

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 7.2	CLAIMS FOR PERSONAL PROPERTY LOSS OR DAMAGE	DT-10-07
<i>Volume 7:</i>	Legal and Ethical Guidelines	
<i>Approved By:</i>	Gregory B. Jaczko, Chairman	
<i>Date Approved:</i>	June 2, 2010	
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<i>Issuing Office:</i>	Office of the General Counsel	
<i>Contact Name:</i>	Assistant General Counsel for Administration 301-415-1550	
EXECUTIVE SUMMARY		
<p>Directive and Handbook 7.2 establish NRC's procedures regarding the settlement and payment of claims for loss of or damage to personal property of employees incident to their service with NRC, under the authority of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. 3721.</p> <p>Directive and Handbook 7.2 are being revised, pursuant to the Comprehensive Five-Year Plan (ML072750777), to update references and to clarify certain legal standards and procedures contained therein.</p>		

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission to establish procedures to cover the settlement and payment of claims for loss of or damage to personal property of employees incident to their service with NRC, under the authority of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended, 31 U.S.C. 3721.

II. OBJECTIVE

To provide regulations for the settlement and payment of claims by NRC, within applicable statutory authority, for loss of or damage to personal property of employees incident to their service with NRC in implementation of the Military Personnel and Civilian Employees' Claims Act of 1964, as amended.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Office of the General Counsel (OGC)

1. Ensures application of and provides advice concerning the provisions of this directive.
2. Receives, reviews, and evaluates claims; obtains needed information for this purpose, utilizing staff assistance from offices and divisions and requesting investigation by the Inspector General where appropriate; and makes recommendations for settlement of claims.

B. Inspector General (IG)

1. As appropriate, investigates claims referred by OGC or the Chief Financial Officer (CFO).
2. Submits a report of findings to the appropriate management official and the requesting office.
3. When a fraudulent claim is indicated by the investigation, refers such findings to the appropriate prosecuting authority.

C. Chief Financial Officer (CFO)

1. Approves and settles payment of claims covered under this management directive.
2. Certifies for payment and pays approved claims after determining availability of funding.
3. Obtains such supporting documentation as is necessary for these purposes.

D. Office and Division Directors (Headquarters)

1. Ensure that employees under their jurisdiction are acquainted with and advised as to the application of the provisions of this directive.
2. Provide staff services as required by OGC, or the CFO, to supply, obtain, or verify information in connection with the review, evaluation, and settlement of claims.

IV. DEFINITIONS (FOR PURPOSES OF THIS DIRECTIVE)

A. Claim

Any written request filed under this directive by an NRC employee for damage to or loss of personal property incident to his or her service with NRC.

B. NRC Employee

An individual employed by the NRC, including military and civilian personnel assigned to the NRC by other Federal Government agencies.

C. Settle

Consider, ascertain, adjust, determine, compromise, and dispose of any claim, whether by full or partial allowance or disallowance.

V. APPLICABILITY

The policy and guidance in this directive and handbook apply to all NRC employees.

VI. DIRECTIVE HANDBOOK

Directive Handbook 7.2 contains the procedures for the evaluation and disposition of claims.

VII. REFERENCES

Code of Federal Regulations

10 CFR Part 13, "Program Fraud Civil Remedies."

Nuclear Regulatory Commission

Management Directives

MD 7.1, "Tort Claims Against the United States."

MD 9.2, "Organization and Functions, Office of the Inspector General."

MD 9.7, "Organization and Functions, Office of the General Counsel."

MD 9.20, "Organization and Functions, Office of the Chief Financial Officer."

United States Code

“False Claims” (31 U.S.C. 3729).

“False, Fictitious, or Fraudulent Claims” (18 U.S.C. 287).

“Fraud and False Statements: Statements or Entries Generally” (18 U.S.C. 1001).

Inspector General Act, 5 U.S.C. Appendix 3.

Military Personnel and Civilian Employees' Claims Act of 1964, as amended
(31 U.S.C. 3721).

Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812).

