

# Department of the Interior Departmental Manual

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**Effective Date:** 10/29/75

**Series:** Legal

**Part 451:** Claims

**Chapter 1:** Tort Claims Against the United States

**Originating Office:** Office of the Solicitor

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This chapter has been given a new release number.\* No text changes were made.

## 451 DM 1

1.1 **General.** From time to time property losses, property damage, personal injuries and deaths are claimed to have resulted from the negligent or wrongful acts or omissions of employees of the Department in the course of their duties. This chapter prescribes the Departmental policies, responsibilities, and procedures for handling claims against the United States under the Federal Tort Claims Act. Throughout this chapter, the terms “incident” and “accident” should, except where the context clearly indicates otherwise, be interpreted broadly to refer to any occurrence which may give rise to a tort claim. Since any incident which results in personal injury or death, in injury to real or personal property, or the loss thereof, may give rise to a tort claim, it shall be treated as is provided herein. (Claims for compensation for injury or death sustained by employees of the Department while in performance of duty are covered under the Federal Employees’ Compensation Act in accordance with 370 DM 810.)

1.2 **Policy.** It is the policy of the Department to promptly and fairly consider all claims of a tortious nature and to settle the meritorious ones as quickly as possible within the statutory period of six months after filing, thereby avoiding possible litigation which could be expensive and time-consuming to claimants and the Government.

1.3 **Authority.** Acts establishing Federal Tort Claims Act Procedures and Implementing regulations, as amended by the Act of July 18, 1966 (Public Law 89-506; 80 Stat. 306).

- A. 28 U.S.C. secs. 2671-2680 -- Federal Tort Claims Procedures
- B. 28 U.S.C. sec. 1346(b) and 1402(b) B United States as defendant
- C. 28 U.S.C. sec. 2401(b) -- Time for commencing action against the United States
- D. 28 U.S.C. sec. 2414 -- Payment for judgments and compromise
- E. 31 U.S.C. sec 724a -- Appropriations for payment of judgments and compromises

- F. 28 U.S.C. sec. 1291 -- Final decisions of District Courts
- G. 28 U.S.C. sec. 1504 -- Tort Claims
- H. 28 CFR 14 -- Attorney General's Regulations
- I. 43 CFR 22 -- Administrative Claims Under Federal Tort Claims Act
- J. 210 DM 2.2A(1) -- Delegation to Solicitor of Tort Claims Authority
- K. 451 DM 4 & IPMR 114-38.54 -- Motor Vehicle Management
- L. 451 DM 1 -- Tort Claims Procedures
- M. 111 DM 2 -- Organization - Office of the Solicitor
- N. Solicitor's Regulation 5 (Revised - 1975) -- Delegation of authority to Associate, Regional and Field Solicitors

**1.4 The Federal Tort Claims Act.** The Federal Tort Claims Act provides a means whereby damages may be awarded as a result of claims against the United States for "injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Agency while acting within the scope of his office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." Generally, a claim must be filed with the appropriate agency within two years after the cause of action accrues.

A. Recovery for torts may be sought:

(1) By submitting claims for administrative determination to the Department. If a determination has not been issued within six months after the claim was filed with the agency out of whose activities the claim arose, claimant may consider the claim administratively denied and may file suit in the appropriate Federal District Court.

(2) By filing suit within six months after administrative denial of the claim in the appropriate U.S. District Court.

**1.5 Responsibilities for Tort Claims.** The expeditious handling of tort claims requires cooperation from the claimant, his representatives, the investigators, the tort claims officer, the Solicitor's Office, Department of Justice personnel and others involved. Provision at all levels for the effective discharge of tort claim responsibilities must be effected.

**1.6 Solicitor's Role in Tort Claims.** Administrative determination as to the merit of any tort claim presented is a function delegated to the Solicitor and redelegated to other members of his Office. Judicial determination is a function of the Courts.

**1.7 Management's Role in Tort Claims.** The prevention of situations which give rise to

tort claims and the proper investigation and documentation of the facts incident to tort claims are management functions. The expenses incurred in the investigation and related activities in connection therewith will be borne by the Office or Bureau of the employee out of whose activities the claim arose.

A. Line officials are responsible for:

(1) Preventive action by (a) taking such steps as are reasonable to prevent situations which give rise to tort claims, (b) proper training and supervision of employees, (c) adequate safety measures, and (d) accident prevention programs.

(2) Proper handling of claims by making necessary reports, thorough and timely investigations and the documentation of facts incident to claims so that the Government's, the employee's, and the claimant's interests are equally protected. In connection with tort claims activities, the Head of each Bureau and Office is responsible for carrying out the policy objective outlined in 451 DM 1.2.

