NATIONAL PARK SERVICE

HANDLING OF TORT CLAIMS

STUDENT GUIDE

FEDERAL LAW ENFORCEMENT TRAINING CENTER
GLYNCO, GEORGIA

(Revised 5-82)

HANDLING OF TORT CLAIMS

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GENERAL

FROM TIME TO TIME PROPERTY LOSSES, PROPERTY DAMAGE, PERSONAL INJURIES AND DEATHS ARE CLAIMED TO HAVE RESULTED FROM THE NEGLIGENT OR WRONGFUL ACTS OR OMISSIONS OF EMPLOYEES OF THE DEPARTMENT IN THE COURSE OF THEIR DUTIES. THIS GUIDELINE IDENTIFIES THE RESPONSIBILITIES THAT GUIDE THE NATIONAL PARK SERVICE IN DEALING WITH SITUATIONS THAT MAY LEAD TO A TORT CLAIM AND DEPARTMENTAL PROCEDURES FOR HANDLING CLAIMS BROUGHT AGAINST THE UNITED STATES UNDER THE FEDERAL TORT CLAIMS ACT.

DEFINITIONS

TORT - A TORT IS A CIVIL WRONG, NOT ARISING FROM A CONTRACT RELATION, GIVING THE PERSON WHO SUFFERS FROM THE WRONG A RIGHT OF ACTION FOR DAMAGES. IT IS ALSO DEFINED AS A BREACH OF LEGAL DUTY NOT IMPOSED BY CONTRACT. THE WORD COMES FROM THE FRENCH WORD "TORT", MEANING "WRONG".

NEGLIGENCE - FAILURE TO EXERCISE THAT DEGREE OF CARE WHICH AN ORDINARILY CAREFUL AND PRUDENT PERSON (REASONABLE MAN) WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES. TO ESTABLISH A PROPER CLAIM OF NEGLIGENCE, HOWEVER, THERE MUST BE (A) A LEGAL DUTY TO USE CARE, (B) A BREACH OF THAT DUTY, AND (C) INJURY OR DAMAGE.

ADDITIONAL LEGAL TERMINOLOGY IS IN THE APPENDIX TO THIS GUIDELINE.

FEDERAL TORT CLAIMS ACT (FTCA)

THE FEDERAL TORT CLAIMS ACT (FTCA) WAS ENACTED ON AUGUST 2, 1946 (60 STAT. 842). IT HAS BEEN AMENDED SEVERAL TIMES. BEFORE 1946, ANY AWARD FOR NEGLIGENCE CLAIMED BY A CITIZEN HAD TO BE SETTLED BY SPECIAL ACT OF THE CONGRESS.

THE FTCA PROVIDES THAT "THE HEAD OF EACH FEDERAL AGENCY OR HIS DESIGNEE, IN ACCORDANCE WITH THE REGULATIONS PRESCRIBED BY THE ATTORNEY GENERAL, MAY CONSIDER, ASCERTAIN, ADJUST, DETERMINE, COMPROMISE AND SETTLE ANY CLAIM FOR MONEY DAMAGES AGAINST THE UNITED STATES FOR INJURY OR LOSS OF PROPERTY OR PERSONAL INJURY OR DEATH CAUSED BY THE NEGLIGENT OR WRONGFUL ACT OR OMISSION OF ANY EMPLOYEE OF THE AGENCY WHILE ACTING WITHIN THE SCOPE OF HIS OFFICE OR EMPLOYMENT, UNDER CIRCUMSTANCES WHERE THE UNITED STATES, IF A PRIVATE PERSON, WOULD BE LIABLE TO THE CLAIMANT IN ACCORDANCE WITH THE LAW OF THE PLACE WHERE THE ACT OR OMISSION OCCURRED." (REFERENCE 28 USC 2672)

FOUR ELEMENTS MUST ALWAYS BE PRESENT BEFORE THE FTCA BECOMES APPLICABLE:

1. EMPLOYEE MUST BE ACTING WITHIN THE SCOPE OF DUTY.
2. CIRCUMSTANCES MUST BE SUCH THAT A PRIVATE CITIZEN CAN BE SUED UNDER EXISTING STATE LAW.
3. THERE MUST BE PROPERTY DAMAGE OR PERSONAL INJURY.
4. THERE MUST BE A NEGLIGENT ACT OR OMISSION BY ANY EMPLOYEE OF THE GOVERNMENT.

EMPLOYEES MAY BE HELD AS NOT ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT (AND THEREFORE NOT DEFENDED BY THE U.S. ATTORNEY AND/OR HELD LIABLE FOR RESTITUTION FOR DAMAGES OR LOSS BY THE UNITED STATES) WHEN INVESTIGATION SHOWS ANY OF THE FOLLOWING:

1. GOVERNMENT PROPERTY WAS BEING USED FOR OTHER THAN OFFICIAL PURPOSES.
2. LOSS OR DAMAGE DUE TO ACT OR OMISSION CONSTITUTING MISCONDUCT.
3. WILLFUL NEGLIGENCE, WANTON OR RECKLESS DISREGARD FOR GOVERNMENT PROPERTY, LOSS OF GOVERNMENT PROPERTY DUE TO LACK OF CARE AND CONTROL.
4. INTENT TO DEFRAUD.
5. FAILURE TO FOLLOW LEGITIMATE INSTRUCTIONS.
6. FAILURE TO EXERCISE NECESSARY SUPERVISION.

ORIGINALLY, THE FEDERAL TORT CLAIMS ACT APPLIED ONLY TO NEGLIGENCE AND DID NOT INCLUDE SPECIFIED INTENTIONAL TORTS SUCH AS ASSAULT, BATTERY, FALSE IMPRISONMENT, FALSE ARREST, MISREPRESENTATION, ETC. HOWEVER, A 1974 AMENDMENT TO THE ACT, PASSED IN RESPONSE TO THE 1971 SUPREME COURT DECISION, BIVENS VS SIX UNKNOWN NAMED AGENTS OF THE FEDERAL BUREAU OF NARCOTICS, INCLUDED THIS TYPE OF TORT UNDER THE JURISDICTION OF THE FEDERAL TORT CLAIMS ACT.

THE ACT OF JULY 18, 1966 (FEDERAL DRIVER'S ACT) AMENDS THE FTCA SO THAT "THE REMEDY AGAINST THE UNITED STATES..... FOR

INJURY OR LOSS OF PROPERTY OR PERSONAL INJURY OR DEATH RESULTING FROM THE OPERATION BY ANY EMPLOYEE OF THE GOVERNMENT OF ANY MOTOR VEHICLE WHILE ACTING WITHIN THE SCOPE OF HIS OFFICE OR EMPLOYMENT, SHALL BE EXCLUSIVE OF ANY OTHER CIVIL ACTION OR PROCEEDING BY REASON OF THE SAME SUBJECT MATTER AGAINST THE EMPLOYEE OR HIS ESTATE WHOSE ACT OR OMISSION GAVE RISE TO THE CLAIM." (REFERENCE ALSO 451 DM 4)

WHO MAY FILE A TORT CLAIM AGAINST THE FEDERAL GOVERNMENT

A PERSON WHO HAS A CLAIM UNDER THE FTCA MUST FIRST FILE HIS CLAIM WITH THE AGENCY AND MAY NOT FILE SUIT PRIOR TO UTILIZING ADMINISTRATIVE REMEDIES. THIS PROVISION IS A STATUTORY RESTATEMENT OF THE WELL-ESTABLISHED DOCTRINE OF "EXHAUSTION OF ADMINISTRATIVE REMEDY" AS A NECESSARY CONDITION PRECEDENT TO FILING OF SUIT REGARDLESS OF THE AMOUNT OF DAMAGES CLAIMED. A CLAIM MUST BE FILED WITHIN TWO (2) YEARS.