U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)

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I. LEGAL REQUIREMENTS

A. Conditions

A claim may not be allowed under any one of the following conditions:

1. The loss or damage occurred at quarters occupied by the claimant in a State or the District of Columbia that were not assigned to him or her or otherwise provided in kind by the United States or the District of Columbia.
2. Any part of the loss or damage was caused by any negligent or wrongful act of the claimant, his or her agent, or employee.
3. Possession by the claimant of the property that is the subject of the claim is determined not to be reasonable, useful, or proper under the circumstances existing at the time and place of the loss or damage.
4. The claim is not substantiated.

B. Proper Claimant

1. Claims may be filed by NRC employees or, in the event of death, by their survivors in the following order of precedence:
 - (a) Spouse
 - (b) Child
 - (c) Parent
 - (d) Brother or sister
2. If the employee is deceased, the claim may be presented by a survivor, regardless of whether the claim arose before, concurrently with, or after the descendant's death. A claim may not be presented by or for the benefit of a subrogee, assignee, conditional vendor, or other third party.

C. Time Limitations

1. The claim must be presented in writing within 2 years after it accrues, except—
 - (a) If the claim accrues in time of war or in time of armed conflict in which any armed force of the United States is involved; or
 - (b) The claim has accrued within 2 years before war or an armed conflict begins, and for cause shown, the claim must be presented within 2 years after that cause no longer exists, or within 2 years after the war or armed conflict ends, whichever is earlier.
2. For the purposes of Section I.C., “Time Limitations,” of this handbook, an armed conflict begins and ends as stated in a concurrent resolution of Congress or a decision of the President.

D. Rights Against Third Parties

1. Liability of Third Parties
 - (a) Claims are not payable for that portion of any loss or damage that is recoverable from an insurer or other third party, pursuant to a contract or otherwise.
 - (b) Claimants shall make reasonable efforts to recover from any third party before filing claims under this management directive (MD).
 - (c) Failure to make timely demand or to make reasonable efforts to collect for loss or damage from such a third party will result in a disallowance of the claim or a reduction of the amount otherwise allowable.
 - (d) However, no deduction will be made if the circumstances of the claimant's service were such as to preclude timely filing of the claim with the carrier or insurer and it is determined that a demand would have been impracticable or unavailing in any event.
2. Assignment of Rights Against Third Parties
 - (a) A claimant shall assign to the United States, to the extent of any allowance of a claim hereunder, such right, title, and interest that he or she may have in any claim against an insurer or other third party based on the incident that resulted in the loss or damage.
 - (b) Upon request, a claimant will also furnish any assistance required to enable the United States to enforce its rights against the third party.

E. False, Fictitious, or Fraudulent Claims

1. When the Office of the Inspector General (OIG) establishes that an employee or claimant has knowingly misrepresented the cost, condition, cost of repair, or a material fact concerning the subject matter of the claim, the entire amount may be disallowed by the Office of the General Counsel (OGC).
2. Anyone who makes or presents to any agency of the United States any claim upon or against the United States, or any department or agency thereof, knowing the claim to be false, fictitious, or fraudulent, shall be fined not more than \$10,000 per claim plus three times the amount of the damages sustained by the Government as a result of a claim (31 U.S.C. 3729).
3. A person is liable to the United States Government for a civil penalty if the person knowingly does either of the following:
 - (a) Presents, or causes to be presented, to an officer or employee of the Government or a member of an armed force a false or fraudulent claim for payment or approval; or
 - (b) Makes, uses, or causes to be made a false record or statement to have a false or fraudulent claim paid or approved (31 U.S.C. 3729).
4. In addition to the above penalties under the False Claims Act, any person who makes or presents a claim that the person knows or has reason to know is false, fictitious, or fraudulent is subject to the following penalties under the Program Fraud Civil Remedies Act of 1986 (PFCRA):
 - (a) A civil penalty of not more than \$6,000, subject to periodic adjustment for inflation (10 CFR Section 13.3), for each such claim (31 U.S.C. 3802(a)(1)).
 - (b) If the Government has made payment on such claim, an assessment of not more than twice the amount of such claim or portion of a claim that is determined to be a violation (31 U.S.C. 3802(a)(1), (3)).
5. Under the PFCRA, any person who makes or presents a written statement that—
 - (a) The person knows or has reason to know asserts material fact that is false, fictitious, or fraudulent; or
 - (b) Omits a material fact that is false, fictitious, or fraudulent as a result of such omission, shall be subject to a civil penalty of not more than \$6,000, subject to periodic adjustment for inflation (10 CFR Section 13.3), for each such statement (31 U.S.C. 3802(a)(2)).
6. Since such violations of law also constitute felonies, persons responsible may also be prosecuted and subject to criminal penalties (18 U.S.C. 287, 1001). The Government determines, in each case, whether to pursue civil or criminal penalties based on the circumstances.

