

receive and evaluate these statements, and provide advice and counsel regarding matters relating to the Ethics in Government Act of 1978 and its implementing regulations. The duties and responsibilities of the Designated Agency Ethics Official and Alternates are set forth in more detail in 5 CFR 2638.203, which is promulgated and amended by the Office of Government Ethics.

Dated: January 19, 1996.

Philip Lader,

Administrator.

[FR Doc. 96-1161 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

### 13 CFR Part 114

#### Policies of General Application

**AGENCY:** Small Business Administration.  
**ACTION:** Final rule.

**SUMMARY:** In response to President Clinton's regulatory review directive, the Small Business Administration has completed a page-by-page and line-by-line review of its regulations. As a result, SBA is clarifying and streamlining its regulations, revising or eliminating any duplicative, outdated, inconsistent or confusing provisions. This final rule reorganizes the entire Part 114 covering administrative claims under the Federal Tort Claims Act to make it clearer and easier to use. It also amends the Part to streamline the review and adjustment of claims and provide for the use of nonbinding alternative dispute resolution in appropriate cases.

**EFFECTIVE DATE:** This rule is effective February 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Jeff Lane, Office of General Counsel, at (202) 205-6879.

**SUPPLEMENTARY INFORMATION:** Part 114 of chapter I, 13 CFR contains policies governing the presentment, review and handling of administrative claims brought against the Federal Government for money damages for injuries or death arising from the negligent or wrongful act or omission of any employee of the Small Business Administration. The rule reorganizes the entire Part 114 to make it clearer and easier to use and amends it to create a more efficient administrative process. It eliminates from the process the various boards of survey that now investigate and review claims, and gives District Counsel authority to review and deny claims of \$5,000 or less and use nonbinding alternative dispute resolution in appropriate cases. (Boards of Survey

would retain all other existing responsibilities.)

The proposed rule was published on November 3, 1995, at 60 FR 55808. The SBA received four comments on the proposed rule during the thirty-day comment period. Two comments questioned generally the need for revisions in the existing rule. As indicated, SBA has revised and reorganized the rule to streamline its operation and make it more understandable to employees and others who may be affected by it. One of those two comments supported the proposal to eliminate the boards of survey from the review process, but stated that employees should not enjoy the benefits of the attorney-client privilege. With regard to this latter point, this final rule makes no substantive change in the longstanding SBA policy applying the attorney-client privilege in cases where Government legal representation is authorized for employees. Finally, two commenters suggested changes in section 114.105 that are adopted in the final rule. Section 114.105(b) now makes clear that any alternative dispute resolution mechanisms must be nonbinding, and § 114.105(c) is clarified to state that District Counsel have authority to deny claims under \$5,000, but may only recommend their approval. In addition to this clarification in proposed section 114.105(c) in response to comments, SBA includes in the final rule an administrative change: the recommendation for approval will be made by District Counsel to the General Counsel or designee, not to the Senior Area Counsel.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule involves internal administrative procedures and is not a significant rule within the meaning of Executive Order 12866 and will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. It is not likely to have an annual economic effect of \$100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or recordkeeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 2 of that Order.

#### List of Subjects in 13 CFR Part 114

##### Claims.

Accordingly, pursuant to the authority set forth in sections 5(b)(1) and (b)(6) of the Small Business Act, 15 U.S.C. 634(b)(1) and (b)(6), 28 U.S.C. 2672, and 28 CFR 14.11 (31 FR 16616), SBA revises part 114 of Title 13, Code of Federal Regulations (CFR), to read as follows:

#### **PART 114—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND REPRESENTATION AND INDEMNIFICATION OF SBA EMPLOYEES**

##### **Subpart A—Administrative Tort Claims**

###### Sec.

- 114.100 Definitions.
- 114.101 What do these regulations cover?
- 114.102 When and where do I present a claim?
- 114.103 Who may file a claim?
- 114.104 What evidence and information may SBA require relating to my claim?
- 114.105 Who investigates and considers my claim?
- 114.106 What if my claim exceeds \$5,000?
- 114.107 What if my claim exceeds \$25,000 or has other special features?
- 114.108 What if my claim is approved?
- 114.109 What if my claim is denied?

##### **Subpart B—Representation and Indemnification of SBA Employees**

- 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?
- 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?

Authority: 15 U.S.C. 634 (b)(1), (b)(6); 28 U.S.C. 2672; 28 CFR 14.11.

##### **Subpart A—Administrative Tort Claims**

###### **§ 114.100 Definitions.**

As used throughout this Part 114, *date of accrual* means the date you know or reasonably should have known of your injury. The date of accrual will depend on the facts of each case. *Site* means the geographic location where the incident giving rise to your claim occurred.

###### **§ 114.101 What do these regulations cover?**

This part applies only to monetary claims you assert under the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., for

injury to or loss of property, personal injury, or death arising from the negligent or wrongful act or omission of any SBA employee acting within the scope of his or her employment.

