

U.S. DEPARTMENT OF AGRICULTURE
WASHINGTON, D.C. 20250

DEPARTMENTAL REGULATION		Number: 2510-001
SUBJECT: Claims Against the United States	DATE: January 25, 1995	
	OPI: Office of the General Counsel	

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1 PURPOSE

This revised regulation prescribes procedures for handling claims against the United States pursuant to the Federal Tort Claims Act, the Military Personnel and Civilian Employees' Claims Act, and 31 U.S.C. 3723, which arise from Department of Agriculture (USDA) programs and activities. It does not set procedures for claims which must be handled under statutes granting authority to specific agencies. The regulation is revised to transfer the authority to determine, settle, and pay claims submitted by employees under the Military Personnel and Civilian Employees' Claims Act from the Office of the General Counsel to the heads of agencies.

2 CANCELLATION

Departmental Regulation 2510-1, Claims Against the United States, dated July 20, 1992, and Amendment No. 1, dated March 31, 1993, are cancelled.

3 CLAIMS WHICH MUST BE SUBMITTED TO THE GENERAL ACCOUNTING OFFICE

Procedures for handling claims which must be submitted to the General Accounting Office for adjudication under 31 U.S.C. 3702(d) will be set forth in another regulation.

4 DEFINITIONS

a In this regulation, "agency" means a major line or program unit or staff office of the Department whose head reports to the Secretary, an Under Secretary, or an Assistant Secretary.

b Generally, in the statutory and regulatory authorities cited in this regulation, "agency" means a department in the executive branch of the Federal Government.

5 ABBREVIATIONS

CFR Code of Federal Regulations

Comp. Gen. Comptroller General

DR Departmental Regulation

FTCA Federal Tort Claims Act

GAO General Accounting Office, also the GAO
Policy and Procedures Manual for Guidance of
Federal Agencies MPCE Act Military Personnel
and Civilian Employees' Claims Act

OGC Office of the General Counsel

U.S.C. United States Code

6 GENERAL RESPONSIBILITIES

a The General Counsel will:

(1) Consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the FTCA, 28 U.S.C. 1346(b), 2401(b), 2671-2680, and the regulations of the Attorney General contained in 28 CFR Part 14. (7 CFR 2.31)

(2) Settle claims for not more than \$1,000 pursuant to 31 U.S.C. 3723. (7 CFR 2.31)

b Agency heads will:

(1) Determine, settle, and pay claims submitted by employees of their agency under the MPCE Act, 31 U.S.C. 3721.

(2) Provide sufficient reserves for the payment of claims that must be paid from agency appropriations.

(3) Establish a system for handling claims that is commensurate with the agency's potential claims liability, based on past experience as to the number, magnitude, and complexity of claims arising from the agency's

activities. The system must be designed to meet OGC and other claims management requirements.

c Agency Tort Contacts. (Designated under section 6 of this regulation) will provide advice, guidance, training, and supervision to agency personnel on all claims matters arising under the FTCA and 31 U.S.C. 3723.

d Employees will:

(1) Respond to inquiries from and furnish information to claimants and prospective claimants, but may not, other than in the proper discharge of official duties, act as "agent or attorney for prosecuting any claim against the United States, or [receive] any gratuity, or any share of, or interest in, any such claim in consideration of assistance in the prosecution of such claim (18 U.S.C. 205)

(2) Refrain from making a statement to a claimant or his or her agent or attorney admitting liability or the sufficiency of a claim.

7 CLAIMS UNDER THE FTCA (28 U.S.C. 1346(b), 2401(b), 2671-2680)

a Authority to Handle Claims. The General Counsel of USDA is delegated authority to consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the FTCA. (7 CFR 2.31(a))

Claims demanding compensation in amounts in excess of \$100,000 are handled by the Associate General Counsel for Legislation, Litigation, Research and Operations, and the Assistant General Counsel, Research and Operations Division. Claims of \$100,000 or less are handled by Regional Attorneys at various OGC field offices. (See Appendix).

All claims arising from a single occurrence should be added together for the purpose of this delegation.

b Agency Tort Contacts. Each agency will designate a Tort Contact to manage all agency related activities, including training and supervision of personnel. The Tort Contact will be the sole liaison with OGC, unless the agency chooses to designate field personnel to serve as Tort Contacts with Regional Attorneys. The Tort Contact should not routinely delegate responsibility for dealing with OGC to subordinates.

