

ACTION BY: All Divisions and Offices

FGIS Directive 2510.1 12-11-73

FEDERAL TORT CLAIMS

I PURPOSE

This Instruction:

A Sets forth the basic provisions of the Federal Tort Claims Act; and

B Prescribes procedures in the Agricultural Marketing Service (AMS) for initiating, handling, and paying tort claims.

II BASIC PROVISIONS OF THE FEDERAL TORT CLAIMS ACT

Under the provisions of the Federal Tort Claims Act (28 U.S.C. 2671-2680), the U.S. Department of Agriculture may receive and settle claims against the United States for death, personal injury, or property loss or damage allegedly caused by the negligent or wrongful act or omission of any employee of the Department. The employee shall have been acting within the scope of his office or employment under circumstances where the United States, if it were a private person, would be liable in accordance with the law of the place where the act or omission occurred. The Federal Tort Claims Act does not apply outside the United States. For information on obtaining liability insurance for the operation of a motor vehicle in a foreign country, see AMS Instruction 371-3, Accident Liability.

NOTE: AMS employees involved in a claim shall not, under any circumstances, assume liability for damages on behalf of the U.S. Government nor advance any opinions as to the merits of any claim.

III CLAIMS

A Place of Filing. Claims involving field or Washington Metropolitan Area headquarters office employees shall be submitted to the Fiscal Services Branch, Financial Services (FS) Division.

B Limitations.

1 A claimant may file a claim with the Department under the Federal Tort Claims Act only for injury to or loss of property, or for personal injury or death allegedly caused by a negligent or wrongful act or omission on the part of an employee of AMS.

2 A claim must be presented, in writing, within two years after the date the claim accrues.

3 Suit in a United States District Court may be instituted on the claim only after the claimant shall have first presented his claim to the Department for administrative

determination and the claim is denied. However, if the Department has not taken action to settle or deny the claim within six months from the date of filing, the claimant may, at his option, file suit in an appropriate United States District Court. Legal action must be started within six months after the date of notification to the claimant of the final denial of the claim by the Department.

4 All claims for injury or damage allegedly caused by an AMS employee must be filed with the Department. There is no monetary limit.

IV PRESENTATION OF CLAIMS

A Persons Who May Present Claims. The following persons or groups may present claims:

1 The claimant (the injured party or the one suffering loss or damage) may file on his own behalf.

2 A legal representative or duly authorized agent may file on behalf of the claimant. He must:

a File in the name of the claimant;

b Submit evidence of his authority to present the claim; and

c Sign the claim and state his title or legal capacity, such as agent, executor, administrator, parent, guardian, or other representative.

3 Insurers with the rights of a subrogee, upon presentation of evidence of their right to present the claim, may file to cover claims for losses:

a Wholly compensated by an insurer; or

b Partially compensated by an insurer or the insured, individually as their respective interests appear, or jointly.

B Forms and Supporting Documents Required.

A claimant, as shown in paragraph A above, who desires to present a claim under the Act, may request SF-95, Claim for Damage, Injury, or Death, either from the AMS office employing the person who allegedly committed the negligent or wrongful act or from the Fiscal Services Branch, FS Division. Should the request be filed with a local AMS office, that office shall forward it promptly to the Fiscal Services Branch, FS Division. The SF-95 must show the proper address for return mailing. Claims for death, personal injury, and property loss or damage must be filed on the same form. Separate claims for each will not be accepted. SF-95 must be completed in accordance with instructions printed on the form. It must be submitted with the following supporting papers or information as applicable:

1 Death Claim.

a An authenticated death certificate or other competent evidence showing the cause of death, the date of death, and the age of the decedent at the time of death.

b A statement giving the decedent's employment or occupation at the time of death including:

- (1) His monthly or yearly salary or earnings; and
- (2) Duration of his last employment or occupation.

c A list of the full names, addresses, birth dates, kinship and marital status of the decedent's survivors, including identification of those survivors who were dependent for support upon the decedent at the time of his death.

d Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

e A statement concerning the decedent's general physical and mental condition immediately prior to death.

f An itemized bill, or receipts of payment, for:

- (1) Medical expenses incurred by reason of the incident causing death; and
- (2) Burial expenses.

g A physician's detailed statement, if damages for pain and suffering prior to death are claimed, specifying:

- (1) The injuries suffered;
- (2) The duration of the pain and suffering;
- (3) Drugs administered for pain, if any; and
- (4) The decedent's physical condition in the interval between injury and death.

h Other evidence or information which may have a bearing on either:

- (1) The responsibility of the United States for the death; or
- (2) The amount of damages claimed.

2 Personal Injury Claim.

a A report signed by the attending physician or dentist setting forth the following:

- (1) The nature and extent of the injury;
- (2) The nature and extent of the treatment;
- (3) The degree of temporary or permanent disability;
- (4) The period of hospitalization;

(5) The prognosis; and

The extent of diminished earning capacity.

b A statement that the claimant has or will make available to the Department any previous or future reports by physicians concerning his physical or mental condition as related to the injury for which claim is made.

c Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payments for such expenses.

d A statement of estimated costs for future treatment, if the attending physician's prognosis indicates the need for such

e A signed statement from the claimant's employer showing:

(1) The status of the injured persons employment, e.g., full or part-time;

(2) The amount of actual time lost from employment; and

(3) The amount of wages or salary lost, should the claim involve loss of time from employment.

f Documentary evidence showing the amount of earnings actually lost, if the claim involves loss of income and the claimant is self-employed.

g Other evidence or information which may have a bearing on the responsibilities of the United States for either the personal injury or the damages claimed. (The claimant may be required to submit to a physical or mental examination by a physician employed by the Department or any other Federal agency. A copy of the report shall be made available to the claimant upon his written request if he has complied with subparagraph a above.)

3 Property Loss or Damage Claim.

a Proof of ownership of the property.

b A detailed statement of the amount claimed with respect to each item of property, if more than one.

c An itemized receipt for payment made for necessary repairs or at least two written estimates of the cost of such repairs.

d A statement listing date of purchase, purchase price, and salvage value, if repair of the property is not feasible or economical.

e Other evidence or information which may have a bearing on the responsibility of the United States for either the damages to or loss of property or the damages claimed.

A The local office to which the employee, who allegedly committed the negligent or wrongful act or omission, is assigned shall:

1 Date stamp, on the day of receipt, each document received in connection with a claim. This is important since many claims are made in the form of letters, repair estimates, or some other document prior to the filing of the formal claim on SF-95. These documents might constitute a valid claim in writing in the event the formal claim is not submitted within the statutory filing period of two years.

2 Forward any correspondence or supporting documents received from the claimant or his attorney to the Fiscal Services Branch, FS Division. If the claim results from an automobile accident, the following shall be furnished:

a The Government driver's automobile liability insurance policy in those cases where the vehicle operated by the Government driver is not owned or leased by the Government. (The policy itself or a reproduced copy is required; not a Certificate of Insurance, extension certificate, etc.) If the driver does not carry automobile liability insurance, the file should so indicate. It is not necessary to include the policy in those cases where the vehicle is owned or leased by the Government.

b The police report, if any. If there was no police report, the file should so indicate.

c Information as to the disposition, by a court or otherwise, of police charges against any person involved. If there has not been a disposition of charges, the file should so indicate.

d Other pertinent information relating to the claim, such as maps, diagrams, and charts.

B The Fiscal Services Branch, FS Division, shall:

1 Enter the full address of that office in the "Submit to" space at the top of an SF-95 and furnish it to the claimant upon his request.

2 Inform the claimant that:

a The completed SF-95 and supporting documentation, as set forth on the back of the form, should be returned to the address shown;

b Final disposition of the claim will be under the jurisdiction of the General Counsel of the Department; and

c Inquiries concerning the progress of the claim, after submission of SF-95 and necessary documentation, should be directed to the Office of the General Counsel (OGC).

