

<p>United States of America DEPARTMENT OF COMMERCE</p>	<p>DEPARTMENT ADMINISTRATIVE ORDER 203-17</p>	
<p>DEPARTMENT ADMINISTRATIVE ORDER SERIES</p>	<p>DATE OF ISSUANCE July 14, 1997</p>	<p>EFFECTIVE DATE July 11, 1997</p>
<p>SUBJECT PERSONAL PROPERTY CLAIMS OF DEPARTMENT OF COMMERCE PERSONNEL</p>		
<p><u>SECTION 1. PURPOSE.</u></p> <p>.01 This Order prescribes guidelines and procedures for administrative settlement and payment of claims not to exceed \$40,000 against the United States, made by an employee of the Department of Commerce for damage to, or loss of, personal property incident to his or her service.</p> <p>.02 This revision increases the maximum settlement allowance to \$40,000, and updates the general language of this Order.</p> <p><u>SECTION 2. DEFINITIONS.</u></p> <p>For purposes of this Order:</p> <p>a. "Agency" means the Department of Commerce, but does not include any contractor with the United States;</p> <p>b. "Employee" means a civilian officer or employee of the Department of Commerce or a member of the uniformed services under the jurisdiction of the Department of Commerce;</p> <p>c. "Uniformed service" means the commissioned officers of the National Oceanic and Atmospheric Administration;</p> <p>d. "Settle" means consider, ascertain, adjust, determine, and dispose of any claim, whether by full or partial allowance or disallowance; and</p> <p>e. "Claimant" means the persons identified in Section 6. of this Order.</p> <p><u>SECTION 3. LEGAL AUTHORITY.</u></p> <p>The Act of August 31, 1964, Public Law 88-558, 78 Stat. 767, as amended, (31 U.S.C. §3721 <i>et seq.</i>) (the Military Personnel and Civilian Employees' Claims Act of 1964, hereinafter, the "Act"), provides that subject to any policies the President may prescribe, and under such regulations as the Secretary or his/her designee may prescribe,</p>		

the Secretary or a designee may settle and pay an allowable claim against the United States for not more than \$40,000 made by an employee of the Department or his/her survivor for damage to, or loss of, personal property incident to the employee's service.

SECTION 4. SETTLEMENT AUTHORITY.

.01 Settlement authority under the Act is hereby delegated to the heads of operating units, and the Assistant Secretary for Administration for the Office of the Secretary. This authority may be redelegated to one or more employees who shall be designated in writing as claims officers.

.02 No claim shall be settled without prior review by agency legal counsel or the Assistant General Counsel for Finance & Litigation, as provided in Appendix A of this Order.

SECTION 5. POLICY.

The purpose of the authority provided by the Act (Section 3. of this Order) is to make possible administrative settlement and payment of meritorious claims. The general purpose is to make it possible for Government agencies, subject to the requirements contained in the Act, to reimburse employees for unusual and unforeseen loss of, or damage to, personal property which is not covered by insurance, indemnity, or other contracts and which is sustained by employees, through no fault of their own, as an incident of their employment, and under circumstances in which it is only fair that the Government as their employer should provide compensation (see Section 11. of this Order for procedures involving insurance, indemnity, or contract recovery from third parties).

SECTION 6. CLAIMANTS.

.01 A claim may be filed by any employee or his or her duly authorized representative. If the employee is deceased, a claim may be filed by the employee's (a) spouse, (b) children, (c) father or mother, or both, or (d) brothers or sisters, or both. Upon submission of a proper claim by a survivor, settlement and payment will be made to survivors in the order named.

.02 No payment will be made to a survivor who has submitted a claim if higher priority survivors have not been notified. It is incumbent upon the claims officer to notify higher priority survivors that a claim has been filed for an alleged loss suffered by the deceased employee. A reasonable period of time should be permitted higher priority survivors to respond to the notification.

.03 Department of Commerce employees who are also covered by the terms of an agreement with another participating agency, e.g., AID, shall submit their claim to that other agency.

SECTION 7. STATUTORY PROVISIONS.

.01 A claim is allowable under the Act only if it meets all of the following conditions:

a. It arose after the effective date of the Act (August 31, 1964);

b. The damage to, or loss of, personal property was incident to the employee's service;

c. The claim is presented in writing within two years after it accrues, except that if the claim accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such a war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after that cause ceases to exist, or two years after the war or armed conflict is terminated, whichever is earlier;

d. If the loss or damage occurred at quarters occupied by the claimant within the fifty States or the District of Columbia, such quarters must have been assigned to him/her or otherwise provided in kind by the United States;

e. The loss or damage was not caused wholly or partly by the negligent, willful, or wrongful act of the employee or other claimant, or the agent or employee of either of them. The claimant must affirmatively demonstrate to the satisfaction of the Department that this essential requirement is fulfilled;

f. The claim is substantiated as set forth in Section 10. of this Order; and

g. The possession of the property by the employee is determined to have been reasonable, useful, or proper under the attendant circumstances at the time of the loss or damage.

