

### § 33.13

(2) The Secretary will certify the total amount of the Department's collection on the debt and send a copy of the certification to the employee and another copy to the creditor agency; and

(3) If the Department's collection does not fully satisfy the debt, and the Secretary is aware that the employee is entitled to payments from the Civil Service Retirement and Disability Fund, or other similar payments that may be due the employee from other Federal Government sources, the Secretary will provide written notification of the outstanding debt to the agency responsible for making such payments to the employee. The written notification shall state that the employee owes a debt, the amount of the debt, and that the provisions of this section have been fully complied with. The Department shall furnish a copy of this written notification to the creditor agency so that it can file a properly certified debt claim with the agency responsible for making such payments.

(e) *Employees who transfer to another paying agency.* If, after the creditor agency has submitted a debt claim to the Department, the employee transfers from the Department to a different paying agency before the debt is collected in full, the Secretary shall:

(1) Certify the total amount of the collection made on the debt; and

(2) Furnish a copy of the certification to the employee and another copy to the creditor agency along with notice of the employee's transfer.

### § 33.13 Interest, penalties, and administrative costs.

Debts owed to the Department shall be assessed interest, penalties and administrative costs in accordance with 45 CFR 30.18.

### § 33.14 Non-waiver of rights.

An employee's involuntary payment of all or any portion of a debt collected under this part shall not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of law or contract, unless there are statutory or contractual provisions to the contrary.

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### § 33.15 Refunds.

(a) The Secretary shall promptly refund any amounts paid or deducted under this part when:

(1) A debt is waived or otherwise found not owing to the United States; or

(2) The employee's paying agency is directed by administrative or judicial order to refund amount deducted from the employee's current pay.

(b) Unless required or permitted by law or contract, refunds shall not bear interest.

### § 33.16 Additional administrative collection action.

Nothing contained in this part is intended to preclude the use of any other appropriate administrative remedy.

## PART 34—CLAIMS FILED UNDER THE MILITARY PERSONNEL AND CIVILIAN EMPLOYEES ACT

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AUTHORITY: 31 U.S.C. 3721.

SOURCE: 69 FR 13257, Mar. 22, 2004, unless otherwise noted.

### § 34.1 Purpose and scope.

(a) *Purpose.* This part prescribes policies and procedures for handling claims not in excess of \$40,000.00 filed by employees against the Department of Health and Human Services under the Military Personnel and Civilian Employees Claims (MPCE) Act of 1964, 31 U.S.C. 3721, for damage to, or loss of, property against the Department. Under the MPCE Act, the Secretary may approve claims made against the Government by a federal government employee for damage to or loss of personal property that is incident to employment when the loss or damage is not due to any negligence on the part of employee.

(b) *Scope.* This part applies to all Departmental Operating Divisions and

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Regional Offices that process and review claims under the MPCE Act. Nothing in this part shall be construed to bar other types of claims that are payable under other statutory authority such as, but not limited to, the Federal Tort Claims Act (28 U.S.C. 2671-2680).

### § 34.2 Definitions.

In this part, unless the context otherwise requires:

*Claim* means any claim filed by or on behalf of an employee for damage to, or loss of, property that is incident to the claimant's employment. This definition includes claims where the claimant is not the legal owner of the property in question, but has obtained authorization from the legal owner to possess or control the property.

*Claimant* means an employee who has filed a claim with the Department under the MPCE Act.

*Damage or loss* means total or partial destruction or loss of the item claimed.

*Department* means the Department of Health and Human Services.

*Employee* means an officer or employee of the Department.

*Quarters* means a house, apartment or other residence assigned by the government to an employee of the Department.

### § 34.3 Filing procedures and time limits.

(a) *Who may file a claim.* A claim may be filed by the following individuals:

- (1) An employee;
- (2) An authorized agent or representative of an employee or employee's estate, regardless of whether the claim arose before or concurrent with an employee's death; and
- (3) A former employee or his authorized agent or representative if damage or loss occurred prior to the separation from the Department.

(b) *Requirements.* A claim submitted under this part must be presented in writing to the Claims Officer (See paragraph (c) of this section). Claims may be submitted on a HHS-481 form, Employee Claim for Loss or Damage to Personal Property. All claims must be signed by the claimant or his authorized agent or representative. The HHS-Form can be obtained from the Claims

Officer or downloaded from the Program Support Center's webpage at *www.psc.gov*. All claims must include the following:

- (1) Name and address of the claimant;
- (2) The office in which the claimant was employed at the time of loss, current office, if different, and telephone number;
- (3) Date of loss or damage;
- (4) Amount of claim;
- (5) Description of the property, including but not limited to type, design, model number, date acquired, value when acquired, value when lost, and estimation of repair or replacement cost;
- (6) Description of incident; and
- (7) If property was insured when loss or damage occurred, a statement indicating whether a claim was filed with an insurance carrier.