THE FOLLOWING PERSONS MAY FILE A CLAIM:

1. A CLAIM FOR INJURY TO OR LOSS OF PROPERTY MAY BE PRESENTED BY THE OWNER OF THE PROPERTY, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE.
2. A CLAIM FOR PERSONAL INJURY MAY BE PRESENTED BY THE INJURED PERSON, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE.
3. 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.

4. 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.
5. 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 THE TITLE OR LEGAL CAPACITY OF THE PERSON SIGNING, AND BE ACCOMPANIED BY EVIDENCE OF HIS AUTHORITY TO PRESENT A CLAIM ON BEHALF OF THE CLAIMANT AS AGENT, EXECUTOR, ADMINISTRATOR, PARENT, GUARDIAN, OR OTHER REPRESENTATIVE.

PROCEDURES FOR FILING CLAIMS AGAINST THE UNITED STATES

THE PROCEDURE FOR FILING CLAIMS WITH THE DEPARTMENT OF THE INTERIOR IS SET FORTH IN PART 22 OF TITLE 43 OF THE CODE OF FEDERAL REGULATIONS, AND THE DEPARTMENTAL MANUAL, PART 451.1.

CLAIMS ARE USUALLY INITIATED THROUGH THE SUPERINTENDENT OF THE AREA WHERE THE ACCIDENT OR INCIDENT OCCURRED. IN SOME CASES THE DESIRE TO FILE A CLAIM IS MADE DIRECTLY TO THE INVESTIGATING RANGER, OR THROUGH REGIONAL STAFF.

IN ANY CASE, THE APPROPRIATE FORMS, SF-95 (CLAIM FOR DAMAGE, INJURY, OR DEATH) OR DI-570 (EMPLOYEE CLAIM FOR DAMAGE TO PERSONAL PROPERTY) SHOULD BE PROVIDED WHEN REQUESTED, OR

WHEN A PERSON STATES A DESIRE TO FILE A CLAIM, OR WHEN HE OR SHE EXPRESSES THE OPINION THAT SOME COMPENSATION SHOULD BE MADE. SUCH FORMS SHOULD NOT BE VOLUNTEERED AS A MATTER OF ROUTINE.

A CLAIM MUST BE FILED WITHIN TWO (2) YEARS AFTER THE ACCIDENT OR INCIDENT OCCURS GIVING RISE TO SUCH A CLAIM.

REGULATIONS REQUIRED THAT THE CLAIMANT'S ENVELOPE MUST BE RETAINED AND CLAIM FORM MUST BE TIME AND DATE STAMPED (THIS IS ESSENTIAL AS IT MAY BE IMPORTANT LATER WITH RESPECT TO TIME LIMITATIONS).

THE CLAIMANT CANNOT INITIATE AN ACTION IN THE UNITED STATES DISTRICT COURT UNTIL EITHER:

1. THE CLAIM HAS BEEN DENIED IN WRITING BY THE FIELD SOLICITOR, OR
2. THE FIELD SOLICITOR HAS FAILED TO MAKE A FINAL DISPOSITION OF THE CLAIM WITHIN SIX (6) MONTHS AFTER IT WAS FILED.

CONCEIVABLY, AN AGENCY MAY FAIL TO ACT ON A PARTICULAR CLAIM FOR SEVERAL YEARS, THEREBY GIVING THE CLAIMANT THE SIX (6) MONTHS PLUS THE YEARS OF ACTION, OR INACTION, WITHIN WHICH TO FILE A SUIT IN COURT.

AN ADMINISTRATIVE CLAIM MUST BE FILED FOR A "SUM CERTAIN". SUBSEQUENT SUIT IS LIMITED TO THE AMOUNT ADMINISTRATIVELY

CLAIMED BARRING NEWLY DISCOVERED EVIDENCE OR PROOF OF INTERVENING FACTS RELATING TO THE AMOUNT OF THE CLAIM.

TORT CLAIMS AND ALL PERTINENT INVESTIGATIVE FILES ARE FORWARDED TO THE FIELD SOLICITOR THROUGH THE PARK SUPERINTENDENT AND THE REGIONAL TORT CLAIMS OFFICER WHERE THE INCIDENT GIVING RISE TO THE CLAIM OCCURRED. AREA SUPERVISORS AND PARK MANAGERS DO NOT HAVE THE AUTHORITY TO MAKE ADMINISTRATIVE DETERMINATIONS REGARDING TORT CLAIMS OR EMPLOYEE CLAIMS NOR A DETERMINATION AS TO WHETHER THE CLAIMANT HAS A BASIS FOR A CLAIM. THESE DETERMINATIONS CAN BE MADE ONLY BY THE REGIONAL FIELD SOLICITOR.

ADMINISTRATIVE DETERMINATION OF TORT CLAIMS

ADMINISTRATIVE DETERMINATION AS TO THE MERIT OF ANY TORT CLAIM PRESENTED IS A FUNCTION DELEGATED TO THE SOLICITOR AND REDELEGATED TO OTHER MEMBERS OF HIS OFFICE. UPON THE RECEIPT OF THE CLAIM AND THE PERTINENT INVESTIGATIVE REPORTS, THE SOLICITOR'S OFFICE WILL MAKE A DETERMINATION OF THE CLAIM. ALL EVIDENCE IN THE ADMINISTRATIVE RECORD WILL BE CONSIDERED, INCLUDING THAT SUBMITTED BY THE CLAIMANT, AND THAT DOCUMENTED BY THE INVESTIGATION CONDUCTED BY THE GOVERNMENT. IF THE EVIDENCE PRESENTED BY THE PLAINTIFF (CLAIMANT) IS MORE CONVINCING THAN THAT OFFERED BY THE GOVERNMENT - IN OTHER WORDS, IF THE PLAINTIFF PROVES HIS CASE BY A "PREPONDERANCE OF THE EVIDENCE" - THE PLAINTIFF WINS. THIS DETERMINATION MAY EITHER DENY, COMPROMISE, OR PAY IN FULL THE SUM ORIGINALLY CLAIMED.

DENIAL

IF THE RATIVE DETERMINATION OFFERS THE CLAIMANT LESS THAN TH CLAIMED OR DENIES THE CLAIM COMPLETELY, THE SOLICITGIVE WRITTEN NOTICE. THIS NOTICE MUST FURTHER ADVISE MANT THAT IF HE IS DISSATISFIED WITH THE DETERMINATIOY THE FIELD SOLICITOR HE IS ENTITLED TO:

1. REQONSIDERATION OF THE DENIAL WITHIN 30 DAYS AFTEATE OF MAILING; OR
2. INSUIT IN FEDERAL DISTRICT COURT. SUCH SUIT MUSTTIATED WITHIN A PERIOD OF SIX (6) MONTHS FROMTE OF THE MAILING OF THE DETERMINATION.

PAYMENT DS IN FAVOR OF CLAIMANTS

ANY AWAROMISE OR SETTLEMENT IN AN AMOUNT OF $2,500.00 OR LESS E PAID BY THE PARK AREA WHERE THE INCIDENT OCCURRED

PAYMENT ADMINISTRATIVE AWARD, COMPROMISE OR SETTLEMENT IN NT IN EXCESS OF $2,500.00 WILL BE PAID AS FOLLOWS:

1. PAYM AWARDS OF NOT MORE THAN $100,000.00 MUST BE O BY FORWARDING STANDARD FORM 1145 TO THE CLAISION, GENERAL ACCOUNTING OFFICE.
2. PAYMAWARDS IN EXCESS OF $100,000.00 WILL BE OBTA FORWARDING STANDARD FOR 1145 TO THE BUREAU OF A, DEPARTMENT OF THE TREASURY.

