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Title 40 —Protection of Environment
Chapter I —Environmental Protection Agency
Subchapter A —General

Part 10 Administrative Claims Under Federal Tort Claims Act

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PART 10—ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

Authority: Sec. 1, 80 Stat. 306; 28 U.S.C. 2672; 28 CFR part 14.

Source: 38 FR 16868, June 27, 1973, unless otherwise noted.

Subpart A—General

§ 10.1 Scope of regulations.

The regulations in this part apply only to claims asserted under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671-2680, for money damages against the United States because of 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 Environmental Protection Agency (EPA) while acting within the scope of his/her employment.

[51 FR 25832, July 16, 1986]

Subpart B—Procedures

§ 10.2 Administrative claim; when presented; place of filing.

- (a) For purpose of the regulations in this part, a claim shall be deemed to have been presented when the Environmental Protection Agency receives, at a place designated in paragraph (c) 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 EPA, but which was mistakenly addressed to or filed with another Federal agency, shall be deemed to be presented to EPA as of the date that the claim is received by EPA. A claim mistakenly addressed to or filed with EPA 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 Administrator, or his designee, 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, EPA 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 EPA office having jurisdiction over the employee involved in the accident or incident, or with the EPA Claims Officer, Office of General Counsel (2311), 1200 Pennsylvania Ave., NW., Washington, DC 20460.

[38 FR 16868, June 27, 1973, as amended at 51 FR 25832, July 16, 1986]

§ 10.3 Administrative claims; who may file.

- (a) A claim for injury to or loss of property may be presented by the owner of the property interest which is the subject of the claim, his duly authorized agent, or his legal representative.
- (b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or his legal representative.
- (c) A claim based on death may be presented by the executor or administrator of the decedent's estate or by any other person legally entitled to assert such a 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 as their respective interests appear, or jointly. Whenever an insurer presents a claim asserting the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights of a subrogee.
- (e) A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§ 10.4 Evidence to be submitted.

- (a) **Death.** In support of a claim based on death, the claimant may be required to submit the following evidence or information:

- (1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.
- (2) Decedent's employment or occupation at time of death, including his monthly or yearly salary or earnings (if any), and the duration of his last employment or occupation.
- (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 his death.
- (4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his 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 payments 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 the 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 his attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by EPA. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that the claimant has, upon request, furnished the report referred to in the first sentence of this subparagraph and has made or agrees in writing to make available to EPA any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of his claim.
- (2) Itemized bills for medical, dental, hospital and related expenses incurred, or itemized receipts of payment for such expenses.
- (3) If the prognosis reveals the necessity for future treatment, a statement of expected duration of and expenses for such treatment.
- (4) If a claim is made for loss of time from employment, a written statement from his employer showing actual time lost from employment, whether he 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 the responsibility of the United States for either 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.
 - (2) A detailed statement of the amount claimed with respect to each item of property.
 - (3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.
 - (4) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, where repair is not economical.
 - (5) Any other evidence or information which may have a bearing on the responsibility of the United States either for the injury to or loss of property or for the damage claimed.
- (d) **Time limit.** All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary to a determination of his claim within three months after a request therefor has been mailed to his last known address may be deemed an abandonment of the claim. The claim may be thereupon disallowed.

§ 10.5 Investigation, examination, and determination of claims.

The EPA Claims Officer adjusts, determines, compromises and settles all administrative tort claims filed with EPA. In carrying out these functions, the EPA Claims Officer makes such investigations as are necessary for a determination of the validity of the claim. The decision of the EPA Claims Officer is a final agency decision of purposes of 28 U.S.C. 2675.

[51 FR 25832, July 16, 1986]

§ 10.6 Final denial of claim.

- (a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with EPA's action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notification.
- (b) Prior to the commencement of suit and prior to the expiration of the 6-month period after the date of mailing by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the EPA for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration, EPA 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) to bring suit shall not accrue until 6 months after the filing of a request for reconsideration. Final action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a) of this section.

§ 10.7 Payment of approved claim.

- (a) Upon allowance of his claim, claimant or his duly authorized agent shall sign the voucher for payment, Standard Form 1145, before payment is made.

- (b) When the claimant is represented by an attorney, the voucher for payment (SF 1145) shall designate both the claimant and his attorney as "payees." The check shall be delivered to the attorney whose address shall appear on the voucher.
- (c) No attorney shall charge fees in excess of 25 percent of a judgment or settlement after litigation, or in excess of 20 percent of administrative settlements (28 U.S.C. 2678).

§ 10.8 Release.

Acceptance by the claimant, his agent or legal representative of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, his agent or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of all claims against either the United States or any employee of the Government arising out of the same subject matter.

§ 10.9 Penalties.

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be liable to a fine of not more than \$10,000 or to imprisonment of not more than 5 years, or both (18 U.S.C. 287,1001), and, in addition, to a forfeiture of \$2,000 and a penalty of double the loss or damage sustained by the United States (31 U.S.C. 3729).

[38 FR 16868, June 27, 1973, as amended at 51 FR 25832, July 16, 1986]

§ 10.10 Limitation on Environmental Protection Agency's authority.

- (a) An award, compromise or settlement of a claim hereunder in excess of \$25,000 shall be effected 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 shall be treated as a single claim.
- (b) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice when, in the opinion of the Environmental Protection Agency:
 - (1) A new precedent or a new point of law is involved; or
 - (2) A question of policy is or may be involved; or
 - (3) The United States is or may be entitled to indemnity or contribution from a third party and the Agency is unable to adjust the third party claim; or
 - (4) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.
- (c) An administrative claim may be adjusted, determined, compromised, or settled by EPA hereunder only after consultation with the Department of Justice when EPA 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.

§ 10.11 Relationship to other agency regulations.

The regulations in this part supplement the Attorney General's regulations in part 14 of chapter 1 of title 28, CFR, as amended. Those regulations, including subsequent amendments thereto, and the regulations in this part apply to the consideration by the Environmental Protection Agency of administrative claims under the Federal Tort Claims Act.

[38 FR 16868, June 27, 1973, as amended at 51 FR 25832, July 16, 1986]