

PART 2042 - TORT CLAIMS

SUBPART A - Claims Under Federal Tort Claims Act

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Exhibit A - Sample Administrative Claim
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PART 2042 - TORT CLAIMS

SUBPART A - Claims Under Federal Tort Claims Act

§2042.1 General.

This subpart outlines the basic provisions of the Federal Tort Claims Act (FTCA), as amended, and provides the procedures for processing claims brought against the United States, by claimants, for wrongful acts or omissions of employees acting in the scope of their offices or employment with Rural Development.

§2042.2 Authority and responsibility.

(a) Authority. Under the provisions of the Federal Tort Claims Act, 28 U.S.C. 2671 - 2680, the United States Department of Agriculture (USDA) may receive and settle claims against the USDA for personal injury, death, or property loss or damage caused by the negligent or wrongful act or omission of any employee of the USDA while acting within the scope of his/her office or employment, when, under the same circumstances, if the USDA were a private person, it would be liable in accordance with the law of the place where the act or omission occurred. Claims may be considered without regard to the amount claimed; however, any settlement in excess of \$25,000 must have prior written approval of the United States Attorney General or his/her designee.

(b) Responsibility. The responsibility to consider and settle claims against the USDA has been delegated to the Office of the General Counsel (OGC). The General Counsel and such employees of OGC as may be designated by the General Counsel, have authority to consider, ascertain, adjust, determine, compromise, and settle claims pursuant to the FTCA, as amended, and the regulations of the Attorney General and the USDA. Representatives of OGC may contact directly Rural Development field employees, claimants, or their duly authorized agents or legal representatives regarding evidence or information needed for determination concerning claims.

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§2042.3 Statutory limitations on submission of claims.

Claims not submitted within the time limits prescribed by law are automatically barred. For this reason, all documents received in connection with a claim must be stamped showing date received, and office identification, and should include the initials or signature of the recipient.

(a) A tort claim is barred unless a written demand for money damages in a sum certain to be accepted and considered by OGC is presented within two years after the claim accrues. Claimants must file suit in Federal District Court within six months following the date of mailing, by certified or registered mail, of notice of final denial of the claim if they wish to contest denial of their claim by USDA. Suit may not be instituted on a claim unless the claimant has first presented the claim to the USDA for administrative determination and the claim is denied, except in the case of counterclaims, cross claims and third party claims. However, if a claim has not been disposed of within six months from the date of filing, the claimant may file suit in an appropriate United States District Court.

(b) Once a claim has been filed, the claimant may not sue for more than the amount of the original claim unless there is newly discovered evidence or intervening facts. A claim may be withdrawn by giving notice to the OGC.

§2042.4 Who may file a claim.

Claims filed under the provisions of the FTCA may be submitted as set forth in this subpart and must be accompanied by sufficient facts for the Agency to investigate the claim.

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

(b) Claim for personal injury. A claim for personal injury may be presented by the injured person, a duly authorized agent, or legal representative.

(c) Claim based on death. A claim based on death may be presented by the executor or administrator of the decedent's estate, or by any other person legally entitled to assert such a claim in accordance with applicable State law.

§2042.4 (Con.)

(d) Claim for loss compensated by insurer. A claim for loss wholly compensated by an insurer, with the rights of a subrogee, may be presented by the insurer. A claim for loss partially compensated by an insurer, with the rights of a subrogee, may be presented by the parties individually, as their respective interests appear, or jointly.

(e) Claim presented by agent or legal representative. A claim presented by an agent or legal representative shall be presented in the name of the claimant, be signed by the agent or legal representative, show title or legal capacity of the person signing, and be accompanied by evidence of the authority to present the claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

§2042.5 Evidence and information required from claimant.

For a claim to be accepted and considered by the OGC, the claimant must submit a properly executed Standard Form 95, "Claim for Damage, Injury, or Death," (see Exhibit A) or other written demand for money damages in a sum certain to be accepted and considered by OGC (see Exhibit B). The claim must specify the total amount claimed and be supported by the following evidence.

(a) Claim for property damage. In support of a claim for injury to or loss of property, real or personal, the claimant is required to submit the following evidence or information:

- (1) Proof of ownership.
- (2) A detailed statement of the amount claimed with respect to each item of property.
- (3) An itemized receipt of payment for necessary repairs or at least two written estimates of the cost of such repairs.
- (4) A statement listing date of purchase, purchase price and salvage value, when repairs are not economical.
- (5) Any other evidence or information which may have a bearing on either the responsibility of the United States for injury to or loss of property or the damage claimed.