ACCEPTANCE OF AN AWARD OR ENTRY OF JUDGMENT IS A COMPLETE RELEASE OF THE UNITED STATES AND ITS EMPLOYEES FROM ANY FURTHER CLAIM BY THE SAME PARTY BASED ON THE SAME ACCIDENT OR INCIDENT.

GOVERNMENT EMPLOYEES

GOVERNMENT EMPLOYEES MAY FILE A CLAIM (FOR PROPERTY DAMAGE ONLY) BY VIRTUE OF THE MILITARY AND CIVILIAN COMPENSATION ACT, OF 1964 (39 USC,S240-243). THIS CLAIM IS SUBMITTED ON FORM DI-570 AND PROCESSED IN THE SAME MANNER AS ANY OTHER CLAIM IN THE SOLICITORS OFFICE.

GOVERNMENT EMPLOYEES MAY FILE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT FOR PERSONAL INJURY OR FOR DAMAGE TO THEIR PRIVATE PROPERTY IF SUCH DAMAGE IS CAUSED BY A NEGLIGENT ACT OR OMISSION OF OTHER EMPLOYEES OF THE UNITED STATES ACTING WITHIN THE SCOPE OF THEIR EMPLOYMENT. THE FEDERAL EMPLOYEES COMPENSATION ACT PROVIDES THE EXCLUSIVE REMEDY FOR CLAIMS FOR PERSONAL INJURY IN THE COURSE OF EMPLOYMENT.

NATIONAL PARK SERVICE RESPONSIBILITIES REGARDING TORT CLAIMS PREVENTION

ONE OF THE MOST WIDELY RECOGNIZED DUTIES OF A PUBLIC SERVANT IS THAT WE AVOID NEGLIGENCE IN OUR WORK. OUR SOCIETY IMPOSES A DUTY UPON INDIVIDUALS TO CONDUCT THEIR AFFAIRS IN A MANNER WHICH WILL AVOID SUBJECTING OTHERS TO UNREASONABLE RISK OF HARM.

IN FIELD AREAS THIS REQUIRES CONSTANT VIGILANCE BY ALL NATIONAL PARK SERVICE EMPLOYEES TO DETECT, CORRECT AND WARN VISITORS OF HAZARDS THAT MAY OR MAY NOT BE READILY APPARENT.

INVESTIGATION BY FIELD RANGERS AND TECHNICIANS

IT IS ABSOLUTELY VITAL THAT A COMPLETE INVESTIGATION AND DOCUMENTATION BE MADE BY FIELD PEOPLE OF ALL ACCIDENTS OR INCIDENTS THAT MAY LEAD TO A TORT CLAIM.

WHILE IT IS NOT THE INTENT OF THIS GUIDE TO PROVIDE COMPREHENSIVE TRAINING IN THE INVESTIGATIVE FUNCTION, THE FOLLOWING POINTS SHOULD ALWAYS BE CONSIDERED WHEN CONDUCTING AN INVESTIGATION INTO AN ACCIDENT OR INCIDENT THAT MAY LEAD TO A TORT CLAIM:

1. DATE, TIME, EXACT LOCATION.
2. CONCISE BUT COMPLETE STATEMENT OF FACTS, INCLUDING NAMES AND ADDRESSES OF ALL WITNESSES.
3. SIGNED (IF POSSIBLE) STATEMENTS AND ADMISSIONS OF PERSONS INVOLVED AND WITNESSES.
4. INFORMATION AS TO WHETHER A LAW OR REGULATION WAS VIOLATED, WHETHER A VIOLATION NOTICE WAS ISSUED, AND COURT JUDGMENT, IF POSSIBLE.
5. DESCRIPTION OF PROPERTY DAMAGE OR PERSONAL INJURY.
6. WEATHER OR FACILITY CONDITION (NATURAL PHENOMENA), VISIBILITY, SLIPPERY, SIZE OF STEP, LOOSE GRAVEL, ETC.
7. DIAGRAM OF THE SCENE DEPICTING ALL PERTINENT FACTS.

8. PHOTOGRAPHS OF ALL PERTINENT FACTS, INCLUDING ENVIRONMENTAL CONDITIONS (TAKEN AS SOON AS POSSIBLE AFTER THE INCIDENT), DAMAGE TO PROPERTY, PERTINENT SIGNS, LANDMARKS, SIZE REFERENCES, ETC. DATA REGARDING PHOTOGRAPHS (DATE, NAME OF PHOTOGRAPHER, DIRECTION OF VIEW, TIME ETC.) SHOULD BE WRITTEN ON A SEPARATE PAPER AND ATTACHED WITH TAPE TO THE BACK OF THE PHOTOGRAPHS.
9. DO NOT DOCUMENT ANY OPINIONS ABOUT NATIONAL PARK SERVICE NEGLIGENCE.
10. COPIES OR PHOTOGRAPHS OF ALL SIGNS, HANDOUTS, OR OTHER DEVICES USED TO WARN OF HAZARDOUS CONDITIONS - AND DOCUMENTATION CONCERNING ACCESS TO THESE DEVICES BY THE VICTIM (POTENTIAL CLAIMANT).

ROLE OF PARK TORT CLAIMS OFFICER

THE SUPERINTENDENT OF EACH PARK UNIT MUST DESIGNATE AN INDIVIDUAL TO SERVE AS TORT CLAIMS OFFICER FOR THAT PARK TO PERFORM THE FOLLOWING TASKS:

1. PROVIDE INVESTIGATIVE ASSISTANCE ON TORT CLAIM MATTERS.
2. ASSURE THE PROMPT AND FULL INVESTIGATION OF ACCIDENTS WHICH MAY RESULT IN TORT CLAIMS AGAINST THE GOVERNMENT PRIOR TO THE FILING OF A CLAIM.
3. REPRESENT THE SUPERINTENDENT IN ALL COMMUNICATIONS CONCERNING A TORT CLAIM - IF SO DELEGATED.

APPENDIX

Legal Authority

Simplified Review of Tort Claims Process

Common Mistakes in Handling Claims

Standard Form 95 (Claim for Damage, Injury or Death)

Standard Form DI-570 (Employee Claim for Loss or Damage to Personal Property)

Definitions of Legal Terms Related to Government Liability and Tort Claims

Departmental Procedures - Departmental Manual Claims (Part 451)

LEGAL AUTHORITY

ACTS ESTABLISHING FEDERAL TORT CLAIMS ACT PROCEDURES AND IMPLEMENTING REGULATIONS, AS AMENDED BY THE ACT OF JULY 18, 1966 (PUBLIC LAW 89-506; 80 STAT. 306).

1.	28 USC SEC. 2671-2680	FEDERAL TORT CLAIMS PROCEDURES
2.	28 USC SEC. 1346(B) AND SEC. 1402(B)	UNITED STATES AS DEFENDANT
3.	28 USC SEC. 2401	TIME FOR COMMENCING ACTION AGAINST THE UNITED STATES
4.	28 USC SEC. 2414	PAYMENT FOR JUDGMENTS AND COMPROMISES
5.	31 USC SEC. 724(A)	APPROPRIATIONS FOR PAYMENT OF JUDGMENTS AND COMPROMISES
6.	28 USC SEC. 1291	FINAL DECISIONS OF DISTRICT COURTS
7.	28 USC SEC. 1504	TORT CLAIMS
8.	28 CFR 14	ATTORNEY GENERAL'S REGULATIONS
9.	43 CFR 22	ADMINISTRATIVE CLAIMS UNDER FEDERAL TORT CLAIMS ACT

10.	210 DM 2.2A(1)	Delegation to Solicitor of Tort Claims Authority
11.	451 DM 4 and IPMR 114-38.54	Motor Vehicle Management
12.	451 DM 1	Tort Claims Procedures
13.	111 DM 2	Organization - Office of the Solicitor
14.	Solicitor's Regulation 5 (Revised 1975)	Delegation of Authority to Associate, Regional and Field Solicitors.

