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Policies and Procedures

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This P&P establishes responsibility for the management and control of claims filed under the Federal Tort Claims Act. It also provides procedures for the handling of tort claims and payments.

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1. Introduction

In 1946 the Federal Tort Claims Act (FTCA) established a system for filing claims against the United States. This means an individual may sue the United States for money damages, loss of property, personal injury, or death provided circumstances fit within the strict limits of the FTCA. The FTCA permits recovery of money damages because of a negligent or wrongful act or omission by the Federal Government or an employee of the Federal Government while the employee was acting within his/her scope of employment or office.

2. Authorities

The following laws and regulations govern the procedures and processes for administering claims against the Government:

- FTCA (28 U.S.C. 1346(b), 2401(b), and 2671-2680)
- Department of Justice (28 CFR 14)
- General Accounting Office (7 GAO 21.20)
- Department of Agriculture (7 CFR 1.51 and 2.31, and Departmental Regulation 2510-1)

3. Establishing Liability Under the FTCA

Negligent or Wrongful Act or Omission

Under the FTCA, the United States is liable for money damages for loss of the claimant's property, personal injury, or death caused by the negligent or wrongful act or mission of any employee of the Government while the employee was acting within the scope of his/her office of employment.

Proof of Negligence. The claimant must prove that there was a negligent or wrongful act or omission by an employee of the Federal Government.

Proximate Cause. The alleged negligent or wrongful act or omission must have actually caused the damage to the person filing suit.

Federal Employee

An employee of the Federal Government must have committed the negligent or wrongful act or omission. The Act extends liability to include agents of the Federal Government or non-Federal employees working on joint ventures or cooperative agreements.

Non-Federal Employee

To determine liability for actions involving non-Federal employees under the FTCA, ask the following questions:

- Was the non-Federal employee performing a function in support of a Federal requirement?
- Was the non-Federal employee working on behalf of the Federal Government in support of a Federal requirement at the time of the accident or incident?

If yes, the Federal Government may be liable for any damages incurred under the FTCA.

Scope of Employment

The negligent or wrongful act or omission of employees of the Federal Government must have been committed while employees were acting within their “scope of employment.” State law determines the definition of scope of employment. This may/may not be the same as the Federal Government’s definition of “official duties.”

The Drivers Act section of the FTCA gives statutory immunity to Federal employees while driving Government vehicles within their scope of employment. This means a Federal employee involved in an accident while driving a Government motor vehicle in his/her scope of employment cannot be sued as an individual.

State Where Act or Omission Occurred

A program activity that causes loss or damage to an individual may be considered negligent and liable in one State and not in another. The determining factor is the common law of the State.

Common Law. The common law for a State is a system of law based on judicial precedent. This is not limited to State statutes. In addition to State statutes, the interpretations and developments of these statutes that the courts have handed down over the years also are State law.

Liability under the FTCA is based on what the courts have determined to be common law of torts in that State. The Federal Government is not protected by any State restrictions imposed on filing suits against a State, county, or municipal government. If a private person or company is liable under the tort laws of the State, the United States is liable in like circumstances.

Analogous Duty. Conversely, if the State law does not consider an activity or action to create liability under State law, an individual cannot file a claim against the Federal Government under the FTCA. This is called the doctrine of “analogous duty.”

Federal Employees Liability Reform and Tort Compensation Act, 1988

This Act:

- protects Federal employees from personal liability for common law torts if they were acting within the scope of their office of employment. The U.S. Attorney General certifies as to the employee's capacity at the time of the incident. If the Attorney General denies certification, the employee can petition the Federal Courts. If the Courts denies the certification, they will remand the action to the State Court;
- provides citizens with an exclusive remedy against the United States;
- restores the liability protection for Federal employees; and
- does not provide immunity from personal liability as a result of civil action brought for violation of Constitution of the United States or which is otherwise authorized by any Federal statute that specifically provides for personal liability suits.

State employees should refer to their particular State law on liability, immunity, and indemnity.

4. Exceptions to FTCA

When Congress enacted the FTCA, they also listed certain kinds of activities that would be exempt from liability. 28 U.S.C. 2680 lists all the exceptions. However, the ones most often cited are:

- **Discretionary Function.** The FTCA excludes any claim arising out of the performance or nonperformance of a discretionary function or duty. Discretionary functions refer to the policy and planning functions of each Federal agency. Under the FTCA, a Federal agency cannot be sued and held liable for damages resulting from policy or planning decisions of that agency. Discretionary functions do not include policy or planning decisions that violate the norms or guidelines established by the appropriate industry or discipline. An agency cannot claim discretionary function when it violates established norms and guidelines clearly listed in a book or manual.
- **Intentional Torts.** The FTCA specifically excluded any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights. (These exclusions do not apply to law enforcement personnel.)
- **Misrepresentation.** This includes those Federal employees whose duties and responsibilities are to inspect or grade products or provide advice and guidance to the

public. If in the performance of these duties an employee was found negligent, misrepresented a product, or caused an erroneous action, the injured party could not sue the Government based on such misrepresentations.

- **Underlying Duty.** The Supreme Court made a distinction between misrepresentation and Federal employees' responsibilities to perform their underlying duties. The Supreme Court ruled that while the injured party could not sue for misrepresentation, the injured party may sue the Government because employees were negligent in performing their duties if such negligence violated a duty under State law. If a claimant can prove damage by a negligent or wrongful act or omission of Federal employees in the scope of their employment, the claimant can sue under the FTCA.
- **Good Samaritan Doctrine.** Many have recognized what is commonly referred to as the "Good Samaritan Doctrine." This doctrine says although a person does not have the duty to perform a certain task, if that person voluntarily assumes that task and is negligent in the performance of that task, that person can be held liable for any damages incurred. The Supreme Court ruled that if State law recognized such a duty, the claimant could prove that a Federal employee voluntarily undertook the duty, did it negligently, and the claimant was damaged by the action. The claimant could then be compensated under the FTCA.
- **Interference with Contractual Relationships.** This exclusion covers situations generally arising out of program activities in which an outside party claims a loss of some business due to some action of the Federal Government. This usually occurs when a company claims that a Federal agency did something which barred or interfered with their ability to get, keep, or not lose some business the company had with another outside party.
- **Quarantine.** A cause of action arising out of the way the Department administers quarantines is not suable under the FTCA. This applies to all quarantines, including the quarantine of areas, animals, crops, goods, etc.
- **Cause of Action Arising in a Foreign Country.** The United States is not liable for any cause of action arising in a foreign country. If the negligent or wrongful act or omission by an employee of the Federal Government took place in a foreign country, the injured party could not sue the United States under the FTCA. The Government would be liable, however, if the claimant could prove that the injury received was the result of negligent or wrongful act or omission which took place in the United States.

5. Statute of Limitations

The statute of limitations is the time limit an individual or company has to file an administrative claim, in writing, with the appropriate Federal agency. The statute of limitations under the FTCA is 2 years from the date of the accrual of the claim. The accrual of a claim begins at the moment the Government violated an individual's rights and the individual was damaged. In some cases, the accrual of the claim is not easy to determine and may be subject to interpretation by the court. While the court cannot change the 2-year statute, they can interpret the date on which it begins.

6. Initiating a Claim

To initiate a claim against the Federal Government under the FTCA, the claimant must file an administrative claim with the appropriate Federal agency within 2 years of the accrual of the claim.

Administrative Claim

A valid administrative claim is when the appropriate Federal agency receives a written demand for money damages, indicating a specific dollar amount, signed by the claimant or someone authorized to sign for the claimant, identifying the cause which led to the claims.

Appropriate Federal Agency

The Federal agency whose program resulted in the claim must receive an administrative claim. If another Federal agency receives the claim, that agency will immediately forward the claim to the appropriate agency, if known. If the agency cannot identify the appropriate agency, the agency must return the claim to the claimant.

Written Demand for Money Damages

A claim against the Government must be in writing and must include a demand for money damages. The claim may be a letter, form SF-95, Claim for Damage or Injury, or other written communication which meets the requirements of an administrative claim. (See Exhibit 1 and Exhibit 2.)

Claimants may use form SF-95 to file a claim under the FTCA. However, if this form does not contain all the requirements of an administrative claim, then it is not a valid claim. In addition, not all complaint letters that request money are claims under the FTCA. Some complaint letters are simply complaint letters and should be treated as such.

All written communication from a party alleging damages and indicating an intent to sue the United States for money damages should be checked against the requirements of claim under the FTCA.

