

PART 2042 - TORT CLAIMS

SUBPART A - Claims Under Federal Tort Claims Act

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## PART 2042 - TORT CLAIMS

### SUBPART A - Claims Under Federal Tort Claims Act

#### **§ 2042.1 Purpose.**

This subpart prescribes:

- (a) The procedures for the receipt, administering, and payment of claims for monetary damages made under the Federal Tort Claims Act (FTCA) against the United States Government because of property damage or loss, personal injury, or death by Claimants because of negligence or error of employees acting within the scope of their official duties with the United States Department of Agriculture (USDA), Rural Development (RD or “the Agency”).
- (b) All questions or concerns regarding this Instruction or any other Tort Claim matters should be referred to the RD Business Center, Enterprise Office, Records and Information Management Division, Information Management Branch by sending an email to the Agency Tort Contact at [RD.FOIA@usda.gov](mailto:RD.FOIA@usda.gov) or by visiting [Information Management Branch - Tort Claims](#).

#### **§ 2042.2 Authority and responsibilities.**

- (a) Authority. Under the provisions of the FTCA, 28 U.S.C. 2671 - 2680, the United States Department of Agriculture (USDA), Rural Development may receive and settle claims against RD for personal injury, death, or property loss or damage caused by the negligent or wrongful act or omission of any employee of RD while acting within the scope of his/her office or employment 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 directly contact any employee in RD, claimants, or their duly authorized agents or legal representatives regarding evidence or information needed for determination concerning claims.

(c) Agency and State Office Tort Contacts will:

- (1) Provide advice, guidance, training, and supervision to agency and state office personnel on all claims arising under the FTCA and 31 U.S.C. § 3723.
- (2) Be responsible for providing the Administrative Claim Report to OGC, as well as providing litigation-related documents, such as litigation hold information, draft answers, and discovery responses, as directed by OGC.

(d) Employees:

- (1) Shall respond to inquiries from, and furnish information to, claimants and prospective claimants on procedures for filing claims and the claims review process, but may not, other than in the proper discharge of their official duties, act as “agent or attorney for prosecuting any claim against the United States, or [receive] any gratuity, or any share of or interest in any such claim, in consideration of assistance in the prosecution of such claim. . . .” (18 U.S.C. § 205)
- (2) are prohibited from making a statement to a claimant or his or her agent or attorney admitting liability or addressing the sufficiency of a claim.

**§ 2042.3 Time requirements and statutory limitations on submission of claims.**

- (a) When a RD State Office receives a claim or potential claim, it must be date-stamped and signed immediately by the person who receives it or by use of a digital signature with Lincpass certificate. The investigated claim must be forwarded to OGC no later than four (4) months after it was received unless a different deadline has been set by the appropriate OGC office.
- (b) When the RD National Office Information Management Branch receives a claim or a potential claim, it must be immediately entered into the Tort Claims tracking system.
- (c) If an incident involves multiple claimants, the claims generally should not be forwarded to OGC until all claims from the same incident are received, or the two-year Statute of Limitations has expired, whichever comes first.
- (d) 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 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 United States 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 a 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.

(e) 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.

(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.

(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 state office which employs the employee who allegedly committed the negligent or wrongful act or omission will furnish the claimant with Standard Form 95. The state office shall

inform the claimant to complete the SF-95, in accordance with the instructions included on the form, and to submit the completed SF-95, together with the appropriate substantiating evidence and information specified in § 2042.5 of this subpart with that office. The state office should advise the claimant that final disposition of the claim comes under the jurisdiction of 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 United States Government or advance any opinion as to the merits of the claim. It is prohibited by law for any Federal employee to provide guidance or assistance "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 Agency Tort Contact in the National Office. At that time all files concerning the subject should be preserved and handled in accordance with RD Instruction 2033-A.

(d) Processing claims. All tort claims filed with the State and Field Offices are responsible for examining the claim and determining if the SF 95 or the Administrative Claim letter 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 the FTCA, the Claimant shall be acknowledged, informed that the claim is being forwarded to OGC for determination. If a claim does not meet the requirements of the FTCA, the Claimant shall be notified of the deficiencies advised to remedy them. 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. The response to such inquiries should be that such decisions must come from OGC.

