

CHAPTER **4-20**
REGULATIONS

4-20-10 REGULATIONS

The **following** regulations (32 **FR** 197 of October 11, 1967) govern the **presentation** and **processing** of tort **claims** asserted **against** the **Government** based upon activities of **officers** and **employees** of the Department of **Health, Education, and Welfare**.

Title 45 • PUBLIC WELFARE

Subtitle A • Department of **Health, Education, and Welfare**,
General Administration

Part 35 • Tort Claims Against
the Government

Subpart A • General

Sec.

35.1 Scope of regulations.

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AUTHORITY: The **provisions** of this Part 35 **issued** under Sec. 1(a), 80 Stat. 306, 28 U.S.C. 2672; 28 **CFR** Part 14.

Subpart **A - General**

535.1 Scope of regulations.

These regulations shall apply only to claims asserted under the Federal **Tort Claims Act, as amended**, 28 U.S.C. §§ 2671-2680, accruing on or after January 18, 1967, 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 Department of **Health, Education and Welfare** while acting within the scope of his office or employment.

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Subpart B - Procedures

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

(a) For **purposes** of these **regulations**, a **claim** shall be deemed to have been presented when the **Department of Health, Education, and Welfare** 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 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 **t&e 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 **six 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 six 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 Department of Health, Education, and Welfare Claims Officer**, Washington, D. C. 20201.

§35.3 Administrative claim; 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

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8 claim • sserti8g the rights of a subrogee, he shall present with his claim appropriate evidence that he has the rights Of 8 subrogee.

(e) A claim presented by an agent or leg81 representative shall be presented in the name Of the claimant, be signed by the 8geBt or leg81 representative, show the title OR legal capacity of the person signing, and be accompanied by evidence of his authority to present 8 claim on behalf Of the claimant 88 agent, executor, administrator, parent, guardian, or other representative.

§35.4 Administrative claims: evidence and information to be submitted.

(8) 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, 8 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 8 bearing on the responsibility of the United States for the death or the damages claimed. .

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(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 the Department or the constituent organization. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request provided that claimant has, upon request, furnished the report referred to in the first sentence of this subparagraph and he has made or agrees to make available to the Department or the operating agency 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, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected 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 the 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 of the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

(6) Any other evidence or information which may have bearing on the responsibility of the United States for the person injured 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.

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(4) A statement listing date of purchase, purchase price, market value of t&e property of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have bearing either on the responsibility of the United States for the injury to or loss of property or the damages 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.

§35.5 Investigation, examination, and determination of claims.

When a claim is received, the constituent agency out of whose activities the claim arose shall make such investigation as may be necessary or appropriate for a determination of the validity of the claim and thereafter shall forward the claim, together with all pertinent material, and a recommendation based on the merits of the case, with regard to allowance or disallowance of the claim, to the Department Claims Officer to whom authority has been delegated to adjust, determine, compromise and settle all claims hereunder.

§35.6 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 the Department's action, he may file suit in an appropriate United States District Court not later than six 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 Department for reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration the Department 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 Department action on a request for reconsideration shall be effected in accordance with the provisions of paragraph (a).

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§35.7 Payment of approved claims.

(8) 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.

§33.8 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 any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

135.9 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. 231).

§35.10 Limitation on Department's authority.

(8) 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 Department:

- (1) a new precedent or a new point of law is involved; or
- (2) a question of policy is or may be involved; or

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(3) the **United States** is **or may** be entitled to **indemnity** or contribution from a third **party** and the **Department is** unable to adjust the third **party** claim; or

(4) the **compromise** of a particular claim, **as a particular** **utter, 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 **•** **adjudicated, determined,** compromised or **settled** only after **consultation with** the **Department** of Justice **when it is learned 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.**