SIMPLIFIED REVIEW OF TORT CLAIMS PROCESS

INCIDENT OCCURS GIVING RISE TO POTENTIAL CLAIM

VISITOR_____ _____EMPLOYEE

↓

INVESTIGATION
DOCUMENTATION

↓

REQUEST FOR CLAIM INFORMATION
SF-95 - VISITOR
DI-570 - EMPLOYEE

↓

CLAIM (OR ANY COMPARABLE WRITTEN NOTIFICATION) RECEIVED IN PARK (2 YEARS)

↓

CLAIM FORWARDED WITH COPY OF ALL INVESTIGATIVE MATERIALS TO REGIONAL OFFICE THROUGH PARK CHANNELS (TORT CLAIMS OFFICER, SUPERINTENDENT, ETC.)

↓

FORWARDED FROM REGIONAL OFFICE TO OFFICE OF FIELD SOLICITOR

↓

SOLICITOR

EITHER

SETTLES ADMINISTRATIVELY (NEGOTIATED SETTLEMENT)

UP TO $25,000 (MORE REQUIRES WRITTEN APPROVAL OF ATTORNEY GENERAL)

LESS THAN $2,500 PAID BY PARK OPERATIONS
$2,500-$100,000 - GENERAL ACCOUNTING OFFICE
$100,000 OR MORE - GENERAL TREASURY

NO RIGHT OF APPEAL AFTER SETTLEMENT MADE

DENIES CLAIM (OR IGNORES FOR SIX (6) MONTHS)

ADMINISTRATIVE REMEDY IS NOW TERMINATED

PLAINTIFF CAN NOW APPEAL TO FEDERAL COURT THROUGH LEGAL ACTION (MUST BE WITHIN SIX (6) MONTHS)
U.S. ATTORNEY (AND OFTEN THE SOLICITOR REPRESENTS GOVERNMENT INTERESTS IN COURT)

Common Mistakes in Handling Claims

Visitor Claim

Not Date-Stamped by Park

Investigation

--None (sometimes) and not enough (sometimes)

--No photos of accident scene; surrounding area

--No location map

--No statements taken down from witnesses

--10-413 inaccuracies, lacking information, not properly signed

--Contains opinionated statements which add nothing

Employee Claim

Investigation

--None!

--Contains opinionated statements which add nothing

--Done by claimant, not by a neutral third party

--Lacks substantiation on values claimed (receipts, etc.)

If a person inquires how to file a claim he should be so advised on what forms are to be prepared, attention called to the instructions, etc. in accordance with established procedures. A Federal employee should neither encourage nor discourage the filing of a claim for whatever reason, nor advise what one may claim for--by delegation of authority from the Secretary of the Interior, the Solicitor's Office decides on the allowability of all claims under the Federal Tort Claims Act and the Civilian Employee and Military Claims Act.

SF 95:

--Claims are received in the Regional Office without a sum certain entry.

--Without claimant's signature

--Undated by claimant

--Without estimates of repair (property damage) or paid receipts.

Common mistakes in Handling Claims (cond't)

Visitor Claim	Employee Claim
--Nothing in support of the Government's case	
--Xeroxed copies of photographs which are worthless	
--Illegible xeroxed copies of portions of the investigative file	
--Xeroxed copies of portions of the documents "cut off" (original documents are sent to the Field Solicitor) Ref: 451 DM 1.14B	

Some claims are being held in the park for an undue period. Some not being forwarded to region for as long as five (5) months after claimant was submitted. Others are not acted upon for several months after having been submitted. The duties of the employee in the capacity of Tort Claims Officer shall ordinarily <u>have priority over any other assignments</u>. (Ref: 451 DM 1.9)

Unless a claim received in a park is awaiting further documentation from a claimant, it should be forwarded to the Regional Office as soon as possible. In cases where a claim (filed under the Federal Tort Claims Act) is more than justified, i.e., Government vehicle backing into claimant's unoccupied legally parked vehicle, it is unfair to delay reimbursement unnecessarily. In such a case, the claimant always comes up the loser as he is never reimbursed for his inconvenience pending time filling out forms, getting estimates, etc.

CLAIM FOR DAMAGE, INJURY, OR DEATH

INSTRUCTIONS: Prepare in ink or typewriter. Please read carefully the instructions on the reverse side and supply information requested on both sides of this form. Use additional sheet(s) if necessary.

OM and B Approval No. 80-R111

1. SUBMIT TO:

2. NAME AND ADDRESS OF CLAIMANT *(Number, street, city, State, and Zip Code)*

3. TYPE OF EMPLOYMENT
☐ MILITARY
☐ CIVILIAN

4. AGE

5. MARITAL STATUS

6. NAME AND ADDRESS OF SPOUSE, IF ANY *(Number, street, city, State, and Zip Code)*

7. PLACE OF ACCIDENT *(Give city or town and State; if outside city limits, indicate mileage or distance to nearest city or town)*

8. DATE AND DAY OF ACCIDENT

9. TIME *(A.M OR P.M)*

10. AMOUNT OF CLAIM *(in dollars)*

A. PROPERTY DAMAGE	B. PERSONAL INJURY	C. WRONGFUL DEATH	D. TOTAL

11. DESCRIPTION OF ACCIDENT *(State below, in detail, all known facts and circumstances attending the damage, injury, or death, identifying persons and property involved and the cause thereof)*

12. PROPERTY DAMAGE

NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT *(Number, street, city, State, and Zip Code)*

BRIEFLY DESCRIBE KIND AND LOCATION OF PROPERTY AND NATURE AND EXTENT OF DAMAGE *(See instructions on reverse side for method of substantiating claim)*

13. PERSONAL INJURY

STATE NATURE AND EXTENT OF INJURY WHICH FORMS THE BASIS OF THIS CLAIM

14. WITNESSES

NAME	ADDRESS *(Number, street, city, State, and Zip Code)*

I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM

15. SIGNATURE OF CLAIMANT *(This signature should be used in all future correspondence)*

16. DATE OF CLAIM

CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM

The claimant shall forfeit and pay to the United States the sum of $2,000, plus double the amount of damages sustained by the United States. *(See R.S. §3490, 5438; 31 U.S.C. 231.)*

CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS

Fine of not more than $10,000 or imprisonment for not more than 5 years or both. *(See 62 Stat. 698, 749; 18 U.S.C. 287, 1001.)*

INSTRUCTIONS

Complete all items—Insert the word NONE where applicable

Claims for damage to or for loss or destruction of property, or for personal injury, must be signed by the owner of the property damaged or lost or the injured person. If, by reason of death, other disability or for reasons deemed satisfactory by the Government, the foregoing requirement cannot be fulfilled, the claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing authority to act.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in item 10 of this form. Separate claims for personal injury and property damage are not acceptable.

The amount claimed should be substantiated by competent evidence as follows:

(*a*) In support of claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

(*b*) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(*c*) In support of claims for damage to property which is not economically reparable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

Any further instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in item #1 on the reverse side.