**§ 114.102 When and where do I present a claim?**

You must present your claim within two years of the date of accrual at the SBA District Office nearest to the site and within the same state as the site. You must use an official form obtained from SBA or give other written notice of your claim, stating the specific amount of your alleged damages and providing enough information to enable SBA to investigate your claim. Your claim will be considered presented when SBA receives this information.

**§ 114.103 Who may file a claim?**

(a) If a claim is based on factors listed in the first column, then it may be presented by persons listed in the second column.

Claim factors	Claim presenters
Injury to or loss of property.	The owner of the property, his or her duly authorized agent, or legal representative.
Personal injury .....	The injured person, his or her duly authorized agent, or legal representative.
Death .....	The executor, administrator, or legal representative of the decedent's estate, or any other person entitled to assert the claim under applicable state law.
Loss wholly compensated by an insurer with rights as a subrogee.	The parties individually, as their interests appear, or jointly.

(b) An agent or legal representative may present your claim in your name, but must sign the claim, state his or her title or legal capacity, and include documentation of authority to present the claim on your behalf.

**§ 114.104 What evidence and information may SBA require relating to my claim?**

- (a) For a claim based on injury to or loss of property:
  - (1) Proof you own the property.
  - (2) A specific statement of the damage you claim with respect to each item of property.
  - (3) Itemized receipts for payment for necessary repairs or itemized written estimates of the cost of such repairs.

- (4) A statement listing date of purchase, purchase price and salvage value, where repair is not economical.
- (5) Full information about potential insurance coverage and any insurance claims or payments relating to your claim.
- (6) Any other information that may be relevant to the government's alleged liability or the damages you claim.
  - (b) For a claim based on personal injury, including pain and suffering:
    - (1) A written report from your health care provider stating the nature and extent of your injury and treatment, the degree of your temporary or permanent disability, your prognosis, period of hospitalization, and any diminished earning capacity.
    - (2) A written report following a physical, dental or mental examination of you by a physician employed by SBA or another Federal Agency. If you want a copy of this report, you must request it in writing, furnish SBA with the written report of your health care provider, if SBA requests it, and make or agree to make available to SBA any other medical reports relevant to your claim.
    - (3) Itemized bills for medical, dental and hospital expenses you have incurred, or itemized receipts of payment for these expenses.
    - (4) Your health care provider's written statement of the expected expenses related to any necessary future treatment.
    - (5) A statement from your employer showing actual time lost from employment, whether you are a full or part-time employee, and the wages or salary you actually lost.
    - (6) Documentary evidence showing the amount of earnings you actually lost if you are self-employed.
    - (7) Information about the existence of insurance coverage and any insurance claims or payments relating to the claim in question.
    - (8) Any other information that may be relevant to the government's alleged liability or the damages you claim.

- (c) For a claim based on death:
  - (1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.
  - (2) Evidence of decedent's employment or occupation at the time of death, including monthly or yearly salary or earnings, and the duration of such 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 upon the decedent for support at the time of his or her death.

(4) Evidence of the support provided by the decedent to each dependent survivor at the time of his or her death.

- (5) A summary of the decedent's general physical and mental condition before death.
  - (6) Itemized bills or receipts for payments for medical and burial expenses.
  - (7) For pain and suffering damage claims, a physician's detailed statement specifying the injuries suffered, the 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 information that may be relevant to the government's alleged liability or the damages claimed.

**§ 114.105 Who investigates and considers my claim?**

- (a) SBA may investigate, or ask another Federal agency to investigate, your claim. SBA also may request any Federal agency to conduct a physical examination of you and provide a report to SBA. SBA will reimburse the Federal agency for the costs of that examination when authorized or required by statute or regulation.
  - (b) In those cases in which SBA investigates your claim, the SBA District Counsel with jurisdiction over the site will conduct an investigation and make recommendations or a determination with respect to your claim. The District Counsel may negotiate with you and is authorized to use alternative dispute resolution mechanisms (nonbinding on SBA) when they may promote the prompt, fair and efficient resolution of your claim.

(c) If your claim is for \$5,000 or less, the District Counsel may deny the claim, or may recommend approval, compromise, or settlement of the claim to the General Counsel or designee, who may take final action. The District Counsel first must refer the claim to SBA's General Counsel or designee for review if SBA should consult with the Department of Justice before approving the claim, as required under § 114.107.

**§ 114.106 What if my claim exceeds \$5,000?**

The District Counsel must review and investigate your claim and forward it with a report and recommendation to the General Counsel or designee, who may approve or deny an award, compromise, or settlement of claims in excess of \$5,000, but not exceeding \$25,000. The General Counsel or designee will handle claims in excess of \$25,000 as required by § 114.107.