The Tort Contact should review all submissions to OGC for adequacy, completeness, and compliance with these procedures.

Persons who are designated as agency Tort Contacts should be familiar with the FTCA and with litigation, and should receive periodically additional training to keep current with developments in the field of claims management.

The name, address, and telephone number of each Tort Contact and at least one alternate should be sent to the Assistant General Counsel, Research and Operations Division, OGC, Washington, D.C. 20250, and updated as changes in personnel occur.

c Investigation. When an agency receives a claim or learns of an incident likely to result in a claim, it is responsible for ensuring that an investigation of the incident is undertaken and for the preservation of all relevant evidence. Any such investigation is conducted at the request of OGC, and any report derived from such investigation is considered attorney work product.

d Time Requirements. When an agency receives a claim or potential claim, it must be date stamped and signed immediately by the person who receives it. After agency processing, a claim must be forwarded to OGC no later than 4 months after it

was received, unless a different deadline has been set by the appropriate office of OGC.

e Advice to Prospective Claimants. When a private person complains of injury or loss of property or personal injury or death alleged to be caused by the negligent or wrongful act or omission of an agency employee, and expresses an intention to seek monetary compensation for damages from the Government, the agency must inform the person of procedures for filing a claim under the FTCA.

Unless a private person appears to have incurred concrete damages and to have expressed an intention to seek monetary compensation from the United States, agency personnel should not encourage or require them to submit FTCA claims. (Also see section 5d.) Mere expression of dissatisfaction with the conduct of agency programs does not provide grounds for suggesting a claim under the FTCA would be an appropriate method to indicate such dissatisfaction.

Furthermore, the FTCA should not be suggested as an alternative remedy to parties who have had an appeal denied pursuant to appeal rights which are part of an agency program.

Prospective claimants should be given a copy of SF-95, "Claim for Damage, Injury, or Death." Use of this form is optional. A claim, however, must be in writing and should be prepared in accordance with 28 CFR Part 14 and the instructions set forth on the SF-95.

A claim should be filed with the local office of the agency which employs the allegedly responsible employee.

f Agency Processing of Claims. As soon as a claim is received by an agency, it should be reported to the Tort Contact for entry on a master calendar of tort claims. The claim should then be examined to determine whether it meets all the requirements of the FTCA.

If it does not, the claimant should be informed of the specific defect(s) and that OGC will not issue a determination on a claim until all defects are cured.

If the claim meets all FTCA requirements, its receipt should be acknowledged and the claimant should be informed that the claim is being forwarded to OGC for determination. Agency personnel should never inform claimants that a purported claim meets FTCA requirements.

OGC will provide assistance to agencies in preparing form letters to be used for these responses.

Where a claim has been submitted by an attorney for the claimant, all correspondence should be directed to the attorney rather than the claimant.

g Administrative Report. When the claim is forwarded to OGC for determination, it must be accompanied by a single memorandum in narrative form setting forth the agency position on the claim.

The administrative report should be reviewed by the Tort Contact to ensure that it contains:

- (1) A background description of the program involved, referencing statutory authority and applicable regulations.
- (2) A complete description of the events in question, including references to documents included and a response to every allegation made in the claim.
- (3) An agency analysis of who was at fault for losses or damages alleged in the claim, referencing the opinion of technical experts, who may be either non-involved agency personnel or outside consultants, as necessary.

(4) An analysis of damages claimed, unless OGC advises that it does not need them.

(5) Any policy reasons arguing for or against settlement.

(6) Details of any claims USDA might have against the claimant, whether or not they arose out of the incident which is the subject of the claim against USDA.

To the administrative report should be attached copies of all documents relevant to the issues involved in the claim. The claim and supporting documents should be submitted to OGC in triplicate. Original agency records should not be forwarded to OGC unless specifically requested. However, they should be preserved and remain available for use in litigation.

h Determination of Claims. OGC will determine whether claims should be allowed, compromised, or denied and will appropriately notify claimants. If a claim is allowed in full or compromised, OGC will notify the fiscal officer of the agency involved.

If a claim is denied, OGC will notify the claimant and his attorney or legal representative. The notification will include a statement that if the claimant is dissatisfied with USDA's action, he may file suit in a United States District Court not later than 6 months after the date of the notification was mailed. (28 U.S.C. 1346(b))

i Payment of Claims. Regardless of the amount originally claimed, awards of \$25,000 or less may be approved by USDA. Awards over \$25,000 must have the approval of the Attorney General. (28 U.S.C. 2672) OGC will take the necessary actions to obtain this approval.