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

17. DO YOU CARRY ACCIDENT INSURANCE? ☐ YES, IF YES, GIVE NAME AND ADDRESS OF INSURANCE COMPANY (*Number, street, city, State, and Zip Code*) AND POLICY NUMBER. ☐ NO

18. HAVE YOU FILED CLAIM ON YOUR INSURANCE CARRIER IN THIS INSTANCE, AND IF SO, IS IT FULL COVERAGE OR DEDUCTIBLE?

19. IF DEDUCTIBLE, STATE AMOUNT

20. IF CLAIM HAS BEEN FILED WITH YOUR CARRIER, WHAT ACTION HAS YOUR INSURER TAKEN OR PROPOSES TO TAKE WITH REFERENCE TO YOUR CLAIM? (*It is necessary that you ascertain these facts*)

21. DO YOU CARRY PUBLIC LIABILITY AND PROPERTY DAMAGE INSURANCE? ☐ YES, IF YES, GIVE NAME AND ADDRESS OF INSURANCE CARRIER (*Number, street, city, State, and Zip Code*) ☐ NO

GPO 642—16—81479-1 454-300

UNITED STATES
DEPARTMENT OF THE INTERIOR

EMPLOYEE CLAIM
FOR LOSS OR DAMAGE TO PERSONAL PROPERTY
(P.L. 88-558)

INSTRUCTIONS: Submit in triplicate. Please type.

Name of Claimant			Address of Claimant	
Bureau or Office	City	Telephone no.		
Location of loss or damage			Date of loss or damage	Total amount of claim

DESCRIPTION OF PROPERTY (Attach supplemental sheet, if necessary)

Itemized Listing	Date Acquired	Purchase Price or Value	Value When Lost	Estimated Repair Cost

Claim is for ☐ Loss ☐ Damage (Check one) Please give brief statement of circumstances:

Was property insured? ☐ Yes ☐ No (If "Yes", give name of insurer and itemize amount collected)

CRIMINAL PENALTY FOR PRESENTING A FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS: Fine of not more than $10,000 or imprisonment for not more than 5 years, or both (See 62 Stat. 698, 749; 18 U.S.C. 287, 1001).

CIVIL PENALTY FOR PRESENTING A FRAUDULENT CLAIM: The claimant shall forfeit and pay to the United States the sum of $2,000, plus double the amount of damages sustained by the United States (See R.S. Sec. 3490, 5438; 31 U.S.C. 231).

I make this claim with full knowledge of the penalties for wilfully making a false claim, and certify that I am entitled to any payments.

Date	If claimant is not owner, state relationship	Signature of Claimant

Form DI-570
(July 1965)

GPO : 1972 O - 477-271

DEFINITIONS OF LEGAL TERMS
RELATED TO GOVERNMENT LIABILITY AND TORT CLAIMS

TORT - A PRIVATE OR CIVIL WRONG OR INJURY - A VIOLATION OF A RIGHT NOT ARISING OUT OF A CONTRACT. IT MAY BE EITHER (A) A DIRECT INVASION OF SOME LEGAL RIGHT OF THE INDIVIDUAL, (B) THE INFRACTION OF SOME PUBLIC DUTY BY WHICH SPECIAL DAMAGE ACCRUES TO THE INDIVIDUAL, OR (C) THE VIOLATION OF SOME PRIVATE OBLIGATION BY BY WHICH LIKE DAMAGE ACCRUES TO THE INDIVIDUAL.

(OUR TORTS DEAL USUALLY WITH NEGLIGENCE AND ACCIDENTS.)

NEGLIGENCE - FAILURE TO EXERCISE THAT DEGREE OF CARE WHICH AN ORGINARILY CAREFUL AND PRUDENT PERSON ("REASONABLE MAN") WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES. TO ESTABLISH A PROPER CLAIM OF NEGLIGENCE, HOWEVER, THERE MUST BE (A) A LEGAL DUTY TO USE CARE, (B) A BREACH OF THAT DUTY, AND (C) INJURY OR DAMAGE.

DEGREE OF CARE - THE DEGREE OF ATTENTION, CAUTION, CONCERN, DILIGENCE, DISCRETION, PRUDENCE, OR WATCHFULNESS DEPENDS UPON THE CIRCUMSTANCES. FOR EXAMPLE, A HIGH DEGREE OF CARE IS DEMANDED FROM PEOPLE WHO INVITE OTHERS ONTO THEIR PREMISES, BY FORMAL, VERBAL OR IMPLIED INVITATION. ALL SALES AND SERVICES ENTERPRISES MUST EXERCISE A HIGH DEGREE OF CARE FOR THE SAFETY OF THEIR PATRONS. AS LONG AS A BUSINESS IS OPEN, IT ASSUMES A RESPONSIBILITY TO ITS CLIENTELE.

INVITEE - ONE WHOSE PRESENCE ON THE PREMISES IS UPON THE INVITATION OF ANOTHER, SUCH AS A PATRON AT A SPORTS STADIUM OR A PERSON WHO VISITS AN EXHIBITION HALL EVEN THOUGH NO ADMISSION IS CHARGED.

LICENSEES - LICENSEES ARE NEITHER "INVITEES" NOR "TRESPASSERS". THEY HAVE NOT BEEN INVITED TO ENTER UPON THE PROPERTY BUT THEY HAVE A REASONABLE EXCUSE (BY PERMISSION OR BY OPERATION OF THE LAW) FOR BEING THERE. THESE COULD BE VENDORS, DELIVERYMEN, PEOPLE VISITING, EXECUTIVES FOR BUSINESS PURPOSES, AND THE LIKE. NOTE THAT POLICEMEN AND FIREMEN WHO ENTER PROPERTY IN THE COURSE OF THEIR DUTIES HAVE SOMETIMES BEEN HELD BY THE COURTS TO BE INVITEES (PATRONS) AND SOMETIMES LICENSEES (NON-PATRONS).

CONTRIBUTORY NEGLIGENCE - NOT EVERY INJURY GIVES RISE TO A CLAIM FOR DAMAGES. IF AN INSURANCE COMPANY CAN PROVE THAT THE PLAINTIFF (CLAIMANT) CONTRIBUTED TO THE INJURY BY NOT EXERCISING ORDINARY CARE, THE RESULTANT DAMAGES MAY BE CONSIDERABLY REDUCED OR NEGATED. IF IT CAN BE PROVEN THAT THE PLAINTIFF WAS EVEN ONLY SLIGHTLY NEGLIGENT, HE MIGHT NOT BE ALLOWED TO COLLECT DAMAGES.

THIS POINTS UP THE IMPORTANCE OF A PROPER ACCIDENT INVESTIGATION PROCEDURE; THIS CAN STRENGTHEN A COMPANY'S ABILITY TO REDUCE THE OVERALL COST OF DOING BUSINESS.

ASSUMPTION OF RISK - THE CLAIMANT CANNOT COLLECT DAMAGES WHEN THE LAW PRESUMES HE WAS AWARE OF PERIL OR DANGER, YET WAS WILLING TO PROCEED WITH HIS ORIGINAL INTENTION AND UNDERTAKE HIS ACTION. "THAT TO WHICH A PERSON ASSENTS IS NOT REGARDED BY LAW AS AN INJURY". FOR EXAMPLE, A SKIER WHO FALLS WHILE DESCENDING A SLOPE IS SAID TO ASSUME THE NORMAL RISK THAT CAN HAPPEN WHEN PARTICIPATING IN THIS SPORT. HOWEVER, AN INJURY INVOLVING A CHAIR LIFT OR TOW ROPE COULD BE A MECHANICAL NATURE AND COULD BE COSTLY.