.02 The maximum allowance on any claim is \$40,000 and property may be replaced in kind at the option of the Government. The claimant must furnish satisfactory proof of the value of the property.

.03 The settlement of a claim under the provisions of the Act and implementing Department of Commerce orders shall be final and conclusive.

.04 No more than 10 percent of the amount paid in settlement of each individual claim 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, despite any contract to the contrary. As provided in the Act, any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined a sum not exceeding \$1,000.

SECTION 8 .ADMINISTRATIVE POLICY - ALLOWABLE CLAIMS.

Section 5. of this Order sets forth the general policy basis for the Act. The requirements contained in the Act for allowable claims are enumerated in Section 7. of this Order. Examples

of the types of damages and losses of personal property which, subject to those requirements, would be allowable are:

- a. Losses or damages when employees are compelled by circumstances to evacuate from the transportation in which they were traveling on official business;
- b. Losses or damages in situations where the employee's property is used for the benefit of the Government at the direction, or with the approval of a superior. This includes theft of personally owned hand tools used on the job and stored in space provided by the Government;
- c. Loss of, or damage to, personal belongings caused by natural disasters, fire, water, or wind while stored in Government buildings;
- d. Losses or damages suffered by employees stationed at a remote location due to damage caused by natural disasters;
- e. Losses or damages as a direct result of extraordinary risks to which the employee or his/her property has necessarily been subjected to in the performance of official duties, such as in connection with a civil disturbance, public disorder, or public disaster, or efforts to save Government property or human life where the situation was such that the employee could have saved his or her own property had he or she not so acted;
- f. Abandonment or destruction of property by reason of a military emergency, or by the order of a superior authority;
- g. Losses or damages occurring as a result of the unpredictable behavior of animals;
- h. Losses or damages occurring in shipments provided by the Government, e.g., via Government vessels, Government charter of commercial vessels, or by Government bills of lading on commercial vessels, including storage, on-loading, and off-loading incidents;
- i. Loss of, or damage to, personal and household goods (including motor vehicles and trailers) moved or shipped incident to the requirements of the employee's Government service, subject to Section 9. of this Order and the Depreciation Guide (Appendix B);
- j. Losses or damages where the proximate cause of such damage or loss was the negligent act or omission of agents or employees of the Government acting within the scope of their employment, absent any negligence of the claimant; and
- k. Loss of, or damage to, motor vehicles and/or trailers will be paid, where appropriate, only for an amount covering an insurance deductible, up to a maximum of \$500. If the employee has no insurance on the vehicle, the limit allowable is still \$500.

SECTION 9. UNALLOWABLE CLAIMS.

.01 The following types of claims will not ordinarily be payable (in addition to those which do not meet the conditions contained in Section 7. of this Order):

a. Claims for theft of the property of an employee are unallowable unless there exists positive evidence establishing the theft. It must also be established that the employee or his/her agents took all reasonable and practicable protection and security measures;

b. Claims for articles of extraordinary value or which may be easily pilferable, such as jewelry, cameras and accessories, lap-top computers, pagers, cellular phones, binoculars, watches, furs, valuable articles of gold, silver, other precious materials, painting, antiques (other than bulky furnishing), relics, when shipped or stored with household goods or as unaccompanied baggage. Claims for loss of or damage to such articles when properly checked or in the personal custody of the employee may be allowed, provided that all reasonable and practicable protection and security measures have been taken. The employee shall furnish satisfactory proof that such measures have been taken;

c. Claims for loss of money, currency, or intangible property, such as bank books, checks, notes, stock certificates, bonds, money orders, credit cards, and travelers' checks, except when deposited for safekeeping with an authorized Government agent, or when lost incident to a marine, rail, aircraft, or other public transportation disaster, public disorder, or natural disaster such as fire, flood, hurricane, etc., or when lost under other circumstances such as larceny or burglary, when it is clearly shown that the employee had taken all reasonable and practicable protection and security measures. Where the theft occurred from the employee's living quarters, and such loss is not excluded by subparagraphs 7.01d. of this Order, or .01k. of this Section, the employee must show, among other things, that the property was in a locked container and that the quarters themselves were secured;

d. Claims for worn-out or unserviceable property;

e. Claims for loss or damage to the extent recovered by reason of insurance, indemnity, subrogation, assignment, or other contracts, or torts of third parties;

f. Claims for any losses of insurers or other subrogees;

g. Claims for property owned by the United States unless the employee is financially responsible for it;

h. Claims for property normally used for private business or profit;

- i. Claims for fees for obtaining estimates of the cost of repair of the property damaged, except when approved by the claims officer concerned as (1) necessary and unavoidable expenses of submitting a claim, (2) reasonable in relation to the value of the property and cost of repairs, and (3) not deductible from the cost of repairs if the work is accomplished by the estimator;
- j. Claims for property acquired, possessed, or transported in violation of law, regulations, or orders of competent authority; and
- k. Claims of employees outside the United States for property located in their quarters when the employee is a local inhabitant.