II. PROCEDURES

A. General

1. The Government does not underwrite all personal property losses that a claimant may sustain.
2. While the Government does not attempt to limit possession of property by an individual, payment for loss or damage is made only to the extent that the possession of the property is reasonable, useful, or proper.
3. If individuals possess an excessive quantity of items and/or expensive items, they should have such property privately insured.
4. Each claim must rest on its particular circumstances and merit.
5. Claims of the classes listed in Exhibit 1 will not be settled under this directive.

B. Filing a Claim

1. Claims must be filed on NRC Form 600, "Employee Claim for Loss or Damage to Personal Property" (available on the online Informs icon).
2. Claims from Headquarters and regional office employees must be transmitted in triplicate through the claimant employee's supervisor to OGC, Headquarters.
3. In each case, the supervisor will indicate on the NRC Form 600, "Employee Claim for Loss or Damage to Personal Property" (available on the online Informs icon), his or her opinion as to whether possession of the property that is the subject of the claim was incident to the service of the NRC employee and whether such possession was reasonable, useful, or proper under the circumstances existing at the time and place of the loss or damage.

C. Evidence in Support of a Claim

A claim must be supported by the data required by NRC (NRC Form 600, "Employee Claim for Loss or Damage to Personal Property" available on the online Informs icon), including the following, as applicable:

1. Corroborating statement(s) from person(s) having personal knowledge of the facts concerning the claim, including the supervisor's endorsement, as appropriate (see Section II.B, "Procedures," of this handbook)
2. The itemized receipted bill of repair for damaged property that has been repaired; or, if the property is repairable and has not been repaired, at least one written estimate (preferably two) of the cost of repair from a competent repairperson; or, alternatively, a written statement by competent authority, such as a repairperson, that it is economically or otherwise impractical to repair the property
3. Copies of any pertinent correspondence with third parties and insurers.

4. Claims for property loss by theft, accompanied by a statement indicating—
 - (a) Geographical location
 - (b) Facts and circumstances surrounding the loss, including, for example, evidence of larceny, burglary, or housebreaking, such as breaking and entering, capture of the thief, recovery of part of the stolen goods
 - (c) Evidence that the claimant exercised due care in protecting his or her property before the loss
5. Claims for transportation losses, accompanied by the following—
 - (a) Copies of orders authorizing the travel, transportation, or shipment
 - (b) A statement indicating—
 - (i) Name (or designation) and address of shipping officer, supply officer, contract packer, or carrier
 - (ii) Date property was delivered to the carrier
 - (iii) Inventoried condition when property was turned over
 - (iv) When and where property was packed and by whom
 - (v) Date of shipment
 - (vi) Copies of all bills of lading, inventories, and other applicable shipping documents
 - (vii) Date and place of delivery to claimant
 - (viii) Date property was unpacked and whether it was unpacked by the carrier, the claimant, or the Government
 - (ix) Statements of disinterested witnesses as to the condition of the property when it was received and delivered, or as to the handling or storage of the property
 - (x) Reasons, if any, why exceptions were not noted on the inventory when the goods were received
 - (xi) Whether the last common carrier or local carrier was given a clear receipt, except for concealed damages
 - (xii) Total gross, tare, and net weight of shipment
 - (xiii) Insurance certificate or policy if losses are privately insured
 - (xiv) Copy of the demand on the carrier or the insurer, or both, when required, and the reply, if any
 - (xv) Action taken by the claimant to locate missing baggage or household effects, including related correspondence