(c) *Where to file your claim.* (1) Claimants employed with the Regional Offices should submit claims to the Chief Regional Counsel, Office of the General Counsel, within the claimant's Region.

(2) All other claimants must submit claims to the Office of the General Counsel, General Law Division, Claims and Employment Law Branch, 330 Independence Ave., SW., Room 4760, Cohen Building, Washington, DC 20201.

(d) *Evidence required.* You must submit the following:

- (1) Not less than two itemized signed estimates for the cost of repairs, or an itemized bill of repair for the damaged property;
- (2) In the event the property is not economically repairable or is totally lost or destroyed, proof of this fact, its market value before or after loss, purchase price, and date of acquisition of the property;
- (3) Proof of ownership or right to recover for the damage such as a receipt;
- (4) Police/incident report;
- (5) If property is insured, insurance information, such as insurance carrier, type of coverage, deductible, and whether claim has been filed and/or paid;
- (6) Travel orders, if applicable;
- (7) Any citations or traffic tickets, if applicable; and
- (8) Any other evidence required by the claims officer not specified above.

(e) *Time limit.* (1) A claim filed under this section must be filed in writing

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with the Department within two years from the date of the incident.

(2) If the claim accrues in the time of war or in the time of armed conflict in which any armed forces of the United States are engaged or if such a war or armed conflict occurs within two years after the claim accrues, and if good cause is shown, the claim shall be presented no more than two years after that cause ceases to exist, or two years after the war or armed conflict is terminated, whichever is earlier.

(3) All required evidence in support of a claim submitted under this section must be forwarded to the claims officer within sixty days after request. Failure to do so will be deemed as an abandonment of the claim and the claim will be disallowed.

#### § 34.4 Allowable claims.

(a) *What you can claim.* (1) Claims for damage or loss may be allowed where possession of the property was lawful and reasonable under circumstances.

(2) Claims for property damage or loss by fire, flood, hurricane, theft, or other serious occurrence may be allowed when the property is located inside:

(i) Quarters that have been assigned or provided by the government; or

(ii) Quarters outside the United States whether assigned by the government or not, except when a civilian employee outside the U.S. is a local inhabitant.

(3) Claims for damage to, or loss of, property may be allowed when caused by:

(i) Marine, air disaster, enemy action or threat thereof, or other extraordinary risks incurred incident to the performance of official duties by the claimant; and

(ii) Efforts by the claimant to save human life or government property.

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

(5) Claims for clothing and accessories may be allowed when loss or damage was caused by faulty or defec-

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tive equipment or furnishings owned or managed by the Department.

(6) Claims for stolen property, only if it is determined that the claimant exercised due care in protecting his property and there is clear evidence that a burglary or theft occurred.

(7) Claims for automobiles, only when required to perform official business or parked on a government-owned or operated parking lot or garage incident to employment. This subsection does not include claims for damage or loss when traveling between place of residence and duty station, or when the loss or damage was caused by the negligence of a third party. If the automobile is a total loss, the maximum amount allowed is the value of the vehicle at the time of loss as determined by the National Automobile Dealer Association Appraisal Guide or similar publications.

(8) Claims for any other meritorious claims in exceptional cases may be allowed by the Claims Officer.

(9) Transportation or travel losses. Damage or loss of personal property, including baggage and household items, while being transported by a carrier, agent or agency of the government, or private conveyance, may be allowed only if the property is shipped under orders or in connection with travel orders.

(b) [Reserved]

#### § 34.5 Unallowable claims.

(a) *What you cannot claim.* (1) Claims for money or currency, such as intangible property (*i.e.* bankbooks, check, money orders, promissory notes, stock certificates, etc.).

(2) Worn-out or unserviceable property.

(3) Easily pilferable articles, such as jewelry, cameras, watches, and binoculars when they are shipped with household goods by a moving company or unaccompanied baggage. This does not apply to checked property or property in personal custody of the claimant or his agent provided proper security measures have been taken.

(4) Government property.

(5) Appraisal or estimate fees.

(6) Automobiles, except when required to perform official business or

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parked on a government-owned or operated parking lot or garage incident to employment.

(7) Loss or damage caused in whole or in part by the negligent or wrongful act of the claimant or his agent or employee.