(b) Claim for personal injury. In support of a claim for personal injury, including pain and suffering, the claimant shall be required to submit the following evidence or information.

(1) A written report by the attending physician or dentist setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed by the Department or other Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request, provided the claimant has furnished the report referred to in the first sentence of this paragraph and has made or agrees to make available to the Department any other physician's reports previously or thereafter made of the physical or mental condition which is the subject matter of the claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time from employment, a written statement from the claimant's employer showing actual time lost from employment, whether claimant is a full or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amounts of earnings actually lost.

(6) Any other evidence or information which may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) Claim for death. In support of a claim based on death, the claimant shall be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at the time of death, including salary earnings (if any) and the duration of last employment or occupation.

§ 2042.5(c) (Con.)

(3) Full names, addresses, birthdates, relationship, and marital status of the decedent's survivors, including identification of those survivors who, at the time of the decedent's death, were dependent upon the decedent for support.

(4) Degree of support afforded by the decedent to each surviving dependent at the time of the decedent's death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment for such expenses.

(7) If damages for pain and suffering prior to death are claimed, a physician's detailed statement specifying the injuries suffered, duration of pain and suffering, any drugs administered for pain, and the decedent's physical condition during the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(d) Non-obtainability of evidence or information. In any case where all of the information or evidence required under paragraphs (a), (b), or (c) of this section cannot be obtained, the OGC may determine that such information or evidence is unnecessary for proper disposition of the claim.

§ 2042.6 Procedures for handling claims.

(a) Filing claims. When a claimant wishes to make a claim, the local Rural Development office which employs the employee who allegedly committed the negligent or wrongful act or omission will furnish the claimant with Standard Form 95. The Rural Development office should inform the claimant to complete the SF-95 in accordance with the instructions on the reverse of the form, and to file the completed SF-95 together with the appropriate substantiating evidence and information specified in § 2042.5 of this subpart with that office. The Rural Development office should advise the claimant that final disposition of the claim comes under the jurisdiction of the OGC and that inquiries concerning progress of the claim should be directed to the OGC.

(b) Restriction on discussion of the merits of claims. An employee may furnish the claimant information concerning rights, procedures, and forms for presenting a claim. Under no circumstances should an employee undertake to assume liability for damages on behalf of the Government or advance any opinion as to the merits of the claim. The giving of aid or assistance by a Government employee "other than in discharge of proper official duties" to any claimant in prosecuting any claim against the USDA is prohibited by law.

(c) Receiving claims. Upon receipt of a claim or potential claim by any Rural Development office, whether in the form of a letter or SF 95, the recipient should stamp the material submitted showing date received, office identification, and signature or initials of the recipient. This information is essential in order to establish the filing date in accordance with the statutory limitation requirements specified in § 2042.3 of this subpart. The recipient should review the material submitted and determine if the claimant is seeking redress under the FTCA or under some other authority. If brought under the FTCA, the claim should be reported to the National Office Tort Claims Officer (TCO), Support Services Division. At that time all files concerning the subject should be "frozen" and handled in accordance with § 2033.8 (b)(5) of RD Instruction 2033-A. (Revised 10-30-02, PN 352.)

(d) Processing claims. For all tort claims filed with District or County Offices, the State Office is responsible for examining the claim and determining if the Standard Form 95 or the Administrative Claim letter (see sample letter in Exhibit A) has been properly completed. Also, determine if the evidence required to be submitted by the claimant is in accordance with § 2042.5 of this subpart. If the claim meets all the requirements of a claim under the FTCA, the claim should be acknowledged and the claimant informed that the claim is being forwarded to OGC for determination. If a claim does not meet the requirements of the FTCA, the claimant should be specifically informed of the deficiencies and asked to remedy them in a manner similar to the sample letter shown in Exhibit B. Claimants should also be informed that OGC will not issue a determination until all defects are cured. Neither in this letter nor in any other manner, except to the extent required by law, should agency personnel make any admission concerning the incident involved in the claim or sufficiency of the filing of the claim. The response to such inquiries should be that such decisions must come from OGC. (Revised 10-30-02, PN 352.)

§ 2042.6(d) (Con.)