**§ 114.107 What if my claim exceeds \$25,000 or has other special features?**

(a) The U.S. Attorney General or designee must approve in writing any award, compromise, or settlement of a claim in excess of \$25,000. For this purpose, a principal claim and any derivative or subrogated claim are considered a single claim.

(b) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever the General Counsel or designee determines:

- (1) The claim involves a new precedent or a new point of law; or
- (2) The claim involves or may involve a question of policy; or
- (3) The United States is or may be entitled to indemnity or contribution from a third party and SBA is unable to adjust the third party claim; or
- (4) Approval of a 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) SBA must consult with the Department of Justice before adjusting, determining, compromising, or settling a claim whenever SBA learns that the United States, or any of its employees, agents, or cost-plus contractors, is involved in litigation based on a claim arising out of the same incident or transaction.

(d) SBA, acting through its General Counsel or designee, must make any referrals to the Department of Justice for approval or consultation by transmitting them in writing to the Assistant Attorney General, Civil Division.

(1) The referral must contain a short and concise statement of the facts and the reason for the request or referral, copies of the relevant portions of the claim file, and SBA's views and recommendations.

(2) SBA may make this referral at any time after a claim is presented.

**§ 114.108 What if my claim is approved?**

SBA will notify you in writing if it approves your claim. The District Counsel will forward to you or your agent or legal representative the forms necessary to indicate satisfaction of your claim and your acceptance of the payment. Acceptance by you, your agent or your legal representative, of any award, compromise or settlement of your claim is final and conclusive under the Federal Tort Claims Act. It binds you, your agent or your legal representative, and any other person on whose behalf or for whose benefit the claim was presented. It also constitutes a complete release of your claim against the United States and its employees. If

you are represented by counsel, SBA will designate you and your counsel as joint payees and will deliver the check to your counsel. Payment is contingent upon the waiver of your claim and is subject to the availability of appropriated funds.

**§ 114.109 What if my claim is denied?**

SBA will notify you or your agent or legal representative in writing by certified or registered mail if it denies your claim. You have a right to file suit in an appropriate U.S. District Court not later than six months after the date the notification was mailed.

**Subpart B—Representation and Indemnification of SBA Employees****§ 114.110 What is SBA's policy with respect to indemnifying and providing legal representation to SBA employees?**

(a) If an SBA employee engages in conduct, within the scope of his or her employment, which gives rise to a claim, and the SBA Administrator or designee determines that any of the following actions relating to the claim are in SBA's interest, SBA may:

(1) Indemnify the employee after a verdict, judgment, or other monetary award is rendered personally against the employee in any civil suit in state or federal court or any arbitration proceeding;

(2) Settle or compromise the claim; and/or

(3) Pay for, or request that the Department of Justice provide, legal representation to the employee once personally named in such a suit.

(b) If you are an SBA employee, you may ask SBA to settle or compromise your claim, provide you with legal representation, or provide you with indemnification for a verdict, judgment or award entered against you in a suit. To do so, you must submit a timely, written request to the General Counsel, with appropriate documentation, including copies of any pleadings, verdict, judgment, award, or settlement proposal. The General Counsel will decide all requests for representation or settlement, and will forward to the Administrator, with the accompanying documentation and a recommendation, any requests for indemnification.

(c) Any payments by SBA under this section will be contingent upon the availability of appropriated funds.

**§ 114.111 Does the attorney-client privilege apply when SBA employees are represented by the Government?**

When attorneys employed by SBA participate in any process in which SBA seeks to determine whether SBA should request the Department of Justice to

provide representation to an SBA employee sued, subpoenaed, or charged in his or her individual capacity, or whether attorneys employed by SBA should provide representational assistance for such an employee, those attorneys undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. If representation is authorized, SBA attorneys who assist in the representation of an SBA employee also undertake a full and traditional attorney-client relationship with the employee with respect to the attorney-client privilege. Unless authorized by the employee, the attorney must not disclose to anyone other than attorneys also responsible for the employee's representation information communicated to the attorney by the client-employee during the course of the attorney-client relationship. The attorney-client privilege will continue with respect to that information whether or not representation is provided, and even if the employee's representation is denied or discontinued.

Dated: January 19, 1996.

Philip Lader,

Administrator.

[FR Doc. 96-1160 Filed 1-25-96; 8:45 am]

BILLING CODE 8025-01-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 39**

[Docket No. 95-NM-16-AD; Amendment 39-9481; AD 96-01-05]

**Airworthiness Directives; McDonnell Douglas Model DC-9-10, -20, -30, -40, and -50 Series Airplanes and C-9 (Military) Series Airplanes**

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-9 and C-9 (military) series airplanes, that requires replacement, inspection, and modification of the attach fittings of the main landing gear (MLG). This amendment is prompted by reports of severe structural damage and rupture of the integral fuel tank due to overload of the MLG caused by adverse landing conditions. The actions specified by this AD are intended to minimize the possibility of primary structural damage and rupture of the