

UNITED STATES DEPARTMENT OF AGRICULTURE  
FOOD SAFETY AND INSPECTION SERVICE  
WASHINGTON, DC

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# FSIS DIRECTIVE

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3720.1  
Revision 4

10/8/14

## FEDERAL TORT CLAIMS

### I. PURPOSE

This directive provides the procedures for the receipt, processing, and payment of tort claims made under the Federal Tort Claims Act (FTCA). FSIS is revising this directive to update the process for the settlement of claims. The revisions include increasing the threshold amount for claims that are to be submitted to the Office of General Counsel (OGC) in headquarters (as opposed to the regional OGC offices) from \$60,000 to \$100,000 and referencing the Financial Management Service (FMS) forms for processing claims.

#### KEY POINTS:

- *The Agency can be held liable for damage to property, personal injury, or wrongful death caused by the negligent or wrongful act or omission by an FSIS employee*
- *The Agency is to verify that any claim received for processing is in writing and has been prepared in accordance with [28 CFR Part 14](#) and the instructions on the Standard Form (SF) 95, Claim for Damage, Injury, or Death*
- *FSIS employees cannot, under any circumstances, assume responsibility for damages or express opinion on the merits of the tort claim*
- *The USDA's OGC has sole delegated authority to consider, ascertain, adjust, determine, comprise, and settle claims filed against USDA*

### II. CANCELLATION

FSIS Directive 3720.1, Revision 3, Federal Tort Claims, 11/13/13

### III. BACKGROUND

Under the FTCA and the Federal Drivers Act, as amended ([28 U.S.C 1346 \(b\), 2671-2680](#)), each Federal Agency is to receive and resolve claims for monetary damages against the United States Government because of property damage or loss, personal injury, or death, provided the cause was because of negligence or error of an employee acting within the scope of his or her duties. The statute of limitations for a claimant to file a tort claim is 2 years from the date of the event.

### IV. CLAIMS

A. FSIS considers all claims for damage to or loss of personal property, personal injury, or death from a claimant or a claimant's duly authorized agent or legal representative when a signed [SF-95](#) form or other written notification of an incident is submitted to the Agency at the appropriate address set out in section IV.C. of this document. A written document constitutes a valid claim in lieu of a signed SF-95.

B. The [SF-95](#) or written notification is to include a specific amount claimed for damage to or loss of personal property, personal injury, or death alleged to have occurred by reason of the incident. It is also to include, to the extent available, supporting statements, photographs, and damage estimates.

C. FSIS receives claims and related documents that are submitted by mail at the following addresses:

1. Automobile-Related Claims:

USDA FSIS OM OAS  
MAILDROP 5230 GWCC  
5601 SUNNYSIDE AVENUE  
BELTSVILLE MD 20705

2. Non-Automobile-Related Claims:

USDA FSIS FMD APMB  
4520 114<sup>th</sup> Street  
Des Moines, IA 50322

D. FSIS employees cannot file claims for loss or damage of personal property under the FTCA. Claims submitted by FSIS employees are processed pursuant to the Military Personnel and Civilian Employees' Claims Act of 1964 (see [FSIS Directive 3710.1](#), *Employees' Claims for Loss or Damaged Personal Property*).

## V. SUITS AGAINST EMPLOYEES

A. FSIS employees who are served with a summons, complaint, or other legal papers related to an incident that occurred during the performance of their official duties are to immediately notify the head of their program or district office and the Office of Administrative Services (OAS), FSIS, or the Accounts Payable Management Branch (APMB).

B. In providing notification, employees are to include the date, time, place, and the method by which they received the legal paperwork. OAS or APMB will contact OGC immediately, and OGC will determine whether the employee is immune from the suit in the matter based on the criteria in the FTCA. Employees who do not respond to the summons, complaint, or other legal papers may be found liable by the court involved.

## VI. AGENCY TORT CONTACT

The FSIS Financial Management Division (FMD, Office of Chief Financial Officer) Director is to provide advice, guidance, training, and supervision to Agency personnel on all matters arising under the FTCA. The FMD Director serves as the liaison between FSIS and OGC.

## VII. RESPONSIBILITIES

A. When a member of the public, not employed by FSIS, appears to have incurred concrete damages and expressed an intention to seek monetary compensation from the Federal Government, FSIS employees are to refer them to OAS or APMB for guidance and instructions on how to file a claim. FSIS employees cannot encourage or require prospective claimants to submit an FTCA claim. FSIS employees are to:

1. Immediately notify their supervisor when a member of the public not employed by FSIS complains of damage, loss of property, injury, or death allegedly caused by the negligent or wrongful act of an FSIS employee. In the event of an automobile-related claim, the employee's supervisor has to complete a section on form SF-91;
2. Document and report an automobile accident involving a Government-owned vehicle to a police

official, complete the [SF-91](#), Motor Vehicle Accident Report, and send it to the OAS; document and report non-automobile-related claims on form SF-95; and

3. Cooperate with police officials during the investigation of damage claims.

B. [Departmental Regulation 2510-001](#) states that OGC is to consider, ascertain, adjust, determine, compromise, settle, or otherwise resolve claims pursuant to the FTCA, 28 U.S.C. 1346 (b), 2401 (b), 2671-2680, and the regulations of the Attorney General contained in 28 CFR Part 14. OGC is to settle claims for not more than \$1,000 pursuant to [31 U.S.C. 3723](#) for privately owned property that is damaged or loss.