(1) Claims of \$100,000 or less. If the claim is \$100,000 or less, it is the responsibility of the State Office officials to summarize the claim, compile all documents and other evidence relevant to the claim. The claim and three (3) copies of all relevant documents and other evidence should then be submitted to the appropriate Office of the General Counsel (OGC) field office. (Revised 02-04-04, PN 370.)

(i) Allowance of \$2,500 or less. When the appropriate OGC field office awards payments of \$2,500 or less, these tort claims will be charged out of the appropriate State Office's administrative allotment budget. Once the appropriate OGC field office returns the approved claim, along with the form, SF-1145, "Voucher for Payment Under Federal Tort Claims Act," to the tort claim contact in the State Office, the tort claim will be processed through the Foundation Financial Information System (FFIS). The FFIS instructions are set forth in U.S. Department of Agriculture, National Finance Center, Title IX, FFIS; Chapter 4, Rural Development; Part 4, Spending; and Part 9, Appendix I, Rural Development FFIS Processing Matrix for Spending under the heading, Tort Claims \$2,500. The first step is to reserve the funds through FFIS before obtaining the claimant's signature. The next step is for the tort claim contact to forward the completed SF-1145 for the claimant's signature. Upon receipt of the signed SF-1145 from the claimant(s), the last step is for the tort claim to be processed as a payment in accordance with the above referenced FFIS instructions. The FFIS is in compliance with the Treasury Offset Program mandated by the Debt Collection Improvement Act of 1996 (Public Law 104-134). The tort claim contact in the State Office will keep the approved tort claim package for their files. The State Director in each State Office is delegated authority to determine, settle, and pay claims for \$2,500 or less submitted by employees on Form AD-382, "Employee Claim for Loss or Damage to Personal Property," under the Military Personnel and Civilian Employees (MPCE) Act, 31 U.S.C. 3721 (see Departmental Regulation 2510-1). The claims are for a specified sum based on damage to an employee's personal effects that happened while they were on official duty for the Agency. To qualify for payment under the MPCE Act, the damage must stem from the following: extraordinary risks in the performance of duty, such as in connection with a civil disturbance, common or natural disaster, or efforts to save

human life or Government property [31 U.S.C. 3721b(3)(b)]. These claims will be processed through the FFIS for payment as described in this section. (Revised 02-04-04, PN 370.)

(ii) Allowance of claims over \$2,500. When the appropriate OGC field office awards payments above \$2,500, the original claim is returned with FMS Form 197, "Voucher For Payment Where A Settlement Agreement Has *Not* Been Executed and Attached Or Where A Final Judgment Is *Not* Attached" or FMS Form 197-A, "Voucher For Payment Where A Settlement Agreement Has Been Executed and Attached or Where A Final Judgment is Attached," to the tort claim contact. Then the tort claim contact forwards the completed FMS 197 to the claimant(s) for signature. The FMS Form 197-A does not require the claimant(s) signature(s). Upon receipt of the appropriate form, the tort claim contact forwards the appropriate form and the original claim and three copies of the entire claim package to the Tort Claim Officer (TCO) in the National Office. The TCO prepares a cover letter to go with the claim package to the Department of Treasury Judgment Fund Group for their review. If approved by the Department of Judgment Fund Group, the claim will be paid out of a U.S. Department of Treasury appropriation account set up for payment of tort claims for all Federal agencies for settlements exceeding \$2,500. The Administrator for the appropriate Agency is delegated authority to determine, settle, and pay claims exceeding \$2,500 submitted by employees under the MPCE Act. The completed Form AD-382, along with the appropriate paperwork as described in Departmental Regulation 2510-1, will be forwarded to the TCO in the National Office for payment. See conditions for payment under paragraph 2042.6(d)(1)(i) above. (Revised 02-04-04, PN 370.)

(2) Claims over \$100,000. If a claim is over \$100,000, the State Office officials should summarize the claim, complete all documents and other evidence relevant to the claim, and prepare an Administrative Report as set forth in paragraph (e) of this section. Thereafter, the claim, two (2) copies of the Administrative Report, and three (3) copies of all relevant documents and other evidence should be returned to the TCO in the National Office for review and submission to OGC. (Revised 02-04-04, PN 370.)

§ 2042.6 (Con.)