HOLD-HARMLESS - A CLAUSE IN A CONTRACT AGREEING FOR ONE PARTY TO ASSUME ALL LIABILITIES OR LOSSES INVOLVED, THUS HOLDING THE OTHER PARTY NOT LIABLE. FOR EXAMPLE, A DEPARTMENT STORE MAY HAVE A HOLD-HARMLESS AGREEMENT WITH A MANUFACTURER WHO SUPPLIES IT WITH A PARTICULAR TYPE OF MERCHANDISE. SHOULD A CLAIM FOR INJURY ARISE OUT OF THE USE OF THAT PRODUCT BY A CONSUMER, THE MANUFACTUREE AND NOT THE STORE WOULD BE LIABLE. EVEN THOUGH THE CONSUMER PURCHASED THE ITEM FROM THE DEPARTMENT STORE, THE HOLD-HARMLESS AGREEMENT MAY RELIEVE THE STORE OF DIRECT LIABILITY.

ATTRACTIVE NUISANCE - LIABILITY GROWING OUT OF A DANGEROUS CONDITION, GENERALLY TO CHILDREN. IT EXCUSES TRESPASSING AND PENALIZES FOR FAILURE TO KEEP CHILDREN AWAY OR FOR FAILURE TO PROTECT OR ELIMINATE A HAZARD THAT MAY REASONABLY BE FXPECTED TO ATTRACT THEM TO PREMISES.

BURDEN OF PROOF - THE INJURED PARTY MUST PROVE HIS INJURY OR DAMAGE AND ITS RELATION TO THE ACCIDENT. THE DEFENSE, ON THE OTHER HAND, MUST PROVE IT IS WITHOUT FAULT. PROOF MUST BE ESTABLISHED BY FACTS, NOT OPINION, SUSPICION, RUMOR, HEARSAY, GOSSIP, OR EMOTIONAL REACTION. PROOF IS THE CONCLUSION DRAWN FROM THE EVIDENCE.

HONEST AND SINCERE WITNESSES CONVEY DIFFERENT IMPRESSIONS FROM THE SAME EVIDENCE ATTESTED TO BY DISHONEST WITNESSES. THUS WE SEE HOW IMPORTANT PROMPTNESS IS WHEN ASSEMBLING AND PRESERVING THE EVIDENCE. SIGNED STATEMENTS TAKEN SHORTLY AFTER THE ACCIDENT OR AN ALL-IMPORTANT PHOTOGRAPH CAN OFTEN MAKE THE BIG DIFFERENCE. IN PUBLIC LIABILITY CLAIMS, THE ONUS OF PROOF RESTS UPON THE PLAINTIFF (CLAIMANT).

FURTHERMORE, THOSE RESPONSIBLE FOR PROPERTY MAY BE SUED FOR ALLEGED INJURIES THAT MAY NOT HAVE OCCURRED ON THE PREMISES. INVESTIGATION TO PROVE INNOCENCE CAN BE EXPENSIVE AND TIME CONSUMING. SUPERVISORS AND EMPLOYEES SHOULD BE FOREWARNED AND TRAINED TO REPORT ANY OCCURRENCE.

.1 General. From time to time property losses, property damage, personal injuries and deaths are claimed to have resulted from the negligent or wrongful acts or omissions of employees of the Department in the course of their duties. This chapter prescribes the Departmental policies, responsibilities, and procedures for handling claims against the United States under the Federal Tort Claims Act. Throughout this chapter, the terms "incident" and "accident" should, except where the context clearly indicates otherwise, be interpreted broadly to refer to any occurrence which may give rise to a tort claim. Since any incident which results in personal injury or death, in injury to real or personal property, or the loss thereof, may give rise to a tort claim, it shall be treated as is provided herein. [Claims for compensation for injury or death sustained by employees of the Department while in performance of duty are covered under the Federal Employees' Compensation Act in accordance with 370 DM 810.]

.2 Policy. It is the policy of the Department to promptly and fairly consider all claims of a tortious nature and to settle the meritorious ones as quickly as possible within the statutory period of six months after filing, thereby avoiding possible litigation which could be expensive and time-consuming to claimants and the Government.

.3 Authority. Acts establishing Federal Tort Claims Act Procedures and Implementing regulations, as amended by the Act of July 18, 1966 (Public Law 89-506; 80 Stat. 306).

A.	28 U.S.C. secs. 2671-2680	Federal Tort Claims Procedures
B.	28 U.S.C. sec. 1346(b) and 1402(b)	United States as defendant
C.	28 U.S.C. sec. 2401(b)	Time for commencing action against the United States

D.	28 U.S.C. sec. 2414	Payment for judgments and compromise
E.	31 U.S.C. sec. 724a	Appropriations for payment of judgments and compromises
F.	28 U.S.C. sec. 1291	Final decisions of District Courts
G.	28 U.S.C. sec. 1504	Tort Claims
H.	28 CFR 14	Attorney General's Regulations
I.	43 CFR 22	Administrative Claims Under Federal Tort Claims Act
J.	210 DM 2.2A(1)	Delegation to Solicitor of Tort Claims Authority
K.	451 DM 4 & IPMR 114-38.54	Motor Vehicle Management
L.	451 DM 1	Tort Claims Procedures
M.	111 DM 2	Organization - Office of the Solicitor
N.	Solicitor's Regulation 5 (Revised - 1975)	Delegation of authority to Associate, Regional and Field Solicitors

.4 The Federal Tort Claims Act. The Federal Tort Claims Act provides a means whereby damages may be awarded as a result of claims against the United States for "injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Agency while acting within the scope of his office

or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." Generally, a claim must be filed with the appropriate agency within two years after the cause of action accrues.

A. Recovery for torts may be sought:

(1) By submitting claims for administrative determination to the Department. If a determination has not been issued within six months after the claim was filed with the agency out of whose activities the claim arose, claimant may consider the claim administrativly denied and may file suit in the appropriate Federal District Court.

(2) By filing suit within six months after administrative denial of the claim in the appropriate U.S. District Court.

.5 Responsibilities for Tort Claims. The expeditious handling of tort claims requires cooperation from the claimant, his representatives, the investigators, the tort claims officer, the Solicitor's Office, Department of Justice personnel and others involved. Provision at all levels for the effective discharge of tort claim responsibilities must be effected.

.6 Solicitor's Role in Tort Claims. Administrative determination as to the merit of any tort claim presented is a function delegated to the Solicitor and redelegated to other members of his Office. Judicial determination is a function of the Courts.

.7 Management's Role in Tort Claims. The prevention of situations which give rise to tort claims and the proper investigation and documentation of the facts incident to tort claims are management functions. The expenses incurred in the investigation and related activities in connection therewith will be borne by the Office or Bureau of the employee out of whose activities the claim arose.

A. Line officials are responsible for:

(1) Preventive action by (a) taking such steps as are reasonable to prevent situations which give rise to tort claims, (b) proper training and supervision of employees, (c) adequate safety measures, and (d) accident prevention programs.

(2) Proper handling of claims by making necessary reports, thorough and timely investigations and the documentation of facts incident to claims so that the Government's, the employee's, and the claimant's interests are equally protected. In connection with tort claims activities, the Head of each Bureau and Office is responsible for carrying out the policy objective outlined in 451 DM 1.2.

B. The Head of each Bureau and Office shall designate an appropriate number of tort claims officers, preferably persons with investigative experience, at headquarters and in the field to:

(1) Provide staff assistance on tort claims matters;

(2) Assure the prompt and full investigation of accidents which may result in tort claims against the Government prior to the filing of claim; and

(3) Document the facts incident to tort claims involving the Bureau or Office.

.8 When an Incident Occurs. All incidents involving injury to person and damage to or destruction of private property shall be reported and investigated as soon as possible after they occur.