(1) Claims of \$100,000 or less. If the claim is \$100,000 or less, it is the responsibility of the State or Field Office to summarize the claim, compile all documents and other evidence relevant to the claim. The claim, Agency Claim Report, all relevant documents, and other evidence should then be submitted to the appropriate OGC Regional Office.

(2) Allowance of \$2,500 or less. When the appropriate OGC Regional office awards payments of \$2,500 or less, these settlements will be charged out of the appropriate State Office's administrative budget.

(3) Allowance of claims over \$2,500. When the appropriate OGC Regional office awards payments above \$2,500, a completed and signed [SF 1145, "Voucher for Payment Under FTCA," FMS Form 194, "Judgement Fund Transmittal," FMS Form 196, "Judgement Fund Award Data Sheet," FMS Form 197, "Judgement Fund Voucher for Payment,"](#) and the approved claim are provided to the State Office Tort Contact. The State Office Tort Contact will forward the completed and signed forms, along with the entire claim package to the Agency Tort Contact in the National Office for coordination of payment with the United States Department of Treasury's, Judgement Fund.

(4) 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.

(e) Administrative Claim 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.**

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

- (a) Allowance of claims. If a claim is allowed, in full or in part, OGC provides the Claimant, Claimant's attorney, or legal representation the necessary documents for completion.
- (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.

#### **§ 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. Regardless of the amount originally claimed, awards of \$25,000 or less may be approved by OGC. Awards over \$25,000 must be approved by the Attorney General, see 28 U.S.C. § 2672. OGC will take necessary actions to obtain this approval.

- (a) Payments of \$2,500 or less will be made from the appropriation of the agency program or state office whose actions gave rise to the claim. After receipt of notice from OGC, that it allows a tort claim, the agency will prepare an SF-1145, or other Financial Management Service (FMS) approved payment form and send it to the claimant for signature. When the Form is returned, the agency or staff office will process the Form for payment out of the agency's or staff office's appropriation. If a claimant is represented by an attorney, the Form must designate both the claimant and the attorney as payees and include the attorney's address and other information for payment to the attorney.

(b) Payments over \$2,500 are paid by the Judgment Fund, Financial Management Service (FMS), United States Department of Treasury. OGC will forward to the agency or state office the completed Forms FMS 194, 196 and 197, and for payments in excess of \$25,000, a copy of the Department of Justice (DOJ) approval for settlement or settlement agreement as directed by DOJ. The agency or state office will forward these Forms to IMB for coordination of payment with the Judgment Fund.

#### **§ 2042.9 Suits against employees.**

If a Rural Development field employee is served with court documents in a suit arising out of the performance of official duties, he/she will immediately notify the appropriate OGC Regional Office. He/she will also notify the State Director, as appropriate. National Office employees will notify the OGC's General Law Division in Washington, DC. Information concerning such suits will be furnished to the Director, Records and Information Management Division, for referral to OGC.

#### **§ 2042.10 Military Personnel and Civilian Employees (MPCE) Act.**

(a) Employee claims. Employees have the right to file a claim for loss of or damage to personal property under the MPCE Act, 31 U.S.C.3721 and Departmental Regulation 2510-001. Claims must be presented in writing no later than two years from the date of the damage or loss. To file an employee claim, the Claimant must submit an [AD-382, "Employee Claim For Loss or Damage to Personal Property"](#).

(b) Acceptable claims. 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 Federal property, see [31 U.S.C. § 3721](#).

(c) Delegated authority. Agency Heads or equivalents and State Directors are delegated authority to determine, settle, and pay claims for \$2,500 or less. Claims over \$2,500 must be determined by OGC. Claims over \$2,500 must be forwarded to the Agency Tort Contact in the National Office.

**§ 2042.11 Retention Schedule.**

The disposition authority for Tort Claims can be found at [General Records Schedule 1.1: Financial Management and Reporting Records](#) under the National Archives and Records Administration.

**§§ 2042.12 – 2042.50 [Reserved]**

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