.02 Employees are encouraged to carry private insurance against damage to, or loss of, their personal property. Such insurance is desirable to cover risks specifically excluded or limited by these, or other, regulations. Employee motor vehicles are expected to be insured by the employee.

SECTION 10. SUBSTANTIATION OF CLAIMS.

Each claim shall be accompanied by statements of any witnesses and by relevant and material documentation or other evidence available relating to the claim, including the value of the property lost or damaged (see Appendix A).

SECTION 11. RECOVERY FROM THIRD PARTIES AND ASSIGNMENT OF CLAIMS.

.01 When it appears that property has been damaged or lost under circumstances in which an insurer, carrier, warehouseman, contractor, or other party may be responsible, the claimant shall promptly make a written and timely demand or claim to that third party. No such demand need be made if in the opinion of the claims officer or legal counsel it would be impracticable, or recovery insignificant, or circumstances precluded making timely demand, and the claim appears to be allowable under these rules.

.02 If the claimant has submitted, or intends to submit, a claim under these rules, a copy of the demand to the third party and any related correspondence shall be submitted to the claims officer. The claimant shall also promptly notify the claims officer of any action, or proposed action, by the third party, including offers of settlement, partial settlement, or denial of liability. In addition, before accepting any settlement, the claimant shall obtain the approval of the claims officer.

.03 When the claimant recovers from third parties a sum greater than, or equal to, the claimant's total loss determined to be allowable under these rules, the agency will make no further payment(s) to the claimant. When the amount recovered from third parties is less than the total loss determined to be allowable by the agency, then the agency may compensate the claimant for the difference which may not exceed \$40,000.

.04 When a third party is responsible for the loss or damage to an employee's property, and the agency compensates the claimant in advance of payment by the third party, the claimant shall assign to the agency (the United States Government) the claimant's right, title and interest in the claim against the third party to the extent the agency makes payment to the claimant. The claimant shall also furnish the agency all evidence and relevant documentation to assist the agency in pursuing the claim against the third party. The claimant shall also promptly notify the claims officer of any payments the claimant receives from a third party and repay the agency the amount due it from any payments received from a third party.

SECTION 12. COMPUTATION OF AWARDS.

.01 The amount normally payable for property lost, or damaged beyond economical repair, is found by determining the property's depreciated replacement cost, less any salvage value. If the cost of repair is less than the depreciated value, it will be considered to be repairable, and only the cost of repair will be allowed. As used herein, cost of repair means cost of restoring the property to the condition it was in at the time of the damage (see Depreciation Guide, Appendix B).

.02 When, at the option of the agency, settlement of a claim is made by replacement of property in kind, such replacement shall be made with property of equivalent nature, quality, and quantity, as determined by the agency.

.03 Claims will be payable only for such types and quantities of personal property the possession of which shall be determined to have been reasonable, useful or proper under the circumstances at the time of the loss or damage, taking into consideration, among other factors, the danger of harm occurring to the property.

.04 Claims for antiques, relics, heirlooms, and items purchased at unreasonably high prices shall, if otherwise allowable, be allowed only for the reasonable purchase price of substitute articles of a similar functional nature, quality, and quantity, disregarding the nonintrinsic value of the articles (see Depreciation Guide, Appendix B).

SECTION 13. INTERNAL PROCEDURES.

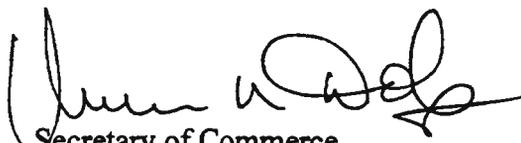
.01 Officials having settlement authority, as prescribed in Section 4. of this Order, shall establish internal procedures for prompt and efficient receipt, investigation, and settlement of claims.

.02 Appendix A includes suggested procedures and policies that may be adapted for use in settling personal property claims, and Form CD-224, "Employee Claim for Loss of or Damage to Personal Property".

.03 Appendix B is the Depreciation Guide to be used in the processing of claims. This Guide is the same as used by the Department of Defense and the Armed Forces.

SECTION 14. EFFECT ON OTHER ORDERS.

This Order supersedes Department Administrative Order 203-17 of December 27, 1979.



Secretary of Commerce

Office of Primary Interest:
Office of the General Counsel

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