Specific Dollar Sum

An administrative claim must contain a single dollar amount which represents the exact amount of money damages demanded by the claimant. It does not have to be a reasonable amount but it must be a number. Claims which do not contain an exact dollar amount or contain a dollar amount with a qualifying statement such as approximately, at least, almost, etc., do not meet the requirement of listing a specific sum.

Signature of Claimant

An administrative claim must contain the signature of the party demanding damages or someone authorized to sign for the claimant. If someone signs the administrative claim other than the claimant, such as an attorney or an insurance company representative, evidence of authorization must accompany the claim signed by the claimant. A copy of a retainer agreement, an affidavit, or a letter must accompany a claim signed by an attorney for the claimant, signed by the claimant, authorizing this attorney to represent the claimant in this case. A statement in a claim signed by an attorney or enclosed in a letter that states that they are representing the claimant is not an acceptable statement of authorization. The claimant must sign the evidence of authorization.

Identification of the Cause

The FTCA obligates the claimant to identify the activity or incident which caused the claim. The claim must contain sufficient information for the agency to identify the cause of the complaint. This is to provide the agency an opportunity to investigate the case.

Lawsuits

Filing a claim in a Federal or State court does not constitute an administrative claim. An individual who initiates an action against the United States by filing a claim in a Federal or State court is not relieved of the requirement to file an administrative claim with the appropriate Federal agency within 2 years of the accrual of the claim.

7. Exceptions to Administrative Claim Requirements

Claimants can file three types of actions against the United States that do not have to meet the requirements of an administrative claim. In these three actions, the United States has already initiated a suit against the party filing the claim. The United States has only 60 days to respond to these types of actions. Since these cases involve short time limits, the Tort Claim

Representative (TCR) must prepare a prompt response to the Office of General Counsel's (OGC) request for an administrative report. These actions are:

Counterclaim

A party which the United States is suing may file a counterclaim in that action. A counterclaim does not have to arise out of the same action which caused Government's suit but can be based on a separate incident entirely.

Cross-claim

A cross-claim is a claim between two parties. In a cross-claim, one defendant is suing another defendant or one plaintiff is suing another plaintiff.

Third Party Claim

In a third party suit, one party to the suit is suing another outside party. For example, a defendant in a suit filed by the United States can file a third party claim alleging that the liability for the damage incurred by the Government rests with a third party.

8. Procedures For Handling Administrative Claims

Date Stamp

All REE offices which receive a claim for money damages, including form SF-95's or any correspondence that shows an intent to sue for money damages, must attach the following information to the claim:

- The day, month, and year the claim was received.
- The name of the location receiving the claim.
- The name of the employee receiving the claim.

This information is essential in determining the validity of a claim and the agency's ability to support that determination in court.

The date used in determining compliance with the statute of limitation requirements is the date the appropriate Federal agency **received** the claim. All other dates (the date the claim was prepared, signed by the claimant, or mailed) are irrelevant. An agency may be liable for claims that fail to meet the statute of limitation requirements if that agency is unable to verify the date they received the claim.

The name of the individual receiving the claim and the location are also important. Attorneys for the Government may require an affidavit from the employee receiving the claim to support a claim denial based on failure to meet the statute of limitation requirements.

Freeze Files

Offices must maintain all records about the claim, accident, or incident that led to the claim. This includes all information, papers, documents, evidence, exhibits, etc. The agency may not dispose of any relevant information until OGC makes a determination in the claim and closes the case. The time between the accident or incident and the trial date may be 5 years or more.

Designated Tort Claim Representatives (TCR)

Offices that receive and are involved with the claim must notify their appropriate TCR. Within REE, the various TCR's are:

ARS Field Locations. The Location Administrative Officer is the designated location TCR. However, the location TCR forwards all information to the designated **Area TCR** for processing. In most cases the designated Area TCR is the Area Property Management Officer or other designated personal property official. The Area TCR and OGC Regional Office, will handle claims demanding money damages for **\$100,000 or less**.

REE Headquarters and NASS Field. The Personal Property Group Leader, Procurement and Property Branch, PPD, is designated as the Agency TCR for REE Headquarters, which includes ARS-Headquarters, CSREES, ERS, NASS, and NASS-Field. The Agency TCR administers the tort claim program for the REE agencies. Also, the Agency TCR and OGC Headquarters, will handle **all claims for REE Headquarters and ARS field locations claims** demanding money damages that **exceed \$100,000**.

Claim Investigation

It is the responsibility of each Federal agency to investigate all accidents or incidents involving agency programs, employees, or cooperators that lead to the tort claim. The responsibility for investigating claims within REE is:

- **ARS Field Locations.** The location TCR's will investigate all accidents or incidents at their location and will forward the investigation to their Area TCR. However, the specific employee and the employee's supervisor, or program activity whose actions led to the claim, and the location TCR will be responsive to specific inquiries and requests for information and will fully cooperate with the Area TCR in preparing the claim.
- **NASS Field.** The State Statistician, through the NASS Deputy Administrator for Field Operations, will investigate all accidents or incidents within the statistician's field office

and will forward the investigation to the Agency TCR. However, the specific employee and their supervisor or program activity whose actions led to the claim and the State Statistician will be responsive to specific inquiries and requests for information and will fully cooperate with the Agency TCR in preparing the claim.

- **REE Headquarters.** The employee and the employee's supervisor, through their administrative officer, division director, or deputy administrator, will investigate all accidents or incidents and will forward the investigation to the Agency TCR. They will also be responsive to specific inquiries and requests for information and will cooperate fully with the Agency TCR in preparing the claim.

This does not exclude other agency program representatives such as Area Safety and Health Officers from conducting their own investigation. Also, the Office of Inspector General or other Department representatives may choose to investigate cases involving Federal criminal law violations, substantial injuries, or death.

The responsible agency will investigate any incident involving personal injury or property damage involving a third party as soon as possible. It is not necessary to wait until the injured party files a claim. This is particularly true in motor vehicle accidents or incidents where there is a strong indication an injured party may file.

The investigation must identify all parties and circumstances involved. When possible, the office will take pictures to substantiate the investigation. The investigation will help the designated TCR prepare an administrative report and help determine agency liability. At no time during an investigation will any agency personnel indicate or imply liability by the Federal Government.

Memoranda of Facts and Findings

The Memoranda of Facts and Findings provides the Area or Agency TCR with all the facts and circumstances involved in the case and provides the basis for the administrative report. This is necessary for each claim filed under the FTCA. The location TCR prepares the Memoranda of Facts and Findings for ARS field location and forwards it to the Area TCR. The Agency TCR prepares when necessary, or assists the administrative officer, division director, state statistician, or associate/deputy administrator with preparing, the Memoranda of Facts and Findings for REE Headquarters.

Forwarding Claims to the Designated TCR

After the office completes the claim investigation, indicating the date, location, and name of the employee, they must forward the claim to their designated TCR as soon as possible. This includes the claim and any relevant information regarding the claim, accident, or incident that led to the claim.

Examination of Claim

The Area or Agency TCR, in consultation with OGC, will examine all form SF-95's or written correspondence that indicates an intent to sue for money damages. The TCR will determine if the claim meets the requirements of a valid administrative claim under the FTCA.

Invalid or Incomplete Claims

The designated TCR will notify in writing any party submitting form SF-95 or written correspondence that does not meet the requirements of an administrative claim as soon as possible. This notification must identify the deficiencies and cite the law supporting that determination.

However, if the TCR does not receive a corrected administrative claim from the claimant within 4 months after receipt of the initial claim, the TCR will contact OGC to determine the appropriate course of action. A claimant may elect to treat 6 months after the filing of a claim as a denial and initiate court action. (See Section 13, Lawsuits Against the United States.) In this case, the claimant may intentionally ignore the TCR's request for information and demand for substantiation of the claim.

Valid Claims

If the administrative claim is in order, the TCR will acknowledge receipt of the claim, in writing, informing the claimant or the claimant's representative that the TCR has referred the claim to OGC and OGC will issue a final determination of the claim. (See Exhibit 3.) The TCR will not indicate to the claimant whether the agency is assuming any liability in the case. Agency officials are not to concede anything to the claimant about the validity or liability of a claim. OGC will inform claimants if their claim meets all the requirements of an administrative claim and will also issue a determination of a claim and communicate that determination to all parties involved.