(8) Claims under \$30.00.

(9) Stolen property when it's determined that claimant failed to exercise due care in protecting his or her property.

(10) Sales Tax. Reimbursements for the payment of sales tax incurred in connection with repairs or replacing an item will not be allowed.

(b) [Reserved]

### § 34.6 Reconsideration or appeal.

(a) Requests for reconsideration or appeal shall be forwarded to the Associate General Counsel, General Law Division, Office of the General Counsel, within sixty days from the date of the Claims Officer's decision along with any new evidence supporting the claim.

(b) A voucher or a supplemental voucher will be prepared by the Claims Officer if it is determined that the claimant's request for reconsideration should be allowed.

### § 34.7 Payment procedures.

(a) For all claims that are approved in whole or part, the claims officer shall prepare and mail a payment voucher to the claimant.

(b) This voucher shall be mailed to the claimant with appropriate instructions.

(c) Upon receipt of the signed payment voucher, the claims officer shall sign and forward the signed voucher to the office where the claimant is or was employed for processing.

(d) Upon receipt of the signed payment voucher, the office in which the claimant is or was employed will submit the voucher for transmission to the Treasury Department for issuance of a check in the sum allowed.

(e) Funds paid for settlement of allowed claims shall be made from appropriations of the office in which the claimant is or was employed.

### § 34.8 Computation of award and settlement.

(a) The amount awarded on any item of property shall not exceed the adjusted cost of the item based on the cost of replacing it with a similar one of the same quality minus the appropriate depreciation rate. The amount normally payable on property damaged beyond economical repair shall not exceed its depreciated value. If the cost of repairs is less than the depreciated value it shall be considered economically repairable and the costs of repairs shall be the amount payable.

(b) Depreciation in value of an item shall be determined by considering the type of article involved, its replacement cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim.

(c) Notwithstanding any other provision of law, settlements of claims under the MPCE Act are final and conclusive. The acceptance of a settlement constitutes a complete release of any claim against the United States and any employee of the government whose act or omission gave rise to the claim by reason of the same claim.

### § 34.9 Claims involving carriers or insurers.

(a) *Carriers.* (1) If property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner shall file a written claim for reimbursement against the carrier no later than nine months from the date of delivery or should have been made according to the terms of the contract. It shall be filed before or concurrent with submitting a claim against the government under this part.

(2) The demand shall be made against the responsible carrier if more than one contract was issued, a separate demand shall be made against the last carrier on each such document, unless claimant knows which carrier was in possession of the property when the damage or loss occurred.

(b) *Insurers.* (1) If property which is damaged, lost, or destroyed incident to the claimant's service is insured in

whole or in part, the claimant shall inform the Claims Officer whether a claim was made with the insurance carrier.

(2) The claimant shall inform the claims officer if he or she received a reimbursement from the insurance carrier for the item that was damaged or lost. The exact amount of the reimbursement must be reported.

(3) If the claimant receives a reimbursement for the lost or damaged property from an insurance carrier, the maximum amount that can be recovered from the Department is the difference between an appropriate award under this regulation and the amount recovered from the insurance carrier. The claimant is responsible for submitting to the Department documentation that identifies the exact amount of the reimbursement.

## PART 35—TORT CLAIMS AGAINST THE GOVERNMENT

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AUTHORITY: Sec. 1(a), 80 Stat. 306; 28 U.S.C. 2672; 28 CFR Part 14.

SOURCE: 32 FR 14101, Oct. 11, 1967, unless otherwise noted.

### Subpart A—General

#### § 35.1 Scope of regulations.

The regulations in this part shall apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. sections 2671-2680, accruing on or after January 18, 1967, for money damages against the United States for damage to or loss of property or per-

sonal injury or death caused by the negligent or wrongful act or omission of any employee of the Department of Health and Human Services while acting within the scope of his office or employment.

### Subpart B—Procedures

#### § 35.2 Administrative claim; when presented; place of filing.

(a) For purposes of the regulations in this part, a claim shall be deemed to have been presented when the Department of Health and Human Services receives, at a place designated in paragraph (b) of this section, an executed Standard Form 95 or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to the Department but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to the Department as of the date that the claim is received by the Department. A claim mistakenly addressed to or filed with the Department shall forthwith be transferred to the appropriate Federal agency, if ascertainable, or returned to the claimant.

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

(c) Forms may be obtained and claims may be filed, with the office, local, regional, or headquarters, of the constituent organization having jurisdiction over the employee involved in the accident or incident, or with the