

§ 180.108

5 CFR Ch. I (1-1-01 Edition)

official business at the request of, or with the knowledge and consent of, superior authority or by reason of necessity; and

(2) If the property being used for the benefit of the Government was damaged or lost while not in use, evidence that the loss occurred in an authorized storage area.

(j) *Money*. Claims for loss of money deposited for safekeeping, transmittal, or other authorized disposition, should be accompanied by:

(1) Name, grade, and address of the person or persons who received the money and any others involved;

(2) Name and designation of the authority who authorized such person or persons to accept personal funds, and the disposition required; and

(3) Receipts and written sworn statements explaining the failure to account for funds or return them to the claimant.

(k) *Motor vehicles in transit*. Claims for damage to motor vehicles in transit should be accompanied by a copy of orders or other available evidence to establish the claimant's lawful right to have the property shipped and evidence to establish damage in transit.

[43 FR 47163, Oct. 13, 1978, as amended at 44 FR 76747, Dec. 28, 1979]

§ 180.108 Settlement of claims.

(a) *Authority*. Associate Directors and Regional Directors are authorized to settle and pay any claim not exceeding \$500 and arising under this part. The General Counsel is authorized to settle and pay any claim not exceeding \$15,000 and arising under this part. Unless cognizable under § 180.104(c)(3), claims for damage to or loss of motor vehicles may be settled and paid only by the General Counsel.

(b) *Redelegation*. The approving authorities may establish such procedures and make such redelegations as may be required to fulfill the objectives of this part.

(c) *Cost or value*. The amount awarded on any item of property will not exceed the cost of the item (either the price paid in cash or property) or the value at the time of acquisition if not acquired by purchase or exchange. The amount payable will be determined by applying the principles of depreciation

to the adjusted dollar value or other base price of property lost or damaged beyond economical repair; by allowing the cost of repairs when an item is economically repairable, provided the cost of repairs does not exceed the depreciated value of the item; and by deducting salvage value, if appropriate.

(d) *Depreciation*. Depreciation in value of an item is determined by considering the type of article involved, its cost, condition when damaged beyond economical repair or lost, and the time elapsed between the date of acquisition and the date of damage or loss.

(e) *Appreciation*. There will be no allowance for appreciation in the value of the property except that the cost of the item may be adjusted to reflect changes in the purchasing power of the dollar before depreciation is computed. Appreciation will not be allowed solely because the loss occurred or the claimant now resides in an area remote from the place of purchase of the property.

(f) *Expensive articles*. Allowance for expensive items (including heirlooms and antiques) or for items purchased at unreasonably high prices will be based on the fair and reasonable purchase price for substitute articles of a similar nature.

(g) *Acquisition*. Allowance for articles acquired by barter will not exceed the cost of the articles tendered in barter. No reimbursement will be made for articles acquired in black market or other prohibited activities.

(h) *Replacement*. Replacement of damaged or lost property may be made in kind whenever appropriate.

(i) *Amount allowable*. Subject to the limitations of §§ 180.108(c) through 180.108(h), the amount allowable in settlement of a claim is either:

(1) The depreciated value immediately prior to damage or loss of property damaged beyond economical repair or lost, less any salvage value; or

(2) The reasonable cost of repairs when property is economically repairable, provided that the cost of repairs does not exceed the depreciated value.

(j) *Notification*. The approving authority shall notify the claimant in writing of the action taken on the claim and, if the claim is disapproved or only partially approved, the reasons therefor.

Office of Personnel Management

§ 185.101

(k) *Carrier or insurer.* In the event a claim submitted against a carrier or insurer under §180.106 had not been settled before settlement of a claim against the Government under this part, the approving authority shall notify such carrier or insurer to pay the proceeds of the claim to OPM to the extent OPM has made payment to the claimant.

(l) *Review.* The action of the approving authority is final; however, the decision may be reconsidered if the claimant so requests and submits a written explanation why reconsideration is appropriate.

(m) *Attorney's fees.* No more than 10 per centum of the amount paid 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 and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating this or any other provision of sections 240 to 243 of title 31, United States Code, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1000.

[43 FR 47163, Oct. 13, 1978, as amended at 44 FR 76747, Dec. 28, 1979]

PART 185—PROGRAM FRAUD CIVIL REMEDIES

- Sec.
- 185.101 Purpose.
 - 185.102 Definitions.
 - 185.103 Basis for civil penalties and assessments.
 - 185.104 Investigation.
 - 185.105 Review by the reviewing official.
 - 185.106 Prerequisites for issuing a complaint.
 - 185.107 Complaint.
 - 185.108 Service of complaint.
 - 185.109 Answer.
 - 185.110 Default upon failure to file an answer.
 - 185.111 Referral of complaint and answer to the ALJ.
 - 185.112 Notice of hearing.
 - 185.113 Location of hearing.
 - 185.114 Parties to the hearing.
 - 185.115 Separation of functions.
 - 185.116 Ex parte contacts.
 - 185.117 Disqualification of reviewing official or ALJ.

- 185.118 Rights of parties.
- 185.119 Authority of the ALJ.
- 185.120 Prehearing conferences.
- 185.121 Disclosure of documents.
- 185.122 Discovery.
- 185.123 Exchange of witness lists, statements and exhibits.
- 185.124 Subpoenas for attendance at hearing.
- 185.125 Protective order.
- 185.126 Evidence.
- 185.127 Fees.
- 185.128 Form, filing and service of papers.
- 185.129 Computation of time.
- 185.130 Motions.
- 185.131 Sanctions.
- 185.132 The hearing and burden of proof.
- 185.133 Determining the amount of penalties and assessments.
- 185.134 Witnesses.
- 185.135 The record.
- 185.136 Post-hearing briefs.
- 185.137 Initial decision.
- 185.138 Reconsideration of initial decision.
- 185.139 Appeal to authority head.
- 185.140 Stays ordered by the Department of Justice.
- 185.141 Stay pending appeal.
- 185.142 Judicial review.
- 185.143 Collection of civil penalties and assessments.
- 185.144 Right to administrative offset.
- 185.145 Deposit in Treasury of the United States.
- 185.146 Compromise or settlement.
- 185.147 Limitations.

AUTHORITY: 31 U.S.C. 3801-3812.

SOURCE: 60 FR 7891, Feb. 10, 1995, unless otherwise noted.

§ 185.101 Purpose.

This subpart implements the Program Fraud Civil Remedies Act of 1986, Public Law 99-509, 6101-6104, 100 Stat. 1874 (October 21, 1986), codified at 31 U.S.C. 3801-3812. Section 3809 requires each authority head to promulgate regulations necessary to implement the provisions of the statute. The subpart establishes administrative procedures for imposing civil penalties and assessments against persons who make, submit, or present, or cause to be made, submitted, or presented, false, fictitious, or fraudulent claims or written statements to authorities or to their agents, and specifies the hearing and appeal rights of persons subject to allegations of liability for such penalties and assessments. The moneys collected as a result of these procedures are deposited as miscellaneous receipts in the Treasury of the United States.