Substantiation of Claim

The FTCA requires all claimants to substantiate any claim filed against the United States. If the administrative claim lacks sufficient information to substantiate the claim, the Area or Agency TCR will require the claimant, or the claimant's representative, to provide additional evidence to substantiate the claim. The TCR must request this information in writing, citing the FTCA and appropriate regulations. However, the TCR or OGC cannot make a determination while there is an outstanding substantiation request.

Request for Information

During the investigation the designated TCR has the option of initiating contact with the claimant to request information. The contact may be in the form of a letter or a request for an interview with the claimant or the claimant's representative, family, friends, etc. A request for information is limited to the facts and circumstances surrounding the incident, facts that lead to the alleged negligence, or wrongful act or omission.

Unlike a demand for the substantiation of claim, the request for information implies no obligation on the part of the person asked to respond to or provide the requested information. A letter requesting information must not assert the agency's rights to receive a response. It must be in the form of a request (i.e., "In order to assist our investigation, we would appreciate your assistance in answering the following questions"). The claimant does not have to respond to a request for information or grant an interview. Any attempt to initiate contact with a claimant, the claimant's representative, family, friends, etc., is limited to cases where the office receives evidence of an intent to sue the Federal Government.

In circumstances where the potential claimant has not submitted a claim and it is unclear whether the third party will sue the Government, the investigator will not initiate contact with the third party, relatives, or friends. In these cases, contact is limited to other parties involved, such as employees, the police, eyewitnesses, etc.

If the TCR receives any communication from an attorney representing the claimant, all correspondence relative to the case must be sent through the attorney. This is also true if an attorney forwards the claimant's letter or form SF-95. At times the only indication that an attorney is representing a claimant is when the return address on the envelope is the attorney's address.

9. Memoranda of Facts and Findings

As stated earlier, the Memoranda of Facts and Findings provides the Area or Agency TCR with all pertinent facts and circumstances involved in the case. The Area or Agency TCR will prepare an administrative report based on Memoranda of Facts and Findings. The location TCR prepares the Memoranda of Facts and Findings for ARS field location and forwards to the Area TCR. The Agency TCR will prepare when necessary, or assist the administrative officer, division director, state statistician, or associate/deputy administrator in preparing the Memoranda of Facts and Findings for REE Headquarters and NASS field offices. Memoranda of Facts and Findings consists of: (See Exhibit 4)

Background Information. The background information must provide information to support the official program that was involved in the incident associated with the claim. This will help determine if the Federal employee was operating in the scope of his/her employment.

Analysis of Events. The incident analysis must contain detailed analysis of the events that occurred that lead to the incident and any factors that were discovered during the investigation.

Relevant Documentation. The Memoranda of Facts and Findings must contain all documents, files, and photographs associated with the claim.

10. The Administrative Report

The TCR will prepare an administrative report for each valid claim filed under the FTCA. (See Exhibit 5.) The administrative report provides OGC with all the facts and circumstances surrounding the case. The TCR will prepare the report ensuring it contains all the information required for OGC and the Department of Justice (DOJ) to issue a determination in the case and defend that decision in court. The TCR must also attach all documents and pictures relating to the case and forward the administrative report to OGC in triplicate. Do not send the original copy of any evidence, exhibits, etc. Make copies of the documents for attachment to the administrative report. The TCR will keep all original documents for litigation if the claim goes to court. The TCR prepares the administrative report, in narrative format, containing the following:

- **Background Information.** The TCR must address the background information of the program involved in the tort claim. This includes reference to statutes authorizing the program and regulations governing the program. In most cases, such as motor vehicle accidents, the background information does not have to be extensive. However, all reports must have some program information to assist OGC in determining “scope of employment.”

For claims against the program activity, the background information becomes very important. The TCR must provide detailed information on the program activities and indicating the actual details of the program operations. The OGC and DOJ representatives require a clear understanding of the program to determine if an analogous tort exists under State law or if the activity that led to the claim falls within one of the exclusionary categories.

- **Analysis of the Events.** The administrative report will contain an analysis of the events that happened, detailing all the parts and circumstances involved in the case. The TCR will base this analysis on the investigation and the Memoranda of Facts and Findings. The report must provide enough information to support a determination by OGC and any subsequent litigation without further investigation.
- **Relevant Documentation.** The TCR must attach all relevant documents referred to in the administrative report. If the report refers to a letter sent to or received from the

claimant, the TCR must include a copy of the letter. The TCR will not attach original documents to the report, only copies of the documents, letters, etc. The designated TCR will keep the originals on file for use in litigation, if necessary. Examples of relevant documentation that may be necessary for personal injuries include:

- written report from attending physician of nature and extent of injuries and treatment,
- prognosis and degree of temporary or permanent disability,
- period of hospitalization,
- itemized bills/receipts for medical/hospital expenses,
- written statement of expected expenses for treatment, and
- written statement from employer for loss of time/lost wages.

Examples of relevant documentation that may be necessary for property damage include:

- proof of ownership,
 - detailed statement of amount claimed with respect to each property item,
 - itemized receipt of payment for necessary repairs or cost of repairs, and
 - if repair is not economical, a written statement listing date of purchase, purchase price, and salvage value.
- **Respond to Every Allegation.** The TCR must address all allegations made by the claimant. The administrative report must address and respond to every allegation made in the administrative claim, even if the allegation appears to be irrelevant. Administrative claims may vary a great deal in length. Form SF-95 may contain only two lines while other claims have 10 page attachments. The information regarding the allegation must be sufficient for OGC to reach a determination.
 - **Determination of Fault.** The administrative report must state the agency's opinion of fault relating to the claim. OGC and DOJ require the agency's opinion of liability when making a final determination on a claim. In certain cases, such as automobile accidents, a detailed description of the events will make a determination of fault self-evident. However, in claims filed against program activities, the administrative report must indicate a determination of fault with clear, supporting evidence. This is particularly true in claims which allege an employee engaged in a negligent or wrongful act in a highly technical area. The TCR will include technical evidence or an analysis from a technical expert(s) to support a determination. The agency may use technical experts on staff or outside consultants. However, an individual not involved in the facts and circumstances of the case must provide the technical analysis.
 - **Policy Recommendation.** The administrative report must state whether there are any agency concerns regarding policy implications in admitting liability in a tort claim. In most cases, there are no policy considerations involved. Policy concerns usually stem

from tort claims involving program activities. The agency must inform OGC if the admission of liability in a particular case will seriously impact the agency's ability to perform its mission. The agency will have to support this type of determination.

- **Damage Analysis.** The administrative report includes an analysis of the damages that the claimant alleges have been incurred. OGC may allow the agency to omit a damage analysis for cases where the defense is sufficient to deny the claim without spending time on a claim analysis.
- **Claims Against the Claimant.** The administrative report must also include any information the agency may have regarding claims the Department or agency may have against the claimant. This includes damages the agency may have incurred as a result of the accident or incident in question. The agency may use this information to file a counterclaim against the claimant.

This information is not only limited to the incident that led to the claim. The report must include information on any outstanding business the Department or agency has with the claimant. For example, the agency may have an outstanding claim against the individual stemming from another incident or the individual may be in default of a loan from the Farm Services Agency, etc.

11. OGC Determination of Claims

Forwarding of Claim and Claim Files to OGC

The TCR will forward the tort claim and administrative report, including copies of all relevant information (mentioned above) to OGC for claim determination. OGC will base the claim determination upon receiving and reviewing the completed administrative claim and the associated documents substantiating the claim. (See Exhibit 6, List of OGC Regional Offices.)

Determination of Claims

OGC will determine whether claims are allowed, compromised, or denied and will appropriately notify claimants. If a claim is allowed in full or compromised, OGC will notify the Area TCR in writing and begin the payment process.

If OGC denies a claim, they will notify the claimant and the claimant's attorney or legal representative. The notification will include a statement that if the claimant is dissatisfied with the Department's action, he/she may file suit in a U. S. District Court not later than 6 months after the date the notification was mailed.

12. Tort Claim Payment

Regardless of the amount originally claimed, OGC approves awards that do not exceed \$25,000. However, the Attorney General must approve awards that exceed \$25,000. OGC will take the necessary actions to obtain this approval.

OGC will notify the TCR, in writing, after they approve a claim for payment. This written notification will include an Allowance of Tort Claim which identifies the amount authorized for payment. Payments of \$2,500 or less are paid through the appropriation of the agency's activity that led to the claim. Payments that exceed \$2,500 are paid through the Judgment Fund, Financial Management Services, Department of Treasury. Two-party payments are no longer issued. Payments are issued in the name of the claimant, however "in the care of" may be added when an attorney is involved.