B. The Head of each Bureau and Office shall designate an appropriate number of tort claims officers, preferably persons with investigative experience, at headquarters and in the field to:

(1) Provide staff assistance on tort claims matters;

(2) Assure the prompt and full investigation of accidents which may result in tort claims against the Government prior to the filing of claim; and

(3) Document the facts incident to tort claims involving the Bureau or Office.

**1.8 When an Incident Occurs.** All incidents involving injury to person and damage to or destruction of private property shall be reported and investigated as soon as possible after they occur.

A. Reporting Incidents. Departmental requirements and procedures for reporting on accidents (see 395 DM 4 and related Bureau or Office instructions) shall be followed. An employee shall immediately notify his or her supervisor of any incident or accident involving a private person or private property which may give rise to a claim against the Government. The supervisor, in turn, shall immediately notify the appropriate tort claims officer. Standard Forms 91, 91A (block 28 shall not be completed), and Optional Form 26 must be completed in all motor vehicle accident cases. (National Park Service Form 10-413 may be substituted for Form 91A.) The following additional guidelines apply to incidents which are or may become the subject of a tort claim.

(1) In the event of death, actual or potential serious personal injury or substantial property damage (estimated to be in excess of \$1,000), the appropriate Associate, Regional, or Field Solicitor and the appropriate tort claims officer shall be notified immediately by telegram or telephone. If by telephone, it shall later be confirmed in writing and dispatched by close of business of the following business day.

(2) Copies of all accident reports shall be furnished to the tort claims officer of the Bureau or Office involved.

(3) Copies of the basic accident reports involving death, serious personal injury, and substantial property damage shall be furnished to the appropriate Associate, Regional, or Field Solicitor no later than 10 days after the incident.

(4) In reporting an accident, an employee should state the facts to the best of his knowledge. Conclusions as to fault or responsibility should not be stated. The employee should report the accident only to authorized representatives of the Government, the employee's insurance company, and police officers investigating the accident. The employee shall also file any report required by law.

(5) If an employee involved in an accident carries liability insurance which may cover the employee or the Government, the employee shall report the accident to the insurance company and shall also furnish the tort claims officer a copy of the insurance policy together with applicable endorsements and amendments.

(6) An employee shall notify his or her supervisor immediately whenever a lawsuit is threatened or filed in Court alleging a tort arising out of Government employment.

(7) For additional reporting requirements in connection with accidents and claims involving General Services Administration motor pool vehicles, see FPMR 101-39.8.

(8) In the event that accidents or other incidents are due to malfeasance, neglect of duty, or irresponsible performance on the part of employees, the provisions outlined in Parts 355-358 of the Departmental Manual for investigating and reporting such incidents shall be followed.

B. Investigating Accidents.

(1) Investigations by Supervisors and Safety Officers. The requirements and procedures for investigating accidents set forth in 385 DM 5 shall be followed. In investigating accidents which have resulted or may result in tort claims, supervisors and safety officers shall consult with the tort claims officer to assure that all appropriate steps have been taken to fully document the case for tort claims purposes. Copies of the investigative report by supervisors, safety officers, and others of such accidents shall be furnished to the tort claims officer for his information and use.

(2) Investigation by Office of Audit and Investigation. All accidents or other incidents involving irregularities, offenses, or official misconduct which are of a serious nature and fall within the categories listed in 355 DM 2 shall be reported directly to the Office of the Assistant Secretary--Management for investigation by the Office of Audit and Investigation. If a tort claim arises from any matter thus investigated by the Office of Audit and Investigation, the investigative report will be made available for use in the processing of the claim.

(3) Investigation by Tort Claims Officer. It is necessary that an investigation be made of all accidents in order that all claims may be properly evaluated.

The extent of this investigation will rest on the exercise of good judgment with emphasis on thoroughness. The complete investigative file shall be forwarded to the appropriate Associate, Regional, or Field Solicitor not later than 30 days after the occurrence of the incident.

#### **1.9 Duties of the Tort Claims Officer.**

A. Every investigation shall be conducted by a tort claims officer, who shall be responsible for the prompt investigation of every incident while witnesses are available and before damage has been repaired to the end of securing all relevant information. The duties of the employee in his capacity as a tort claims officer shall ordinarily have priority over any other assignments he may have.

B. The tort claims officer shall:

(1) Conduct the investigation in a fair and impartial manner, covering all phases of the incident to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available in order that all claims may be properly evaluated.

(2) Find and interview all competent witnesses and secure signed statements on facts pertinent to the incident. Such witnesses are drivers and passengers of all vehicles involved, ambulance attendants, tow-truck operators, doctors, police officers, and eyewitnesses. Witnesses should be interviewed by the tort claims officer at the earliest opportunity. Statements from witnesses should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the tort claims officer fails to obtain such statements before witnesses lose their clear recollection or can be confused by questioning by persons with adverse interests.