Payments of \$2,500 or less will be made from the appropriation of the agency whose activities gave rise to the claim. (7 GAO 21.10) Payments over \$2,500 are paid by GAO from a fund established under a permanent appropriation. (28 U.S.C. 2672, 31 U.S.C. 1304)

(1) Payment of \$2,500 or Less. After receipt of the "Allowance of Tort Claim," the agency will prepare an SF-1145, "Voucher for Payment Under Federal Tort Claims Act" and send it to the claimant for signature! When it is returned, the agency will process the SF-1145 for payment out of the agency's appropriation.

When a claimant is represented by an attorney, the SF-1145 must designate both the claimant and the attorney as payees, and indicate the attorney's address. The check must be sent to the attorney.

(2) Payments Over \$2,500. OGC will forward to the agency an "Allowance of Tort Claim," a completed SF-1145 and, for payments in excess of \$25,000, a copy of the Justice Department letter approving payment. The agency will send the SF-1145 to the claimant for signature.

When it is returned, the agency will forward it to the Claims Division of GAO for payment.

j Finality of Settlement. The acceptance by a claimant of any award, compromise, or settlement is final and conclusive on the claimant, and constitutes a complete release of any claim against the United States and against the Government employee whose act or omission gave rise to the claim. (28 U.S.C. 2672)

k Records. All memoranda, reports, exhibits, and other documents supporting the settlement of

a claim must be retained by an agency and made available to GAO for audit purposes.

8 CLAIMS UNDER 31 U.S.C. 3723 (SMALL CLAIMS)

a Authority to Handle Claims. The General Counsel of USDA is delegated authority to settle claims for not more than \$1,000 that meet the requirements of 31 U.S.C. 3723. (7 CFR 2.31(q))

These claims are handled by the Associate General Counsel for Legislation, Litigation, Research and Operations, the Assistant General Counsel, Research and Operations, and by Regional Attorneys at various OGC field locations. (See Appendix)

b Payment of Claims. Awards under 31 U.S.C. 3723 will be paid from the appropriation of the agency whose activities gave rise to the claim. (31 U.S.C. 1304)

9 CLAIMS UNDER 31 U.S.C. 3721 (MPCE ACT)

a Authority to Handle Claims. The head of each agency, or his designee, is delegated authority to determine, settle, and pay claims submitted by employees of USDA under the MPCE Act, 31 U.S.C. 3721.

b General.

(1) Claims. A claim for damage to, or loss of, personal property incident to service of a civilian officer or employee of the Department, where possession of such property is determined to be reasonable, useful, or proper under the circumstances, may be settled and paid.

(2) Claimant. A civilian officer or employee of the Department or his or her representative.

(3) Claims Allowable. Claims may be allowed when the damage or loss

involves one or more of the following circumstances:

(a) Loss, theft, or damage in quarters or other authorized places if it occurred at:

1 Quarters, wherever situated, if assigned or provided in kind by the Government.

2 Any warehouse, office, hospital, or storage space designated by superior authority for reception of such property.

3 Quarters outside the United States privately leased by employees.

(b) Loss or damage of property, including personal clothing and vehicles, which are subjected to extraordinary risks in the performance of duty, such as in connection with a civil disturbance, common or natural disaster, or efforts to save human life or Government property.

(c) Loss, or damage of property used for the benefit of the Government at the direction of a superior authority.

(d) Loss or damage of property incident to transportation thereof, if

recovery cannot be had from
an insurer or carrier.

(4) Claims Not Allowable. Claims are
not allowable for the following:

(a) Loss or damage occurring
at quarters occupied by the
claimant within one of the
fifty States or the District
of Columbia, unless the
quarters were assigned to
claimant or otherwise
provided in kind by the
Government.

(b) Loss or damage totaling
less than \$10.00.

(c) Loss or damage of articles
being worn, unless allowable
under section 9b(3)(b).

(d) Loss of money or
currency, except when
deposited with Government for
safekeeping or when lost in
marine, rail, aircraft, or
other disaster such as fire,
flood, hurricane, etc.

(e) Transportation losses, if
recovery can be had from
insurer or carrier, or if
employee chose an unlicensed
carrier.

(f) Losses recoverable
pursuant to contract, or
recoverable from insurer.

(g) Loss or damage caused, in
whole or in part, by the
negligent or wrongful act of
the claimant or claimant's
agent.