Payment Procedures for Tort Claims \$2,500 or Less

After written notification from OGC, the TCR:

- Prepares form SF-1145, Voucher for Payment Under Federal Tort Claims Act, for payment (See Exhibit 7.)
- Indicates applicable accounting code/appropriation number for the responsible work unit on form SF-1145.
- Provides signature as authorized designee, TCR.
- Obtains "Certifying Officer" signature from the agency's appropriate budget and financial management staff, such as the Area Budget and Fiscal Officer, administrative officer, or agency financial management representative.
- Forwards original notification documents and form SF-1145 to the claimant's representative (along with a self-addressed return envelope) with instructions to sign, provide a tax identification number, and date the SF-1145 in the appropriate space and return the entire package to the TCR.
- Submits, via express mail, a properly completed and signed original form SF-1145 and a copy of OGC's approval notice to NFC for payment at the following address:

USDA-NFC, Accounting Reporting Branch
Reporting Section #4, TANO Building
4277 Piche Court
New Orleans, LA 70129

- Retains a copy of the correspondence and all supporting documentation for the file.

Payment Procedures for Tort Claims Exceeding \$2,500

Payment under the Judgment Fund was transferred from the General Accounting Office (GAO) to the Department of the Treasury, Financial Management Services. The guidance does not vary substantially from GAO guidance; however, payment authorizations are made using different forms. The forms are not available through standard forms channels, but agencies can photocopy forms as necessary. (See Exhibit 8 for photocopy.) The forms are also available through the Internet at the Department of the Treasury, Financial Management Service's website at <http://www.fms.treas.gov>

The appropriate OGC attorney prepares form FMS-195, Judgment Fund Payment Request, form FMS-196, Judgment Fund Award Data Sheet, and form FMS-197, Voucher for Payment of Judgements, Compromise Settlements, and Administrative Awards, for awards exceeding \$2,500. (See Appendix 8A, B, & C, respectively, for completed forms.) OGC completes as much of the form as possible and forwards the package to the appropriate TCR for completion. The TCR:

- Forwards the original notification documents and form FMS-197 to the claimant's representative (along with a self-addressed return envelope) with instructions to sign and date the form in the appropriate spaces and return the entire package to the TCR.
- Requests the claimant to include their tax identification number or social security number on payment documents. (This is now required by law on all payment vouchers certified for payment by the Department of Treasury.)
- After receipt back from claimant, forwards the case file, including all forms and supporting documents to the Department of Treasury at the following address:

Judgment Fund Branch
Department of the Treasury
Financial Management Service
Prince George's Metro Center #2
Mail Stop 6F03
3700 East-West Highway
Hyattsville, MD 20782
202-874-6664

It will take approximately 6 weeks for FMS to process payment of claims. If you have not received any information after 6 weeks, the TCR can call the Judgment Fund Branch (number above). The Judgment Fund Branch will need specific case information such as the specific spelling of the case name, the date the claim was sent, and the amount of the award.

To help ensure prompt processing of claim payments to FMS, the TCR should:

- include the claim number/file number for each case
- only send one original set of documents
- use current versions of forms
- mail requests, do not fax unless specifically requested by FMS
- include the social security or tax payer identification number of the claimant

Final 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 led to the claim.

Records

The TCR must retain copies all memoranda, reports, exhibits, and other documents supporting the settlement of a claim and make them available to GAO and the Treasury Department for audit purposes. TCR's cannot destroy or send the records to the Federal Records Center until after the matter is officially closed. USDA Records Management Regulations, ASAR 3040-1, states agencies can dispose of files 1 year after final settlement/disposition of the case, or 1 year after the 2-year statutory limitation on the filing of claims expires.

13. Litigation

Lawsuits Against the United States

There are two instances where the injured party, after submitting an administrative claim, can file suit against the United States in a Federal District Court. They are:

- **Denial of an Administrative Claim.** A claimant may file a suit in Federal District Court after receiving OGC's claim denial. OGC will inform all claimants of a denial of a claim by registered mail. The claimant has 6 months from the date OGC mailed the notification to file a claim against the United States in Federal District Court.
- **6 Months After Submitting an Administrative Claim.** The claimant may elect to treat the passage of 6 months after the submission of an administrative claim as a denial of the claim for the purpose of filing a suit in Federal District Court. The claimant may intentionally ignore the TCR's request for information and demand for substantiation of the claim.

The DOJ will represent the United States and the Federal agency whose actions led to the complaint. OGC's role is to take the claim through the administrative claim process. Once a claim reaches court, OGC serves as a background and support resource for DOJ.

Lawsuits Against an Employee of the Federal Government

Claimants may only sue the United States under the FTCA. REE agencies, various REE programs, and employees cannot be sued under the FTCA. However, this does not prevent a claimant from suing employees in their official capacity or their individual capacity.

Official Capacity. An employee may be named as a defendant in a suit against the United States when the claimant seeks damages only against the United States. Employees are named in the suit because of their official involvement with the case.

Individual Capacity. A claimant may file suit in court against an individual employee of the Federal Government seeking money damages from an accident or incident which may or may not involve actions taken within the employee's scope of employment. The suit is not against the United States but seeks money damages from the individual employee.

If the action or activity which led to the suit was within the outer perimeter of the employee's duty, the employee may receive legal representation from DOJ. To arrange representation, OGC must forward a request for representation on behalf of the employee to DOJ. Submitting this request is strictly voluntary. Employees may provide their own attorneys. DOJ will make the final determination on a request for representation.

Before OGC submits the request to DOJ, employees must acknowledge that if found liable by the courts, they must pay the damage. The United States is not authorized to pay for damages in a judgment brought against employees sued in an individual capacity. Employees are responsible for their own legal representation in court if OGC declines to submit a request for representation or DOJ denies the request.

14. Steps in Litigation

Complaint and Summons

The first step in initiating a lawsuit against the United States is filing a complaint in Federal District Court. A **complaint** asks for damages or other relief and sets forth the basis for relief. A **summons** is notification that the individual, or a representative of the United States or the agency, is named in a complaint and must appear in court on the specified date named to respond to the complaint. An agency involved in a lawsuit against the United States is notified of the suit when a representative of that agency or an individual employee receives a complaint or a summons. Most complaints or summonses involving Federal agencies are sent directly to OGC. Should an individual employee or agency representative receive a complaint or summons, the

employee must immediately contact their TCR who will immediately contact OGC. A summons or a complaint against an employee in that employee's individual capacity, filed in a Federal or State court, requires a response within 20 days of the date mailed or served. A summons or complaint against the United States or involving a Federal employee operating within that employee's scope of employment, filed in Federal District Court, requires a response within 60 days. (For other judicial orders that do not appear to fall under the category of tort claims, e.g., a subpoena for expert testimony, please refer questions to the Human Resources Division, ARS/AFM.)

OGC will notify the Agency TCR of all tort claim related complaints or summonses involving their agency. The notification will include a copy of a form letter, a copy of the complaint, and the name of the OGC attorney handling the case. In most cases the complaint will be generally the same as the administrative claim. If the agency has any new information or new developments to add before OGC responds, the TCR must contact OGC immediately and forward this information.

Discovery

Discovery is a chance for each side in a suit to examine the other side's case. This allows each side to see the facts and circumstances involved in order to attempt to reach a settlement before the case goes to trial. There are four main types of discovery:

- **Interrogatory.** Interrogatories are questions requiring an answer under oath within 30 days. The TCR receives the questions and prepares a draft response for OGC and DOJ review. OGC will advise the TCR in preparing answers to certain questions contained in the interrogatory. OGC, after consulting with DOJ, may advise the TCR not to answer certain questions because the U.S. Attorney's Office is planning to object to the validity of the questions.
- **Request to Produce Documents.** This is a request for an examination of certain papers or documents. OGC and DOJ will make the final decision on what papers or documents are copied or made available for review.
- **Request to Admit.** Another type of discovery is a request to admit or deny certain facts or circumstances involved in the case (i.e., Do you admit that on January 3, 1993, John Jones was employed by the Department of Agriculture and was operating a 1989 Ford Sedan within his scope of employment?).
- **Deposition.** A deposition is an opportunity for the parties or witnesses involved to answer questions under oath. A deposition may be included as part of the discovery process. A deposition is similar to a trial although the judge is not present. A deposition includes a court reporter, the attorneys, and any witnesses or third parties called to give a deposition. The court reporter has the authority to swear in a witness and transcribe the deposition. Any person refusing to answer questions posed during the deposition process

may be held in contempt of court. Before giving a deposition, OGC and DOJ will counsel an employee of the Federal Government.