C. The Property Management Branch (PMB) in the OAS, OM, is to:

1. Review and maintain files for all claims filed under the FTCA arising from accidents involving a Government-owned vehicle or personally owned vehicles used in the scope of employment at the time of the accident;
2. Receive the Government claim, date stamp it immediately upon receipt, and enter information into the FTCA database;
3. Ensure that all documentation to support the claim is provided and, if not, request supporting documentation for the claim;
4. Complete an administrative report of the claim;
5. Forward the claim, administrative report, and supporting documents to OGC for determination;
6. Receive a decision from OGC. Release forms are provided for all claims for which the Government is found liable. Send release documents to claimant. Receive release documents from claimant and facilitate payment through either FMD (under \$2500) or Treasury Department, Judgment Fund (over \$2500); and
7. Maintain a file on claims in accordance with records management requirements.

D. The APMB (FMD) is to:

1. Review and maintain files for all claims filed under the FTCA (excluding claims involving automobiles (private or government owned)).
2. Date stamp the [SF-95](#) or written notification of the incident immediately upon receipt and track the tort claim in a Tort Claim Log.
3. Conduct investigations on non-automobile claims.
4. Ensure that documentation to support the claim is provided and, if not, request supporting documentation for the claim.
5. Complete an administrative report of the claim.
6. Forward the [SF-95](#) form or written notification of the incident, administrative report, and supporting

documents to OGC for determination.

7. Implement the decision from OGC by sending the release forms to the claimant for claims on which the Government is found liable. APMB, FMD, receives release documents from the claimant and facilitates payment through either the Agency (under \$2500) or Treasury Department, Judgment Fund (over \$2500).

E. Claims for \$100,000 or less are sent by APMB, FMD, or OAS to the appropriate OGC Regional Attorney for determination. There are four Regional Attorneys (Eastern, Central, Mountain, and Pacific) each of whom manages several OGC field offices. The Regional Attorney names and addresses are located at: [Office of General Counsel](#).

## **VIII. ADMINISTRATIVE REPORT**

In accordance with [Departmental Regulation 2510-001](#), the FSIS tort contacts (OAS and FMD) are to collect and submit the administrative report to OGC and conduct the analysis described below. The administrative report is to consist of a memorandum outlining FSIS's position on the tort claim, including an analysis of the damages claimed and the following information:

1. A background description of the program involved, giving references to statutory authority and applicable regulations.
2. A complete description of the events in question, including responses to every allegation made in the tort claim and references to any attached supporting documents.
3. An analysis of who was at fault for losses or damages alleged in the tort claim, with reference to the judgment of technical experts that are either uninvolved Agency employees or outside consultants.
4. Any policy reasons FSIS might have to argue for or against settlement.
5. Details of any tort claims USDA might have against the claimant, whether or not they arose from the incident that is the subject of the tort claim against FSIS.

## **IX. SETTLEMENT OF CLAIMS**

A. The settlement of all tort claims is determined by USDA's OGC. Claims in excess of \$25,000 require approval by the Department of Justice. The FSIS tort contact is to forward the claim to the following OGC units:

1. For claim for \$100,000 or less, send the claim to the OGC regional or branch office.
2. For claims over \$100,000, send the claims to OGC Headquarter office.

B. If OGC allows the claim, OGC is to send an "Allowance of Tort Claim" notification to the office that submitted the claim.

1. Upon receipt of the notification from OGC allowing the tort claim, the office that submitted the claim is to prepare the [SF-1145](#), "Voucher for Payment Under Federal Tort Claims," if the amount approved is less than \$2500, and send the original to the claimants to be signed as accepting the settlement and returned.
2. If the amount approved is for over \$2500, OGC will prepare forms Financial Management Service (FMS) 194, "Judgment Fund Transmittal," FMS 196, "Judgment Fund Award Data Sheet," and

FMS 197, "Judgment Fund Voucher for Payment." Form FMS 197 is sent by APMB or OAS to the claimant for release signatures.

3. If the claimant is represented by an attorney or is party to a subrogated claim by an insurance company, OGC designates the claimant, and either the attorney or insurance company as payees. Forms SF-1145 and the FMS 197 are to show the attorney's or the insurance company's address as the mailing address for the check.

C. Upon receipt of forms SF-1145 and FMS 197 signed by the claimant as accepting settlement, APMB initiates payment as prescribed below.

1. For claims of \$2,500 or less, the allowance of tort claim letter and completed forms SF-1145 and SF-95 are sent to FMD and are paid from FSIS' program funds using the Miscellaneous Payments System, Electronic Funds Transfers; or
2. For claims over \$2,500, the allowance of tort claim letter and completed forms FMS 194, FMS 196, and FMS 197, with the acceptance signatures of the payees, are to be sent to the Department of Treasury, Judgment Fund Branch, for payment processing.

D. 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.

E. If OGC disallows the claim, OGC is to notify the claimant and the claimant's attorney (or agent or insurance company) by certified or registered letter.

F. The claimant, if dissatisfied with the settlement offered by OGC, may decline any payment offer made and, within 6 months of the date of settlement offer, file suit in a Federal district court. FMD receives notification for inclusion in the claim file.

## **X. FILE RETENTIONS**

A. All memoranda, reports, exhibits, and other documents supporting settlement of a claim are to be retained for 3 years after the matter is officially closed.

B. The Department's Tort Claims attorney is to keep a master calendar of all tort claims that they generate once they receive FSIS' administrative reports.

## **XI. QUESTIONS**

Refer questions regarding this directive to OAS, PMB (automobile-related claims) 301-504-4220 or FMD, APMB (for non-automobile-related claims) at 1-800-949-3964.



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