6. Other evidence as may be required, including travel authorizations, accident reports, or police reports.

D. Recovery From a Third Party

1. OGC will advise employees, when requested, concerning their legal rights to recover from third parties and will notify employees, based on information furnished by them, when reasonable efforts have been made by them to recover from third parties.
2. Employees may consult with OGC before accepting an offer of settlement from a third party that requires the employee to release the third party.
3. When compensation for property lost or damaged has been recovered from a third party, the amount otherwise allowable under this directive will be reduced to the extent of the amount recovered.
 - (a) No reduction will be made for any part of the recovery from a third party that represents an item for which allowance may not be made under this directive, or that represents an amount received for a particular item that is greater than the amount allowed by the NRC.
 - (b) If the amount of a recovery from a third party relates both to items for which an allowance may be made under this directive and items for which an allowance may not be made, then the amount of recovery will be deemed to be allocated proportionally between the two categories.
4. When a claim has been paid by the NRC and the claimant subsequently receives compensation for the same loss or damage from an insurer or other third party, the claimant shall reimburse the Government to the extent of the amount paid by the NRC, subject to the criteria set forth in Section II.D.3(a) of this handbook.
5. If the provisions of Section II.D.3 and Section II.D.4 of this handbook would permit a recovery by a claimant from a third party and the NRC that, in combination, exceeds the amount of claimant's loss or damage, the amount of reduction by or reimbursement to the NRC must be adjusted to avoid that result.
6. The claimant shall furnish to OGC an itemized statement of the settlement by the insurance company or other third party.

E. Determination of the Amount of a Claim

1. Amount Payable
 - (a) No sum in excess of \$40,000 may be paid on any claim arising from one incident, with the exception that when a claim arises from emergency evacuation or from extraordinary circumstances (as determined by the Department of Justice), the amount may exceed \$40,000 but shall not be more than \$100,000.
 - (b) Loss or damage of less than \$10 in amount will be regarded as de minimis and will not be considered for allowance.

2. Valuation of Property

- (a) The maximum payment for lost or damaged property may not exceed its adjusted cost.
- (b) Adjusted cost is either the purchase price of the item or its value at the time of acquisition, less appropriate depreciation.
- (c) The amount normally payable for property damaged beyond economical repair is its depreciated value immediately before the loss or damage, less any salvage value.
- (d) If the cost of repair is less than the depreciated value, it will be considered to be economically repairable and only the cost of repair will be allowable.

3. Replacement in Kind

When appropriate, property lost or damaged may be replaced in kind in lieu of cash payment. The Chief Financial Officer (CFO), by recommendation from OGC, determines when property lost or damaged may be replaced in kind in lieu of cash payment.

4. Cost or Value

- (a) The amount allowed on any item of property will not exceed the cost of the item (either the price paid in cash or property, or the value at the time of acquisition if not acquired by purchase or exchange).
- (b) The amount payable will be determined by applying the principles of depreciation to the adjusted dollar value or other base price of property lost or damaged beyond economical repair; by allowing the cost of repairs when an item is economically repairable, provided the cost of repairs does not exceed the depreciated value of the item; and by deducting salvage value, if appropriate.

5. Depreciation

Depreciation in value of an item is determined by considering the type of article involved, its cost, its condition when lost or damaged beyond economical repair, the expected useful life of the asset and salvage value, and the time elapsed between the time of acquisition, and the date of accrual of the claim.

6. Appreciation

- (a) No allowance will be made for appreciation in the value of the property except that the cost of the item will be adjusted to reflect changes in the purchasing power (adjusted for inflation) of the dollar before depreciation is computed.
- (b) Appreciation will not be allowed solely because the loss occurs or the claimant now resides in an area where the item is rare or difficult to purchase.

7. Expensive or Unique Articles

Loss of or damage to an item of extraordinary value, a unique item, or an antique when the item was shipped with household goods will not be allowed unless the employee filed a valid appraisal or certificate of authenticity with the carrier before shipment of the item.

F. Receipt, Evaluation, and Recommendation by the Office of the General Counsel

1. OGC will receive the claim, form an opinion as to whether the claim may lawfully be allowed and, based on the available facts, whether it should be allowed in whole or in part, and forward a recommendation on the claim to the CFO.
2. In evaluating a claim, OGC may need to obtain further information, or to verify information that it has received. In such a case, it may, when appropriate, use the services of other qualified NRC personnel or request an investigation by OIG. A claims investigator or another person used in obtaining information will usually verify the facts as stated in the claim, note any discrepancies, and supply any additional facts that OGC may require.