Motion to Determine a Lawsuit Prior to Discovery

In order to avoid the lengthy discovery process, DOJ may file a motion to determine a lawsuit prior to discovery. For these types of cases, the motion is a request to the judge to dismiss or for a summary judgement.

Motion to Dismiss. The United States has 60 days to answer a complaint filed in Court. The answer is either an admission of liability, a denial, or a denial from lack of information. In lieu of an answer, DOJ may submit a motion to dismiss because the claimant failed to meet the statute of limitations or the claim falls within the exclusionary category. The United States does not have to file a motion to dismiss at the beginning of litigation. The United States may file after discovery or after reviewing all the information supporting the claim.

Motion for Summary Judgment. A motion for summary judgment alleges that there are not material facts in dispute and that, as a matter of law, one side should get the judgement in its favor.

Pretrial Statement

The final step before trial is the preparation of a pretrial statement. A pretrial statement is a statement of factual and legal issues that are agreed upon and those that are in dispute. Also included is a statement about the possibility of settlement. DOJ and OGC may require the TCR to provide additional information for the pretrial statement.

Trial Preparation

During the preparation and filing of the pretrial statement, DOJ may request the TCR's assistance. This may include providing additional information found during the discovery process and selecting and preparing witnesses for trial. Since the trial may take place 4 or 5 years after the incident that led to the claim, a fair amount of time is necessary to locate, prepare, and arrange transportation for witnesses. Usually, there is a last minute attempt to settle before the trial actually begins.

Trial

The Federal District Court Judge will try all cases against the United States. The defendants do not receive a trial by jury.

15. Summary of Responsibilities

Agency Tort Claim Representative (TCR)

- Administers the REE tort claims program.
- Provides guidance to REE employees regarding tort claims.
- Acts as liaison between REE and OGC.
- Administers all tort claims filed at the REE Headquarters level which includes ARS-Headquarters, CSREES, ERS, NASS, and NASS-Field.
- Examines claims against FTCA requirements.
- Maintains a log of all tort claims filed against REE Headquarters level.
- Provides guidance to management when conducting an investigation of accidents or incidents that led to the claim for REE Headquarters.
- Prepares administrative reports for all tort claims in REE Headquarters and for ARS Field locations claims that exceed \$100,000.
- Provides information to OGC and DOJ to represent REE Headquarters.

Area Tort Claim Representative (TCR)

- Administers the ARS Tort Claim Program at the Area level.
- Provides guidance to Area employees regarding tort claims.
- Acts as liaison with the Agency TCR and the OGC Regional Office for their Area.
- Administers all tort claims filed at the Area level.
- Maintains a log of all tort claims filed at the Area level.
- Examines Area claims against FTCA requirements.
- Freezes all Area files relative to the accident or incident that led to the claim.
- Forwards reporting information to Agency TCR on Area claims when requested.

- Conducts or assists with the investigation of all accidents or incidents that led to the claim.
- Prepares an administrative report for Area claims that do not exceed \$100,000.
- Submits claims, claim files, and administrative reports to the regional OGC office.
- Forwards claims exceeding \$100,000 to the Agency TCR for processing.
- Prepares Area correspondence regarding request for information and substantiation of claims.
- Provides information to OGC, DOJ, and the Agency TCR during tort claim determination and litigation.

Location Tort Claim Representative (TCR)

- Acts as liaison with the Area TCR.
- Freezes all location files relative to the accident or incident.
- Notifies the Area TCR of location tort claims received.
- Conducts an investigation of all location accidents or incidents that may lead to a claim.
- Forwards information to Area TCR for correspondence regarding requests for information and substantiation of claims.
- Prepares and forwards Memoranda of Facts and Findings to the Area TCR for administrative reports.
- Transfers claims, claim files, and Memoranda of Facts and Findings to Area TCR.
- Provides information to Area TCR and the Agency TCR during tort claim determination and litigation.

REE Supervisor

- Notifies designated tort claim representative of all accidents and incidents within the supervisor's area of responsibility that may result in a tort claim.
- Cooperates with designated tort claim representative in providing all information regarding the incident, conducting the investigation, and providing information for the Memoranda of Facts and Findings and the administrative report.

REE Employee

- Notifies supervisor of an accident or incident that may lead to a tort claim.
- Cooperates with management and the designated TCR in providing all information regarding the incident.

16. Glossary

Administrative Claim. A written request for money damages, indicating a specific dollar amount, signed by the claimant or someone authorized to sign on the claimant's behalf. The claim identifies the circumstance which gave rise to the claim and is submitted to the Federal agency whose actions led to the claim.

Accrual date. A date of the incident causing the loss or damage or when the loss or damage is, or should have been, discovered by the claimant.

Agency Tort Claim Representative (TCR). The ARS, AFM, PPD, PPB, Personal Property Group Leader is the designated individual who oversees the tort claim program for the REE agencies; processes tort claims filed against REE Headquarters, which includes ARS-Headquarters, CSREES, ERS, NASS, and NASS-Field.

Area Tort Claim Representative (TCR). In most cases, this is the ARS Area Property Management Officer or other personal property official who is designated as the tort claim representative for the Area.

Counterclaim. A claim filed in opposition to another claim.

Complaint. A legal document filed with a court asking for damages or other relief and setting forth the basis for such relief.

Cross-claim. A claim between two parties, either between one defendant suing another defendant or between one plaintiff suing another plaintiff.

Discovery. Data or documents that a party to a legal action is compelled to disclose to another party either prior to or during a proceedings.

DOJ. Department of Justice.

Form FMS-195. (Local Reproduction). Judgment Fund Payment Request (Administrative Award).

Form FMS-196. (Local Reproduction). Judgment Fund Award Data Sheet.

Form FMS-197. (Local Reproduction). Voucher for Payment of Judgments, Compromise Settlements, and Administrative Awards.

Form SF-95. (Available in Informs). Claim for Damage or Injury.

FTCA. Federal Tort Claims Act.

Location Tort Claim Representative (TCR). The ARS Location Administrative Officer.

Negligence. The performance of some act which a person of ordinary prudence would not have done under similar circumstances, the failure to do what a person of ordinary prudence would have done under similar circumstances, or conduct which falls below the standard established by law for the protection of others against unreasonable risk or harm.

OGC. Office of General Counsel.

Omission. The intentional or unintentional failure to act which may impose liability depending upon the existence of a duty to act under the circumstances.

Summons. A process directed to the sheriff or other proper officer requiring the officer to notify the person named that an action is filed against the person and that the person must appear in Court on the specified day to answer the complaint.

Third Part Claim. One party to a suit suing another outside party.

Tort. A violation of an individual's rights, other than a breach of contract, which results in a loss of property, property damage, personal injury, or death.

Tort claim. A written request for money damages, indicating a specific dollar amount, resulting from the violation of an individual's rights, other than a breach of contract, which has caused a loss of property, property damage, personal injury, or death to the claimant.

TCR. Tort Claim Representative.

Wrongful act. 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 filling a claim under the FTCA.

-Sd-

W. G. HORNER
Deputy Administrator
Administrative and Financial Management

Exhibits

Administrative Claim

1234 Riverside Drive
Brownsville, New Jersey 20411
June 8, 1998

USDA, ARS
North Atlantic Area Office
890 Campus Drive
Philadelphia, PA 20250

Dear Sir:

On June 7, 1998, an employee of your department, while driving a truck through the intersection of Route 1 and Main Street in Brownsville, New Jersey, drove through a red light and struck my car. My car was damaged and I was injured.

Since the accident was the fault of your employee, I demand the sum of \$1500 for damage to my truck and the sum of \$15,000 for my personal injuries, which consisted of a broken leg.