(e) Administrative Reports. In addition to communicating with claimants concerning the requirements of filing a claim, Agency personnel must provide OGC with an appropriate Administrative Report. This Report should be in narrative form and consist of a memorandum, with appropriate references or exhibits, setting forth the Agency position on each of the items or allegations referenced in the claim. The Administrative Report should contain:

- (1) A background description of the program involved, referencing statutory authority and applicable regulations. NOTE: When a Rural Development regulation is used for reference purposes, DO NOT submit the entire regulation with the Administrative Report. Supply only those pages or paragraphs which are pertinent.
- (2) A complete description of the events in question including references to documents included and a response to every allegation made in the claim.
- (3) Agency analysis of who was at fault for losses or damages alleged in the claim, referencing the opinion of technical experts, either noninvolved Agency personnel or outside consultants, when necessary.
- (4) Any policy reasons arguing for or against settlement.
- (5) An analysis of damages claimed, unless waived by OGC.
- (6) Any possible USDA claims against the claimant whether or not they arose out of this incident.

§ 2042.7 Determination of claims.

(a) Allowance of claims. If a claim is allowed, in full or in part, OGC provides the Director, Support Services Division, National Office, with a notice to prepare and process an appropriate voucher for payment.

(b) Disallowance of claims. If a claim is denied, OGC notifies the claimant, claimant's attorney, or legal representative. This notification of final denial will include a statement that the claimant may, if dissatisfied with the USDA action, file suit in the appropriate United States District Court not later than six months after the date of mailing of the notification. The National Office and State Director will be advised of the action taken.

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§ 2042.8 Payment of claims.

The processing of payment for awards, compromises, or settlements depends on the amount of payment and will be handled in accordance with USDA regulations and the advice of OGC.

§ 2042.9 Suits against employees.

If a Rural Development field employee is served with papers in a suit arising out of the performance of official duties, he/she will immediately notify the Regional OGC Attorney. He/she will also notify the State Director or Assistant Controller, Finance Office, as appropriate. National Office employees will notify the Assistant Administrator, Human Resources. Information concerning such suits will be furnished to the Director, Support Services Division, for referral to OGC.

§§ 2042.10 - 2042.50 [Reserved]

Attachments: Exhibits A and B

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SAMPLE ADMINISTRATIVE CLAIM

Main Street
Nowhere, California 00000
September 4, 1996

Secretary of Agriculture
Washington, D.C. 20250

Dear Sir:

On August 8, 1996, an employee of your Department, while driving a truck through the intersection of Route 1 and Main Street, Nowhere, California, drove through a red light and struck my car. My car was damaged and I was injured.

As the accident was the fault of your employee, I demand the sum of \$1,500 for damage to my car and the sum of \$15,000 for my personal injuries, which consisted of a broken leg.

Sincerely yours,

John J. Doe

THIS IS AN EXAMPLE OF A TYPICAL ADMINISTRATIVE CLAIM FILED UNDER THE
FEDERAL TORT CLAIMS ACT.

(Sample response may be found in Exhibit B.)

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SAMPLE RESPONSE TO DEFECTIVE CLAIM

Henry F. Jones
Attorney at Law
Route 1
Nowhere, California 00000

Dear Mr. Jones:

Subject: Claim of John J. Doe

This is to acknowledge receipt of the Standard Form 95 you submitted on behalf of your client, John J. Doe. The Federal Tort Claims Act (FTCA), 28 U.S.C. 2671-80 and the regulations issued pursuant thereto, 7 CFR 1.51 and 28 CFR 14 set forth the manner in which an administrative claim under the FTCA must be filed. The Standard Form 95 which 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 sum certain to be accepted and considered by the Office of the General Counsel (OGC). The claim submitted on behalf of your client is not for money damages in a sum certain to be accepted and considered by OGC. Furthermore, pursuant to the provisions of 28 CFR 14.3 an administrative claim for injury to or loss of property may be submitted by the owner of the property or his duly authorized agent or legal representative. A claim for personal injury may 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 it will be necessary for you to submit a claim for money damages in a sum certain to be accepted and considered by OGC signed by the claimant or signed by a duly authorized agent or legal representative and accompanied by proof of authorization to submit the claim.

It will be necessary for you to substantiate the claims of personal injury and property damage. The provisions of 28 CFR 14.4 (copy enclosed) set forth the manner in which claims are to be substantiated. 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.

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Mr. Jones

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

Sincerely,

AGENCY OFFICIAL

Enclosures

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