(3) Inspect the property damage and interview injured persons, and their representatives, personally, and if such personal inspection and interview is not conducted, state the reason therefor.

(4) Ascertain the nature, extent, and amount of damage and obtain all pertinent repair bills, or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against the Government which may arise from the incident.

(5) Obtain from the proper maintenance office the reports of the inspection of the Government-owned vehicle that were conducted prior to and subsequent to the accident in all cases, in which they appear pertinent to a determination of liability.

(6) Reduce to writing and incorporate into a unified investigative report all pertinent testimony, exhibits, and any other evidence taken or considered.

(7) Furnish the proper claim forms to any person who inquires concerning the procedure for making claims against the Government as a result of an accident or incident and

advise such person where the claim should be filed. (See 43 CFR 22.)

(8) Submit the complete investigative report to the appropriate Associate, Regional, or Field Solicitor as promptly as the circumstances permit; but no later than 30 days after the occurrence of the accident or incident. In the case of an incident involving death, serious personal injury, or substantial property damage, to submit immediately a preliminary report, containing such information as is at that time available, to the appropriate Associate, Regional, or Field Solicitor with a follow-up report in 10 days. Where not all of the required information is immediately available, as in an accident resulting in personal injuries requiring an extended period of hospitalization or medical care, the investigative report shall be submitted promptly, containing all information available at the time of submission, and shall be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

#### **1.10 Contents of the Investigative Report.**

A. A written report of investigation will be made of each incident or accident. For motor vehicle accidents, Standard Forms 91, 91A (block 28 shall not be completed), and Optional Form 26 must be used. Form 10-413 may be used by the National Park Service in lieu of Form 91A.

B. The report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

- (1) Date, time, and exact place the accident or incident occurred.
- (2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.
- (3) A statement as to whether the driver is the sole owner of the damaged property and, if not, the name and address of the owner or part owners.
- (4) Names and addresses of employees involved as participants or witnesses.
- (5) Names and addresses of all eyewitnesses, including the driver and the occupants of the vehicle.
- (6) Accurate description of Government property involved, and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.
- (7) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the name(s) and address(es) of the owner(s) thereof.
- (8) A statement as to whether any person involved was cited for violating any Federal or State statute, local ordinance, or Department regulation, and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(9) A statement as to whether a police investigation was made. If available, a copy of the police report of investigation shall be included.

(10) A statement as to whether any arrests were made or charges preferred, and the result of any trial or proceeding, including names of all witnesses and the substance of their testimony. When available, a copy of the transcript must be secured.

(11) Newspaper accounts, weather reports, plats, and photographs of the site and of the vehicles.

(12) As many exhibits or enclosures as are pertinent and appear necessary or useful for purposes of claim determinations shall be obtained during the course of the investigation and shall be attached to the investigative report. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report.

#### **1.11 Evidence and Information to be Submitted by Claimant.**

A. In support of a claim based on death, the claimant may be required to submit the following evidence for 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, 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 payment 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. In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence and information:

(1) A written report by the attending physician or dentist showing the nature and extent of the injury, the nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity.

(2) Itemized (and signed) bills for medical, dental, 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 expenses for such treatment.

(4) When a claim is made for loss of time from work or loss of earnings, a written statement from the employer showing actual time lost from employment, the number of hours usually worked per week, the amount of wages or salary which the employee was earning at the time of the accident, and whether he was a full-time or part-time employee.

(5) When claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of claimant's earnings during the preceding two years.

(6) Any other evident which would have a bearing on the award.

(7) In addition, the claimant may be required to submit to an examination by a physician selected by the Department of the Interior.

C. 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 and information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed for each item of property.

(3) An itemized receipt of payment for necessary repaired to each item of property.

(4) A statement listing date of purchase, purchase price and salvage value where repair is not economical.

(5) Any other evidence which would have a bearing on the award.

#### **1.12 Who May File.**

A. A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or legal representative.



B. A claim for personal injury may be presented by the injured person, his duly authorized agent, or 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 in accordance with 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 parties individually as their respective interests appear, or jointly.

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.

#### **1.13 When Presented.**

A. A claim shall be deemed to have been presented when the appropriate Bureau or Office receives from a claimant, a duly authorized agent or legal representative, an executed Standard Form 95, or a written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury, or death.

B. A claim presented to the wrong Federal agency shall be transferred forthwith to the appropriate agency.

#### **1.14 When Received.**

A. The Claimant's envelope shall be retained, and the claim form shall be time and date stamped, recorded, and forwarded immediately to the appropriate tort claims officer.