Sincerely,

Daniel J. Smith

(THIS IS AN ADMINISTRATIVE CLAIM UNDER THE FEDERAL TORT CLAIM ACT)

Form SF-95, Claim of Damage or Injury

CLAIM FOR DAMAGE, INJURY, OR DEATH			INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008
1. Submit To Appropriate Federal Agency: USDA, SECRETARY OF AGRICULTURE 1400 INDEPENDENCE AVE., SW. WASHINGTON, DC 20250			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code) J. J. Smith 910 St. Paul Street Minneapolis, Minnesota 98653		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 1-21-58	5. MARITAL STATUS Married	6. DATE AND DAY OF ACCIDENT June 7, 1998	7. TIME (A.M. OR P.M.) 9:00am	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) The accident took place at 9:00 a.m., Wednesday, June 6, 1998. The claimant, D. J. Smith, owner and operator of a 1992 Dodge van was traveling eastbound on Main Street, Minneapolis, Minnesota, approaching the intersection of West Street. The intersection is controlled by a traffic signal. The traffic signal indicated green for Main Street and was red for West Street. As Mr. Smith entered the intersection, a Government vehicle failed to stop for the signal and collided with Mr. Smith. The Government vehicle, a 1996 Chevrolet, pick-up truck was operated by J. P. McDay. Mr. McDay is a permanent full-time employee of the Agriculture Research Station, St. Paul, Minnesota. At the time of the accident, Mr. McDay was en-route to collect research data from a weather station located at the University of Minnesota. The trip was authorized by his supervisor, J. P. Park, Research Leader. It is appropriate to use West Street in order to reach the University of Minnesota.					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code)					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.) 1992 Dodge van- Broken axle and radiator- Joe's Auto Body Shop					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. Lacerations and fractures to the head and back.					
11. WITNESSES					
NAME		ADDRESS (Number, street, city, State, and Zip Code)			
A. B. Charles		234 Cherrylane Rd., Minneapolis, Minnesota 98653			
12. (See instructions on reverse) AMOUNT OF CLAIM (In dollars)					
12a. PROPERTY DAMAGE 7,000.00	12b. PERSONAL INJURY 47,000.00	12c. WRONGFUL DEATH 0.00	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) 54,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)			13b. Phone number of signatory	14. DATE OF CLAIM	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000, plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

Previous editions not usable.
This form was electronically produced by Elite Federal Forms, Inc.

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.
A. Authority: The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 28 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R. Part 14.

- B. Principal Purpose: The information requested is to be used in evaluating claims.
C. Routine Use: See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.
D. Effect of Failure to Respond: Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim "invalid".

INSTRUCTIONS

Complete all items - insert the word NONE where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A SUM CERTAIN FOR INJURY TO OR LOSS OF

PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE REPRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN TWO YEARS AFTER THE CLAIM ACCRUES.

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 12 of this form.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows: (a) in support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to Director, Torts Branch Civic Division U.S. Department of Justice Washington, DC 20530

and to the Office of Management and Budget Paperwork Reduction Project (1105-0008) Washington, DC 20503

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? Yes, if yes, give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number. No

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

17. If deduction, state amount

18. If claim has been filed with your carrier, what action has your insurer taken or proposed to take with reference to your claim? (It is necessary that you ascertain these facts)

19. Do you carry public liability and property damage insurance? Yes, if yes, give name and address of insurance carrier (Number, street, city, State, and Zip Code) No

Letter Acknowledging Claim Receipt

Robert Jones
Attorney at Law
Rout 1, Box 987
San Diego, California 00000

Subject: Claim of William Smith

Dear Mr. Jones:

This letter acknowledges receipt of the Standard Form 95, Claim for Damage or Injury, you submitted on behalf of your client, William Smith. The Federal Tort Claims Act (FTCA), 28 U.S.C. 2671-80 and the regulations issued under 7 CFR 1.51 and 28 CFR 14 establish the manner for filing an administrative claim under the FTCA. The Standard Form 95 that you submitted on behalf of your client does not constitute an administrative claim under the FTCA.

Pursuant to the provisions of 28 CFR 14.2, an administrative claim must be for money damages in a certain sum. The claim on behalf of your client is not for money damages in a certain sum. Furthermore, according to the provisions of 28 CFR 14.3, an administrative claim for injury to or loss of property must be submitted by the owner of the property or his duly authorized agent or legal representative. A claim for personal injury must be submitted by the injured person or his duly authorized agent or legal representative. Therefore, in order to file an administrative claim under the FTCA, you must submit a claim for money damages in a certain sum and signed by the claimant or signed by a duly authorized agent or legal representative, if accompanied by proof of authorization to submit the claim.

You must also substantiate the claims of personal injury and property damage. The provisions of 28 CFR 14.4 establish the manner to substantiate claims. To the extent that the listing of evidence fails to be appropriate for the type of injuries or damages claimed by your client, please supply analogous material sufficient to substantiate each element of your client's damages.

The Office of the General Counsel has authority to consider and determine claims under the FTCA. Upon receipt of an administrative claim meeting the requirements of the FTCA and appropriate substantiation of damages, OGC will be in a position to issue a determination upon your client's claim. Enclosed are two (2) copies of Standard Form 95.

Sincerely,

AGENCY OFFICIAL

Enclosures

Memoranda of Facts and Findings

SUBJECT: Memoranda of Facts and Findings
Tort Claim - J. J. Smith

TO: Larry Evans
Area Tort Claims Representative (APMO)

FROM: Jane Davis
Location Administrative Officer

The following information is being provided in compliance with the Federal Tort Claims Act, Manual 227.1, Section 7.

1. BACKGROUND INFORMATION

The Agricultural Research Service is authorized to conduct soil research for increased efficiency in the use of grassland for the grazing of cattle and the determination of soil erosion. The need to obtain weather reports is crucial in determining the amount of rain water expected.

- A. Incident Date: June 6, 1998
- B. Incident Location: Intersection of Main Street and West Street
Minneapolis, Minnesota
- C. Claimant: J. J. Smith
910 St. Paul Street
Minneapolis, Minnesota 98653
- D. Claimant's Legal Representative: Raymond List
712 West Avenue
Minneapolis, Minnesota 98653
- E. Federal Employee Involved: J. P. McDay
USDA, ARS, Soil Laboratory
Minneapolis, Minnesota 98765
- F. Employee's Supervisor: J. P. Park
USDA, ARS, Soil Laboratory
Minneapolis, Minnesota 98765

2. INCIDENT ANALYSIS

- A. On June 6, 1998, J. P. Park instructed J. P. McDay to collect research data from a weather station located at the University of Minnesota.
- B. Mr. McDay was issued a Government vehicle, tag number A-567890, to accomplish the task.
- C. While enroute to the University, Mr. J. P. McDay failed to stop for the red traffic signal at the intersection of Main and West Streets and collided with a vehicle operated by J. J. Smith.
- D. Mr. Smith sustained injuries as a result of the accident and was transported by ambulance to the city hospital
- E. Mr. A. B. Charles, a pedestrian at the scene of the accident, was a witness and has provided a witness statement of the accident.

3. DOCUMENTATION

Attached are documents associated with the tort claim.

Attachment A - Photographs of the accident site

Attachment B - Witness Statement

Attachment C - Accident Report

Attachment D - Copy of police report

Administrative Report

TORT CLAIM

Motor Vehicle Accident - Claimant: J. J. Smith

Account of Accident

The accident took place at 9:00 a.m., Wednesday, June 6, 1998. The claimant, J. J. Smith, owner and operator of a 1992 Dodge van was traveling eastbound on Main Street, Minneapolis, Minnesota, approaching the intersection of West Street. The intersection is controlled by a traffic signal. The traffic signal indicated green for Main Street and was red for West Street. As Mr. Smith entered the intersection, a Government vehicle failed to stop for the signal and collided with Mr. Smith.

The Government vehicle, a 1996 Chevrolet, pick-up truck was operated by J. P. McDay. Mr. McDay is a permanent full-time employee of the Agricultural Research Station, St. Paul, Minnesota. At the time of the accident, Mr. McDay was enroute to collect research data from a weather station located at the University of Minnesota. The trip was authorized by his supervisor, J. P. Park, Research Leader. It is appropriate to use West Street in order to reach the University of Minnesota.

The accident was investigated by Officer Robert Ward, Minneapolis Metropolitan Police. Mr. McDay was cited for failing to obey the traffic signal. (Attachment B.)

Mr. Smith was transported by ambulance to St. Agnes Hospital for treatment. Mr. McDay was not injured in the accident.

A. B. Charles, a pedestrian at the scene of the accident, was a witness and has provided a witness statement for the accident. (Attachment C.)

Claim for Damage

On July 3, 1998, we received a letter (Attachment A) and a completed Form SF-95 form Claim for Damage or Injury, from Mr. Smith dated June 30, 1998. The claim was based on injuries and property damages in the amount of \$54,000. (Attachment A.)

Injury Claim

Mr. Smith received treatment from St. Agnes Hospital for injuries received in the accident. Injuries included lacerations and fractures to the head and back. Copies of invoices are included. (Attachment D.)