3 Send a copy of the SF-95 transmittal to the local office.

4 If the claim results from an automobile accident, send the completed SF-95, all supporting documents, and the accident file to the PE Division for examination by the AMS Accident Review Board. The accident file consists of the forms and reports prescribed by AMS Instruction 371-1, Investigating and Reporting Accidents.

5 Send the entire file to OGC after it has been acted upon and returned by the AMS Accident Review Board or when it is initially received if the claim did not result from an automobile accident.

6 Obligate the amount of the claim, if \$2,500 or less.

7 Upon notification by OGC that the claim has been awarded, compromised, or settled:

a Prepare SF-1145, Voucher for Payment Under Federal Tort Claims Act;

b Send the original SF-1145 to the claimant for signature;

c Adjust the original amount obligated, if required; and

d Retain the remaining copies of SF-1145 in a pending file.

8 Upon receipt of the signed original of SF-1145 from the claimant, arrange for payment of the claim as follows:

a Payments of \$2,500 or Less.

(1) Prepare SF-1166, Voucher and Schedule of Payments, for the amount of the award, compromise, or settlement.

(2) Pay the claimant from the appropriate obligated funds.

b Payments of \$2,501 Through \$100,000.

Send the executed SF-1145 to the Claims Division, General Accounting Office, for payment of any award, compromise, or settlement of \$2,501 through \$100,000. When the award, compromise, or settlement is in excess of \$25,000, the SF-1145 must be accompanied by evidence that the award, compromise or settlement has been approved by the Attorney General or his designee. (OGC will furnish this evidence.) Payment will be made from General Funds of the Treasury and not from AMS appropriations.

c Payments of \$100,001 or More.

Payment of any award, compromise, or settlement of \$100,001 or more shall be obtained by forwarding the executed SF-1145 to the Bureau of Accounts, Department of Treasury, together with the evidence that the award, compromise, or settlement has been approved by the Attorney General or his designee. Payment will be made from the General Funds of the Treasury, not from

AMS appropriations.

d Payment When Claimant Is Represented by an Attorney. When the claimant has been represented by an attorney, designate both the claimant and his attorney as payees on SF-1145. Give the address of the attorney as the place to which the check should be mailed.

VI DETERMINATION OF CLAIMS

The General Counsel of the Department, or his designee, has the authority to consider, ascertain, adjust, determine, compromise, and settle tort claims presented to the Department. However, he will obtain approval of the Attorney General for those awarded, compromised, or settled for amounts in excess of \$25,000. AMS and the claimant will be notified of the determination made by the General Counsel, as follows:

A Allowance of Claim. When a claim is allowed in full or in part, the Fiscal Services Branch, FS Division, will be notified in writing.

B Disallowance of Claim. When a claim is denied, the claimant, his attorney, or legal representative will be notified, in writing, of the final denial determination. This notification will be made by certified or registered mail and will include a statement that the claimant may, if dissatisfied with the Department's action, file suit in an appropriate United States District Court not later than six months after the date of notification mailing. A copy of the denial determination will be sent to the Fiscal Services Branch, FS Division.

VII ACCEPTANCE OF SETTLEMENT BY CLAIMANT

As provided by statute and the Attorney General's regulations, acceptance by the claimant, his agent, or legal representative, of any award, compromise, or settlement made pursuant to the Federal Tort Claims Act shall be final and conclusive on the claimant, his agent, or legal representative and any other person on whose behalf or for whose benefit the claim has been presented. Acceptance shall constitute a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim.

VIII SUITS AGAINST EMPLOYEES

An employee served with papers in a suit arising out of the performance of his official duties should immediately advise the Officer in Charge (if a field employee) or the Administrative Officer of the Division (if a headquarters employee). That officer shall immediately advise the Division Director and the PE Division. The PE Division will contact officials in the Office of the General Counsel and Office of the Inspector General as prescribed in AMS Instruction 371-1.

/s/ Richard P. Bartlett, Jr.
Deputy Administrator, Management