A. Reporting Incidents. Departmental requirements and procedures for reporting on accidents (see 395 DM 4 and related Bureau or Office instructions) shall be

followed. An employee shall immediately notify his or her supervisor of any incident or accident involving a private person or private property which may give rise to a claim against the Government. The supervisor, in turn, shall immediately notify the appropriate tort claims officer. Standard Forms 91, 91A (block 28 shall not be completed), and Optional Form 26 must be completed in all motor vehicle accident cases. (National Park Service Form 10-413 may be substituted for Form 91A.) The following additional guidelines apply to incidents which are or may become the subject of a tort claim.

(1) In the event of death, actual or potential serious personal injury or substantial property damage (estimated to be in excess of $1,000), the appropriate Associate, Regional, or Field Solicitor and the appropriate tort claims officer shall be notified immediately by telegram or telephone. If by telephone, it shall later be confirmed in writing and dispatched by close of business of the following business day.

(2) Copies of all accident reports shall be furnished to the tort claims officer of the Bureau or Office involved.

(3) Copies of the basic accident reports involving death, serious personal injury, and substantial property damage shall be furnished to the appropriate Associate, Regional, or Field Solicitor no later than 10 days after the incident.

(4) In reporting an accident, an employee should state the facts to the best of his knowledge. Conclusions as to fault or responsibility should not be stated. The employee should report the accident only to authorized representatives of the Government, the employee's insurance company, and police officers investigating the accident. The employee shall also file any report required by law.

(5) If an employee involved in an accident carries liability insurance which may cover the employee or the Government, the employee shall report the accident to the insurance company and shall also furnish the tort claims officer a copy of the insurance policy together with applicable endorsements and amendments.

(6) An employee shall notify his or her supervisor immediately whenever a lawsuit is threatened or filed in Court alleging a tort arising out of Government employment.

(7) For additional reporting requirements in connection with accidents and claims involving General Services Administration motor pool vehicles, see FPMR 101-39.8.

(8) In the event that accidents or other incidents are due to malfeasance, neglect of duty, or irresponsible performance on the part of employees, the provisions outlined in Parts 355-358 of the Departmental Manual for investigating and reporting such incidents shall be followed.

b. Investigating Accidents.

(1) Investigations by Supervisors and Safety Officers. The requirements and procedures for investigating accidents set forth in 485 DM 4 shall be followed. In investigating accidents which have resulted or may result in tort claims, supervisors and safety officers shall consult with the tort claims officer to assure that all appropriate steps have been taken to fully document the case for tort claims purposes. Copies of the investigative report by supervisors, safety officers, and others of such accidents shall be furnished to the tort claims officer for his information and use.

(2) Investigation by Office of Audit and Investigation. All accidents or other incidents involving irregularities, offenses, or official misconduct

which are of a serious nature and fall within the categories listed in 355 DM 2 shall be reported directly to the Office of the Assistant Secretary--Management for investigation by the Office of Audit and Investigation. If a tort claim arises from any matter thus investigated by the Office of Audit and Investigation, the investigative report will be made available for use in the processing of the claim.

(3) Investigation by Tort Claims Officer. It is necessary that an investigation be made of all accidents in order that all claims may be properly evaluated.

The extent of this investigation will rest on the exercise of good judgment with emphasis on thoroughness. The complete investigative file shall be forwarded to the appropriate Associate, Regional, or Field Solicitor not later than 30 days after the occurrence of the incident.

.9 Duties of the Tort Claims Officer.

A. Every investigation shall be conducted by a tort claims officer, who shall be responsible for the prompt investigation of every incident while witnesses are available and before damage has been repaired to the end of securing all relevant information. The duties of the employee in his capacity as a tort claims officer shall ordinarily have priority over any other assignments he may have.

B. The tort claims officer shall:

(1) Conduct the investigation in a fair and impartial manner, covering all phases of the incident to the end that a comprehensive, accurate, and unbiased factual report of the incident may be made available in order that all claims may be properly evaluated.

(2) Find and interview all competent witnesses and secure signed statements on facts pertinent to the incident. Such witnesses are drivers and passengers of all vehicles

involved, ambulance attendants, tow-truck operators, doctors, police officers, and eyewitnesses. Witnesses should be interviewed by the tort claims officer at the earliest opportunity. Statements from witnesses should be reduced to writing and their signatures obtained thereon if at all possible. The interests of the United States may be seriously prejudiced if the tort claims officer fails to obtain such statements before witnesses lose their clear recollection or can be confused by questioning by persons with adverse interests.

(3) Inspect the property damage and interview injured persons, and their representatives, personally, and if such personal inspection and interview is not conducted, state the reason therefor.

(4) Ascertain the nature, extent, and amount of damage and obtain all pertinent repair bills, or estimates, medical, hospital, and associated bills as are necessary to the proper adjudication of a claim against the Government which may arise from the incident.

(5) Obtain from the proper maintenance office the reports of the inspection of the Government-owned vehicle that were conducted prior to and subsequent to the accident in all cases, in which they appear pertinent to a determination of liability.

(6) Reduce to writing and incorporate into a unified investigative report all pertinent testimony, exhibits, and any other evidence taken or considered.

(7) Furnish the proper claim forms to any person who inquires concerning the procedure for making claims against the Government as a result of an accident or incident and advise such person where the claim should be filed. (See 43 CFR 22.)

(8) Submit the complete investigative report to the appropriate Associate, Regional, or Field Solicitor as promptly as the circumstances permit; but no later than 30

days after the occurrence of the accident or incident. In the case of an incident involving death, serious personal injury, or substantial property damage, to submit immediately a preliminary report, containing such information as is at that time available, to the appropriate Associate, Regional, or Field Solicitor with a follow-up report in 10 days. Where not all of the required information is immediately available, as in an accident resulting in personal injuries requiring an extended period of hospitalization or medical care, the investigative report shall be submitted promptly, containing all information available at the time of submission, and shall be completed by means of a supplementary report or reports submitted as soon as the previously omitted information becomes available.

.10 Contents of the Investigative Report.

A. A written report of investigation will be made of each incident or accident. For motor vehicle accidents, Standard Forms 91, 91A (block 28 shall not be completed), and Optional Form 26 must be used. Form 10-413 may be used by the National Park Service in lieu of Form 91A.

B. The report shall be complete in every significant detail and will include particularly such of the following information as is pertinent:

(1) Date, time, and exact place the accident or incident occurred.

(2) A concise but complete statement of the circumstances of the accident or incident. Reference should be made to pertinent physical facts observed and to any material statements, admissions, or declarations against interest by any person involved.

(3) A statement as to whether the driver is the sole owner of the damaged property and, if not, the name and address of the owner or part owners.

(4) Names and addresses of employees involved as participants or witnesses.

(5) Names and addresses of all eyewitnesses, including the driver and the occupants of the vehicle.

(6) Accurate description of Government property involved, and nature and amount of damage, if any. If Government property was not damaged, that fact should be stated.

(7) Accurate description of all privately owned property involved, nature and amount of damage, if any, and the name(s) and address(es) of the owner(s) thereof.

(8) A statement as to whether any person involved was cited for violating any Federal or State statute, local ordinance, or Department regulation, and, if so, in what respect. The statute, ordinance, or regulation should be set out in full.

(9) A statement as to whether a police investigation was made. If available, a copy of the police report of investigation shall be included.

(10) A statement as to whether any arrests were made or charges preferred, and the result of any trial or proceeding, including names of all witnesses and the substance of their testimony. When available, a copy of the transcript must be secured.

(11) Newspaper accounts, weather reports, plats, and photographs of the site and of the vehicles.