Medical bills:

Dr. S. Lloyd	\$30,000.00
X-ray Bills	5,000.00
Emergency Room	2,000.00
Dr. B. Block	<u>10,000.00</u>
Total Medical Bills	\$47,000.00

Property Damage Claim

Repair estimates from two automobile body repair facilities for Mr. Smith's car. The lowest estimate is in the amount of \$7,000.00 (Attachment E.)

Total claim	\$54,000.00
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Determination of Fault

After reviewing the facts of this case, we have determined the Government employee to be at fault and recommend awarding the claim.

With regard to policy considerations, a determination of liability in this case will not impact the ability of ARS to perform its mission. ARS is not a party to any other Tort Claim involving the claimant and is not aware of any claim the Department may have against the claimant.

5 Enclosures

List of OGC Regional Offices

OGC Field Office	Service Area
Albuquerque, New Mexico 87102 (ALB) 4017 Federal Building 517 Gold Avenue, SW Phone: (505) 248-7379	New Mexico
Atlanta, Georgia 30365 (ATL) 1718 Peachtree Street, NE Suite 576 Phone: (404) 347-1060	Kentucky, Tennessee, South Carolina, Georgia, Florida and North Carolina
Chicago, Illinois 60604 (CHI) 230 South Dearborn Room 2920 Phone: (312) 353-5640	Illinois, Michigan and Indiana
Columbus, Ohio 43215 (COL) 200 North High Street Room 209 Phone: (614) 469-2455	Ohio
Denver, Colorado 80215 (DEN) P.O. Box 25005 740 Simms Street, Suite 309 Golden, CO 80401 Phone: (303) 275-5555	Colorado and Wyoming
Harrisburg, Pennsylvania 17108 (HAR) 440 Federal Building 228 Walnut Street P.O. Box 1134 Phone: (717) 221-3713	Maine, Vermont, New Hampshire, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Washington, DC, West Virginia, Virginia and Massachusetts
Hato Rey, Puerto Rico (PR) Rm. 503 159 Chardon Avenue Phone: (787) 766-5200	Puerto Rico

<p>Juneau, Alaska 99802 (JUN) P.O. Box 21628 709 W. 9th Street, Room 913 Federal Building Phone: (907) 586-8826</p>	Alaska
<p>Kansas City, Missouri 64141 (KC) P.O. Box 419205 or 8700 State Line Road, Suite 150 Leawood, KS 66206-1940 Phone: (913) 381-2808</p>	Iowa, Kansas, Missouri, Oklahoma and Nebraska
<p>Little Rock, Arkansas 72201 (LR) 3201 Federal Building 700 West Capitol Street Phone: (501) 324-5246</p>	Arkansas, Louisiana and Mississippi
<p>Milwaukee, Wisconsin 53203 (MIL) Henry Reuss Federal Plaza, Suite 200 310 West Wisconsin Avenue Phone: (414) 297-3774</p>	Wisconsin
<p>Missoula, Montana 59807 (MIS) Federal Building, Room 205 340 North Pattee Street P.O. Box 7669 Phone: (406) 329-3066</p>	Montana
<p>Montgomery, Alabama 36104 (MONT) Sterling Centre 4121 Carmichael Road, Suite 205 Phone: (334) 279-3650</p>	Alabama
<p>Ogden, Utah 84401 (OGD) 507 25th Street, Room 205 Phone: (801) 625-5441</p>	Utah
<p>Portland, Oregon 97204 (POR) 1734 Federal Building 1220 S.W. 3rd Avenue Phone: (503) 326-3115</p>	Oregon, Washington and Idaho
<p>Richmond, Virginia 23229 (RICH) Culpeper Bldg., Suite 239 1606 Santa Rosa Road Phone: (804) 287-1611</p>	Virginia
<p>San Francisco, CA 94105 (SF) 33 New Montgomery, 17th Floor Phone: (415) 744-3011</p>	California, Nevada, Arizona, Hawaii and Guam

St. Paul, MN 55114 (SP) 416N Court International Bldg. 2550 University Avenue W. Phone: (612) 646-6013	North Dakota, South Dakota And Minnesota
Temple, Texas 76501 (TEM) Suite 351 W. R. Poage Federal Office Bldg. 101 South Main Phone: FTS 736-1204	Texas

Form SF-1145, Voucher For Payment Under FTCA Payment of Claims \$2,500 or less

Standard Form 1145 (EG)
(Revised 1/92)
Department of the Treasury
1 TFM 4-2000

VOUCHER FOR PAYMENT UNDER FEDERAL TORT CLAIMS ACT

Voucher No. _____

Schedule No. _____

Claim No. _____

U.S. Department of Agriculture
(Department, bureau, or establishment)

Voucher prepared at Harrisburg, Pennsylvania
(Give place and date)

The United States, Dr.,

To (Name of Claimant or Claimant's Attorney)
(Payee(s))

Address (Address of Claimant or Claimant's Attorney)

PAID BY

Amount claimed. \$ 2,500.00 Date claim accrued June 7, 19 98

Amount of award, compromise, or settlement - \$ 2,500.00

BRIEF DESCRIPTION OF CLAIM (See attachments for further explanation in detail.)

Claimant's personal Injuries included lacerations and fractures to the head and back, Vehicle damage: broken axle and radiator.

ACCEPTANCE BY CLAIMANT(S)

I, (We), the claimant(s) and beneficiaries, do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me (us), on my (our) heirs, executors, administrators or assigns, and agree that said acceptance constitutes a complete release by me (us), on my (our) heirs, executors, administrators or assigns of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising from, and by reason of any and all known and unknown, foreseen and unforeseen and bodily and personal injuries, damage to property and the consequences thereof, resulting, and to result, from the same subject matter that gave rise to the claim for which I (we) or my (our) heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States and against the employee(s) of the Government whose act or omission gave rise to the claim by reason of the same subject matter, including any future claim for the wrongful death of me (us). I (We) further agree to reimburse, indemnify, and hold harmless the United States, its agents, servants and employees from any and all claims or causes of action, including wrongful deaths, that arise or may arise from the acts or omissions that gave rise to the claim by reason of the same subject matter.

Date _____, 19 _____

**SIGN
ORIGINAL
ONLY**

(Claimant)

(Claimant)

This claim has been fully examined in accordance with the provisions of the Federal Tort Claims Act (28 U.S.C. 2672), and is approved in the

amount of \$ _____

(Head of Federal agency, or authorized designee)

Date _____, 19 _____

SIGN ORIGINAL ONLY Title _____

Pursuant to the authority vested in me, I certify that this voucher is correct and proper for payment in the

amount of \$ _____

(Authorized certifying officer)

Date _____, 19 _____

SIGN ORIGINAL ONLY Title _____

ACCOUNTING CLASSIFICATION

8011307104

Paid by Check No. _____

Payment of Claims Exceeding \$2,500

Includes:

8A- Sample of Completed Form FMS-197, Voucher for Payment

8B - Form FMS-197, Voucher for Payment (For Photocopy)

8C - Form FMS-196, Judgment Fund Award Data Sheet (For Photocopy)

8D - Form FMS-195, Judgment Fund Payment Request (For Photocopy)

NOTE: As of the date of the P&P, these forms are available via the Internet at the Department of the Treasury, Financial Management Service's Home Page at:

<http://www.fms.treas.gov>

VOUCHER FOR PAYMENT
WHERE A SETTLEMENT AGREEMENT HAS NOT BEEN EXECUTED
AND ATTACHED OR WHERE A FINAL JUDGMENT IS NOT ATTACHED

Voucher No. _____
Schedule No. _____
Claim No. _____

A. PAYMENT DATA: (PLEASE TYPE OR PRINT CLEARLY)

(1) Submitting Agency/Office: USDA, AGRICULTURE RESEARCH SERVICE

(2) Agency/Office Mailing Address: 120 OAKRIDGE DRIVE SUITE 150
FT. COLLINS, CO 80525-5562

(3) Agency/Office Contact Person and Telephone No.: _____

(4) Payee(s): (a) MARY L. SMITH
(b) _____

(5) Taxpayer Identification No., SSN, or EIN of each Payee: (a) _____
(b) _____

(6) Total Amount: FOUR THOUSAND, NINE HUNDRED SEVENTY - FIVE AND 71/100 \$ 4,975.71

(7) Electronic Funds Transfer (EFT) Information:

(a) Payee Account Name: _____ (d) Bank Name and Address: _____
(b) ABA Bank # (9 digits): _____
©Payee Account #: _____
(c) Checking: _____ Savings: _____

(8) Briefly Identify Claim: Property damage and personal injury claim as result of vehicle collision on 10/10/96 with USDA, Agriculture Research Service employee.