G. Non-Cognizable Claims

Claims for loss of or damage to property in the following categories are **not** payable under this MD:

1. Money or currency, except that deposited with authorized Government personnel for safekeeping, or lost in a disaster, fire or severe weather, or by theft. Reimbursement for loss of money or currency will be limited to an amount determined to have been reasonable for the claimant to have had in his or her possession at the time of the incident.
2. Intangible property, or evidence thereof, such as bankbooks, savings and loan association deposit books, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, and traveler's checks.
3. Government property, except that for which the NRC employee may be responsible to an agency other than the NRC.
4. Property acquired for resale or use in a private business enterprise.
5. Property stolen from the possession of the employee, unless due care was used to protect it.
6. Property acquired, possessed, or transported in violation of law or regulations.
7. Motor vehicles or trailers, unless used at the time for the benefit of the Government with the approval of superior authority.
8. Small articles of substantial value and money when shipped with household goods or as unaccompanied baggage.
9. Articles easily pilfered that usually are worn or carried, including watches and expensive jewelry such as rings, pins, brooches, necklaces, and bracelets.
10. Expensive articles of gold, silver, other precious metals, jewelry, furs, paintings, prints, works of art, antiques other than bulky furnishings, relics, and other articles of extraordinary value when shipped with household effects by ordinary means, or as unaccompanied baggage at normal released valuation, i.e., market value.

11. Property that is worn out and unserviceable.
12. Loss or damage totaling less than \$10.

III. SETTLEMENT OF A CLAIM

A. Action

1. When the CFO, upon consideration of the evidence submitted and the OGC recommendation, determines that an allowance is proper, he or she shall indicate approval on NRC Form 600, "Employee Claim for Loss or Damage to Personal Property."
2. If the claim is disallowed or allowed only in part, the CFO will furnish the claimant with a written notice of the reasons for disallowance.
3. In making a determination, the CFO may request additional investigation or further development of the information.
4. Except as provided in Section II.C., "Reconsideration," of this handbook, the action of the CFO is final.

B. Payment

1. In order for the United States to be held liable for damages resulting from a motor vehicle accident involving an NRC employee, the employee must have been acting within the scope of his or her employment when the accident occurred.
2. This matter is determined under the law of the State where the accident occurred.
3. A determination of the scope of employment issue cannot be made merely on the basis of conclusive statements by the employee.
4. Therefore, after the employee has completed Sections I through IX of SF 91, "Motor Vehicle Accident Report," the supervisor shall complete Section X of SF 91 and promptly transmit the form to OGC.

C. Reconsideration

1. The CFO may reconsider any claim upon written request by the claimant if it can be shown that an arithmetical error has been made in the settlement, or that the settlement is erroneous on the basis of new evidence not available to the claimant through no fault of his or her own when he or she initially submitted the claim.
2. The claimant shall submit a written request for reconsideration to OGC within 60 days after receipt of payment or written notice of disposition under Section II.A., "Action," of this handbook, or 60 days from discovery of new evidence if the request is based on new evidence.
3. The claimant shall submit a request for reconsideration on a new NRC Form 600, "Employee Claim for Loss or Damage to Personal Property" (available on the online Informs icon).

- (a) The claimant shall clearly mark under the place for the description of property "Request for Reconsideration," referencing the date of the original claim and other pertinent information and the new facts or considerations being presented.
 - (b) Other than identification, it is not necessary to repeat particulars already stated in the original claim.
- 4. OGC will compare a request for reconsideration with the original claim. OGC will transmit the complete file to the CFO with recommendations.
 - 5. The CFO will notify the claimant of the disposition of any request for reconsideration. If a determination is made on reconsideration that an additional amount is due the claimant, certification and payment of the additional amount will be made.

D. Effect of Settlement

- 1. Acceptance by the claimant of an allowance under this MD constitutes a release by the claimant of all liability on the part of the United States and its employees for damage to or loss of the property that is the subject of the claim.
- 2. The settlement of a claim under the authority of 31 U.S.C. 3721 is final and conclusive.