(h) Loss or damage of articles of extraordinary value (such articles should be insured by owners).

(i) Loss or damage of property owned by the United States unless employee is financially responsible for it to another Government agency.

(j) Loss or damage of property used for private business or profit.

(k) Loss due to theft unless due care was used to protect such possession.

(l) Loss or damage of property acquired, possessed or transported in violation of law or regulations.

(m) Loss or damage of small articles of substantial value when shipped with household goods or unaccompanied baggage.

(n) Loss or damage of articles sent through United States or international mail systems.

(o) Loss or damage incident to the operation of motor vehicles, unless allowable under section 9b(3)(b).

(5) Prohibited Claims. A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

(6) Private Insurance. Employees are encouraged to carry private insurance against damage to or loss of their personal property in order to cover risks excluded or limited by the statute or this regulation.

Where there is a possibility of recovery against a carrier, insurer, warehouseman, or other contractor, employees should file and pursue claims arising from such relationships.

Employees should not sign any release or statement that the property was received in good condition unless and until they are satisfied that no loss or damage occurred.

Failure to file and pursue claims against non-Government parties, or the signing of a release or statement of arrival in good condition, will prejudice the handling of the employee's claim under the statute and this regulation.

(7) Deposit to Appropriation. Amounts received from third parties for damage to or loss of an employee's personal property for which payment has been made under 31 U.S.C. 3721 need not be deposited in the Treasury as miscellaneous receipts, but may be deposited to the appropriation from which payment was made.

This applies regardless of whether the third-party recovery is paid directly to the Government or first to the employee (claimant) and then refunded to the Government by the employee. It also applies regardless of whether the form of recovery is direct payment or offset. (61 Comp. Gen. 537)

(8) Preservation of Records. Copies of reports and documents supporting a claim should be retained until the 2-year statutory limitation for the filing of claims has expired.

c Procedure for Submitting Claims. The claim should be prepared on Form AD 382, "Employee Claim for Loss or Damage to Personal Property," and should be submitted to the agency for which the employee works.

d Supporting Documentation. In addition to the information required on the claim form, the following should be furnished when applicable:

(1) Receipts, cancelled checks, or other documentation showing acquisition of the property.

(2) At least two itemized repair estimates or estimates as to the replacement cost of the property.

(3) A statement from the employee's supervisor as to whether possession of the property was reasonable, useful, or proper under the circumstances existing at the time and place of the loss or damage.

(4) If other persons have knowledge of facts concerning the claim, statements by them should accompany the claim. Where an accident contributed to loss or damage to property, witness statements should be reported on SF-94, "Statement of Witness."

(5) A copy of the police report, if applicable.

(6) When the loss or damage occurred in quarters or other authorized places, the claim should be accompanied by a statement indicating:

(a) Location of the place where the loss or damage occurred.

(b) A description of measures taken to locate the property or minimize the damage.

(c) An explanation of the facts and circumstances surrounding the loss or damage, and any other information ascertained by investigation.

(d) Where the property was being used for the benefit of the Government, a statement by the claimant's supervisor that the employee was required to provide the property.

(e) In any case where a possibility of recovery exists against a carrier, warehouseman, insurer or other contractor, evidence that a claim was filed, the action taken, and the reasons for the action taken.

e Computation of Award. The following factors will be considered in computing the award:

(1) The cost of property at the time it was acquired.

(2) Replacement cost at time of loss, or repair cost at time of damage.

(3) Depreciation.

(4) Type and quantity of property.

f Determination and Settlement of Claims. when the agency receives the claim and any supporting

documentation, a determination will be made as to the merits of the claim. If the claim is disallowed, the agency will provide the claimant with a written explanation for the disallowance. If the claim is allowed in full or part, the agency will provide the claimant with a written notification of this fact and of the means that payment will be made.

g Reconsideration. A claimant may seek reconsideration with regard to any items for which payment has been denied, in whole or in part. Reconsideration must be requested in writing and must be received by the adjudicating official within 60 days after the date of the denial of the claim. Requests for reconsideration must:

- (1) Present information that was not offered in support of the initial adjudication of the claim, and
- (2) Set forth in detail the factual or legal basis for challenging the initial denial of the claim.

-END-

APPENDIX 1 - Office of the General Counsel Field Offices

For a copy of this appendix, contact Sharon Curtis, Office of the Chief Information Officer at (202) 720-9270, or by e-mail at *sharon.curtis@usda.gov*