**** THIS IS DETERMINATION AND RELEASE FOR PROPERTY DAMAGE PORTION ONLY****

B. ACCEPTANCE BY CLAIMANT(S). (NOTE: For use ONLY where final judgment has NOT been entered or where claimant has NOT signed another agreement. Use FMS Form 197A where final judgment has been entered or another agreement has been signed by the claimant(s).)

I, (We), the claimant(s) and beneficiaries, do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me (us), on my (our) heirs, executors, administrators or assigns, and agree that said acceptance constitutes a complete release by me (us), my (our) heirs, executors, administrators or assigns of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising now or in the future from, and by reason of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries (including wrongful death), damages to property, breaches of contract or law, and any other acts or omissions, and the consequences thereof resulting, and to result, from the same subject matter that gave rise to the claim for which I (we) or my (our) heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States and against the employee(s) of the Government whose acts or omissions gave rise to the claim by reason of the same subject matter. I (We) further agree to reimburse, indemnify and hold harmless the United States, its agents, servants and employees from any and all claims or causes of action, including wrongful deaths, that arise or may arise from the acts or omissions that gave rise to the claim by reason of the same subject matter.

(SIGN ORIGINAL ONLY)

Date: _____, 19 _____

(Claimant(s) sign above)

C. AGENCY APPROVING OFFICIAL: This claim has been fully examined in accordance with Statutory Cite _____ and approved in the amount of \$ _____
Signed: _____
Title: _____
Date: _____

D. OTHER ACCOUNTING INFORMATION AND CERTIFICATIONS: (For use by Treasury only.)

VOUCHER FOR PAYMENT

Voucher No. _____ WHERE A

SETTLEMENT AGREEMENT HAS **NOT BEEN EXECUTED** Schedule No. _____
AND ATTACHED OR WHERE A FINAL JUDGMENT IS **NOT ATTACHED** Claim No. _____

A. PAYMENT DATA: (PLEASE TYPE OR PRINT CLEARLY)

(1) Submitting Agency/Office: _____

(2) Agency/Office Mailing Address: _____

(3) Agency/Office Contact Person and Telephone No.: _____

(4) Payee(s): (a) _____
(b) _____

(5) Taxpayer Identification No., SSN, or EIN of each Payee: (a) _____
(b) _____

(6) Total Amount: _____

(7) Electronic Funds Transfer (EFT) Information:

(a) Payee Account Name: _____ (d) Bank Name and Address: _____
(b) ABA Bank # (9 digits): _____
©Payee Account #: _____
(c) Checking: _____ Savings: _____

(8) Briefly Identify Claim: Property damage and personal injury claim as result of vehicle collision on 10/10/96 with USDA, Agriculture Research Service employee.

**** THIS IS DETERMINATION AND RELEASE FOR PROPERTY DAMAGE PORTION ONLY ****

B. ACCEPTANCE BY CLAIMANT(S). (NOTE: For use ONLY where final judgment has NOT been entered or where claimant has NOT signed another agreement. Use FMS Form 197A where final judgment has been entered or another agreement has been signed by the claimant(s).)

I, (We), the claimant(s) and beneficiaries, do hereby accept the within-stated award, compromise, or settlement as final and conclusive on me (us), on my (our) heirs, executors, administrators or assigns, and agree that said acceptance constitutes a complete release by me (us), my (our) heirs, executors, administrators or assigns of any and all claims, demands, rights, and causes of action of whatsoever kind and nature, arising now or in the future from, and by reason of any and all known and unknown, foreseen and unforeseen, bodily and personal injuries (including wrongful death), damages to property, breaches of contract or law, and any other acts or omissions, and the consequences thereof resulting, and to result, from the same subject matter that gave rise to the claim for which I (we) or my (our) heirs, executors, administrators, or assigns, and each of them, now have or may hereafter acquire against the United States and against the employee(s) of the Government whose acts or omissions gave rise to the claim by reason of the same subject matter. I (We) further agree to reimburse, indemnify and hold harmless the United States, its agents, servants and employees from any and all claims or causes of action, including wrongful deaths, that arise or may arise from the acts or omissions that gave rise to the claim by reason of the same subject matter.
(SIGN ORIGINAL ONLY)

Date: _____, 19 _____

(Claimant(s) sign above)

C. AGENCY APPROVING OFFICIAL: This claim has been fully examined in accordance with Statutory Cite _____ and approved in the amount of \$ _____
Signed: _____
Title: _____
Date: _____

D. OTHER ACCOUNTING INFORMATION AND CERTIFICATIONS: (For use by Treasury only.)

Financial Management Service

FMS Judgment Fund Award Data Sheet

FOR FMS USE ONLY: Z-	<i>Instructions:</i> Both sides of this form must be completed. Use separate forms or schedules for separate payments to separate persons (for instance, separate awards to co-plaintiffs, or to an insurer and the insured). If extra space is needed (for instance, for class actions and multi-claimant awards), attach additional copies of this form or other papers. Indicate attachments at affected items.
-----------------------------	--

1. Claim/Case
 - a. Name of claim/case: _____

 - b. Claimant/Plaintiff's File No., If Known: _____
 - c. If Litigative Award:
 - i. Court Name: _____
 - ii. Docket No.: _____
 - iii. D.O.J. Compromise Settlement? Yes No
 - d. Date Award Made (mo/day/year): ____/____/____
 - e. Brief Description of Facts Giving Rise to Claim/Case:

2. Claimant/Plaintiff
 - a. Name and Address: _____

 - b. If Claim is For Back Pay, Give Claimant's:
 - i. Social Security Number: _____ - _____ - _____
 - ii. Birth Date (mo/day/year): ____/____/____
3. Payee Name (If Different From Claimant/Plaintiff Named Above): _____

4. Claimant/Plaintiff's Counsel, If Any
 - a. Name and Address: _____

5. Agency Information
 - a. Submitting Agency: _____
 - b. Submitting Agency's File No.: _____
 - c. Submitting Agency's Contact: _____
 - i. Name and Address: _____

 - ii. Phone Number: () _____ - _____
 - iii. Fax No.: () _____ - _____
 - d. If Agency Subject to Claim/Suit is Not Submitting Agency:
 - i. Subject Agency: _____
 - ii. Subject Agency's File No.: _____
 - e. Statutory Function Claim/Case Arose Under: _____
 - f. If Claim is Within Contract Disputes Act, 41 USC §§ 601, 612:
 - i. Name and Address of Agency Reimbursement Contact: _____

 - ii. Phone Number: () _____ - _____
 - iii. Contract Number: _____
 - iv. B.C.A. Number: _____
6. If Payment Will Be Made in a Foreign Currency
 - a. Country and Currency: _____

FAILURE TO FULLY COMPLETE THIS FORM WILL RESULT IN ITS RETURN TO THE SUBMITTER.

FMS

Judgment Fund Payment Request (Administrative Award)

FOR FMS USE ONLY: Z-	<i>General Instruction:</i> Use this form to transmit to FMS a request to certify an administrative award against the United States for payment from the Judgment Fund, under 31 U.S.C. § 1304.
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Date: _____

Judgment Fund Section
 Financial Management Service
 Department of the Treasury
 Room 6D37
 3700 East-West Highway
 Hyattsville, Maryland 20782
 (Telephone: (202) 874-6664)

Matter of: _____

Dear Sir or Madam:

I have been authorized to administratively settle the claims made against the United States in the captioned matter. As described in the enclosed documentation, I certify all pertinent criteria required by law for the approval of the claim(s) has been satisfied. The award has been made against the United States in this matter, and any portions of the award required to be paid from agency funds are being paid from those funds.

I believe that this award qualifies for payment pursuant to 31 U.S.C. § 1304. Accordingly, I request that you certify this award for payment from the Judgment Fund established by that law. Enclosed are completed copies of FMS Form 196: Judgment Fund Award Data Sheet; FMS Form 197 or FMS Form 197A: Voucher for Payment; and all other enclosures required by FMS regulations. Unless payment by electronic funds transfer is indicated on FMS Form 196, please have the check sent to the agency contact shown in item 5© of FMS Form 196.

Signature _____

Name (printed or typed) _____

Title and Agency _____

Enclosures: FMS Form 196, FMS Form 197 or 197A, and FMS Form 198.

Incomplete submissions will be returned to the submitter without action.