B. The tort claims officer shall send the original claim form no later than 24 hours, together with all the original papers, to the appropriate Associate, Regional, or Field Solicitor (See 111 DM 2). If the claim is not forwarded within this time, a memorandum stating the reason for delay must be submitted.

#### **1.15 Action by Associate, Regional, or Field Solicitor.**

A. Upon receipt of the claim and the Bureau's or Office's investigative report, the appropriate Solicitor's Office shall make a determination of the claim. The determination may either deny, compromise, or pay the claim in full. If the record discloses that the employee involved had liability insurance, a provision of which might indemnify the Government, the attorney who makes the determination should take such action as is deemed appropriate.

B. Notice of disposition of claims shall be in writing and sent to the claimant, his attorney, or legal representative. In compromises and denials, notice shall be sent by certified or

registered mail, return receipt requested. The notice shall include a statement that if the claimant is dissatisfied, he is entitled to institute suit within a period of six months from the date of the mailing of the notice of the determination.

C. If any award, compromise or settlement is made for \$2,500 or less, the appropriate Associate, Regional, or Field Solicitor will send a signed copy of the administrative determination together with an original payment voucher (Standard Form 1145 "Voucher for Payment under Federal Tort Claims Act"), by certified or registered mail, return receipt requested. When claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees. The signed voucher constitutes full release of the claim.

(1) When a signed payment voucher is received, the appropriate Associate, Regional, or Field Solicitor shall sign the original voucher in the space designated "Head of Federal Agency or Authorized Designee," and forward it, with two copies, the original determination and the complete claim file to the Bureau or Office concerned with payment out of available appropriations. When represented by an attorney, the check shall be delivered to the attorney whose address appears on the voucher.

D. If any award, compromise or settlement is made in excess of \$2,500 and not more than \$100,000, the appropriate Associate, Regional, or Field Solicitor will forward Form 1145 with a covering letter stating that the designee has delegated authority to make the award under the Act, to the Transportation and Claims Division, General Accounting Office. Payment of an award, compromise or settlement in excess of \$100,000 shall be obtained by forwarding Form 1145 to the Bureau of Accounts, Department of the Treasury.

#### **1.16 Final Denial and Reconsideration.**

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 agency action, he is entitled to resubmit his claim to the deciding office within a period of six months from the date of the mailing of the notification of the determination or he may file suit in an appropriate U.S. District Court within six months of the date of the mailing of the notification. The initial decision is final unless reconsideration is requested.

B. Upon timely filing of a request for reconsideration, the agency shall have six 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) shall not accrue until final action on the request for reconsideration. Final action on a request for reconsideration shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. This notification may include a statement of the reasons for the denial and shall include a statement that if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than six months after the date of mailing of the notification of the denial.

#### **1.17 Action on Approved Claims in an Amount of \$2,500 or Less.**

A. Any award, compromise or settlement in an amount of \$2,500 or less shall be paid by the Bureau or Office concerned out of available appropriations.

B. When claimant is represented by an attorney, the voucher for payment shall designate both the claimant and the attorney as payees. The check shall be delivered to the attorney, whose address shall appear on the voucher.

#### **1.18 Action on Approved Claims in Excess of \$2,500.**

A. Payment of awards in excess of \$2,500, and not more than \$100,000, will be obtained by forwarding Standard Form 1145 to the Transportation and Claims Division, General Accounting Office.

B. Payment of awards in excess of \$100,000 will be obtained by forwarding Standard Form 1145 to the Bureau of Accounts, Department of the Treasury.

C. When an award is in excess of \$25,000, Standard Form 1145 must be accompanied by evidence that the award has been approved in writing by the Attorney General or his designee. This may be effected by consulting the Torts Section, Civil Division, Department of Justice.

D. Standard Form 1145 shall be executed by the claimant or it shall be accompanied by either a claims settlement agreement or a Standard Form 95, executed by the claimant.

E. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and the attorney as payees. The check shall be delivered to the attorney, whose address shall appear on the voucher.

#### **1.19 Civil Action Instituted Upon a Tort Claim Against the United States.**

A. Upon institution of a suit, the assigned Associate, Regional, or Field Solicitor shall notify the appropriate Bureau or Office and request the original and two copies of the investigative report. In addition, the Associate Solicitor, Division of General Law, should be notified of the filing of the suit.

B. The appropriate Associate, Regional, or Field Solicitor shall in turn forward a copy of the investigative report to the Attorney General and the original copy to the United States Attorney.

C. The appropriate Associate, Regional, or Field Solicitor will notify the Bureau or Office involved and the Associate Solicitor, Division of General Law of the final disposition of the litigation.

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