(12) As many exhibits or enclosures as are pertinent and appear necessary or useful for purposes of claim determinations shall be obtained during the course of the investigation and shall be attached to the investigative report. The enclosures shall be numbered consecutively and shall be listed numerically in the investigative report.

.11 Evidence and Information to be Submitted by Claimant.

A. In support of a claim based on death, the claimant may be required to submit the following evidence for 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 time of death, his monthly or yearly salary or earnings (if any) and the duration of his last employment or occupation.

(3) 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.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his 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 in 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.

B. In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence and information:

(1) A written report by the attending physician or dentist showing the nature and extent of the injury, the nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity.

(2) Itemized [and signed] bills for medical, dental, 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) When a claim is made for loss of time from work or loss of earnings, a written statement from the employer showing actual time lost from employment, the number of hours usually worked per week, the amount of wages or salary which the employee was earning at the time of the accident, and whether he was a full-time or part-time employee.

(5) When claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of claimant's earnings during the preceding two years.

(6) Any other evidence which would have a bearing on the award.

(7) In addition, the claimant may be required to submit to an examination by a physician selected by the Department of the Interior.

C. In support of a claim for damage to or loss of property, real or personal, the claimant may be required to submit the following evidence and information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed for each item of property.

(3) An itemized receipt of payment for necessary repairs to each item of property.

(4) A statement listing date of purchase, purchase price and salvage value where repair is not economical.

(5) Any other evidence which would have a bearing on the award.

.12 Who May File.

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

B. A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

C. 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. 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. 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 the title or legal capacity of the person signing, and be accompanied by evidence of his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

.13 When Presented.

A. A claim shall be deemed to have been presented when the appropriate Bureau or Office receives from a claimant, a duly authorized agent or legal representative, an executed Standard Form 95, or a written notification of an incident, together with a claim for money damages, in a sum certain, for damage to or loss of property or personal injury, or death.

B. A claim presented to the wrong Federal agency shall be transferred forthwith to the appropriate agency.

.14 When Received.

A. The Claimant's envelope shall be retained, and the claim form shall be time and date stamped, recorded, and forwarded immediately to the appropriate tort claims officer.

B. The tort claims officer shall send the original claim form no later than 24 hours, together with all the original papers, to the appropriate Associate, Regional, or Field Solicitor (See 111 DM 2). If the claim is not forwarded within this time, a memorandum stating the reason for delay must be submitted.

.15 Action by Associate, Regional, or Field Solicitor.

A. Upon receipt of the claim and the Bureau's or Office's investigative report, the appropriate Solicitor's Office shall make a determination of the claim. The determination may either deny, compromise, or pay the claim in full. If the record discloses that the employee involved had liability insurance, a provision of which might indemnify the Government, the attorney who makes the determination should take such action as is deemed appropriate.

B. Notice of disposition of claims shall be in writing and sent to the claimant, his attorney, or legal representative. In compromises and denials, notice shall be sent by certified or registered mail, return receipt requested. The notice shall include a statement that if the claimant is dissatisfied, he is entitled to institute suit within a period of six months from the date of the mailing of the notice of the determination.

C. If any award, compromise or settlement is made for $2,500 or less, the appropriate Associate, Regional, or Field Solicitor will send a signed copy of the administrative determination together with an original payment voucher (Standard Form 1145 "Voucher for Payment under Federal Tort Claims Act"), by certified or registered mail, return receipt requested. When claimant is represented by an attorney, the voucher for payment shall designate both the claimant and his attorney as payees. The signed voucher constitutes full release of the claim.

(1) When a signed payment voucher is received, the appropriate Associate, Regional, or Field Solicitor shall sign the original voucher in the space designated "Head of Federal Agency or Authorized Designee," and forward it, with two copies, the original determination and the complete claim file to the Bureau or Office concerned with payment out of available appropriations. When represented by an attorney, the check shall be delivered to the attorney whose address appears on the voucher.

D. If any award, compromise or settlement is made in excess of $2,500 and not more than $100,000, the appropriate Associate, Regional, or Field Solicitor will forward Form 1145 with a covering letter stating that the designee has delegated authority to make the award under the Act, to the Transportation and Claims Division, General Accounting Office. Payment of an award, compromise or settlement in excess of $100,000 shall be obtained by forwarding Form 1145 to the Bureau of Accounts, Department of the Treasury.

.16 Final Denial and Reconsideration.

A. Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he is entitled to resubmit his claim to the deciding office within a period of six months from the date of the mailing of the notification of the determination or he may file suit in an appropriate U.S. District Court within six months of the date of the mailing of the notification. The initial decision is final unless reconsideration is requested.

B. Upon timely filing of a request for reconsideration, the agency shall have six months from the date of filing in which to make a final disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until final action on the request for reconsideration. Final action on a request for reconsideration shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. This notification may include a statement of the reasons for the denial and shall include a statement that if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than six months after the date of mailing of the notification of the denial.

.17 Action on Approved Claims in an Amount of $2,500 or Less.

A. Any award, compromise or settlement in an amount of $2,500 or less shall be paid by the Bureau or Office concerned out of available appropriations.

B. When claimant is represented by an attorney, the voucher for payment shall designate both the claimant and the attorney as payees. The check shall be delivered to the attorney, whose address shall appear on the voucher.

.18 Action on Approved Claims in Excess of $2,500.

A. Payment of awards in excess of $2,500, and not more than $100,000, will be obtained by forwarding Standard Form 1145 to the Transportation and Claims Division, General Accounting Office.

B. Payment of awards in excess of $100,000 will be obtained by forwarding Standard Form 1145 to the Bureau of Accounts, Department of the Treasury.

C. When an award is in excess of $25,000, Standard Form 1145 must be accompanied by evidence that the award has been approved in writing by the Attorney General or his designee. This may be effected by consulting the Torts Section, Civil Division, Department of Justice.

D. Standard Form 1145 shall be executed by the claimant or it shall be accompanied by either a claims settlement agreement or a Standard Form 95, executed by the claimant.

E. When a claimant is represented by an attorney, the voucher for payment shall designate both the claimant and the attorney as payees. The check shall be delivered to the attorney, whose address shall appear on the voucher.

.19 Civil Action Instituted Upon a Tort Claim Against the United States

A. Upon institution of a suit, the assigned Associate, Regional, or Field Solicitor shall notify the appropriate Bureau or Office and request the original and two copies of the investigative report. In addition, the Associate Solicitor, Division of General Law, should be notified of the filing of the suit.

B. The appe Associate, Regional, or Field Solicitor shall forward a copy of the investigative report to the AtGeneral and the original copy to the United States At

C. The appe Associate, Regional, or Field Solicitor will nhe Bureau or Office involved and the Associate Solicivision of General Law of the final disposition of tgation.

.1 Purpose. This chapter prescribes Departmental policies for the settlement of claims against the United States arising after August 31, 1964, for damage to or loss of personal property of employees of the Department of the Interior. The statutory authority for these regulations is contained in the "Military Personnel and Civilian Employees' Claim Act of 1964," 78 Stat. 767, 31 U.S.C. 240.

.2 Scope. Under these regulations claims against the United States, arising after August 31, 1964, are settled for damage to or loss of personal property of employees of the Department of the Interior. The damage or loss must be incident to the employees' service, and possession of the property must be reasonable, useful, or proper in the circumstances. The maximum amount allowable on a claim is $15,000.

In determining whether or not the possession of the property in question is reasonable, useful or proper in the circumstances, the adjudicating authority will consider the claimant's living conditions, his income, his social obligations, the size of his family, his need for the quantity of the property involved, as well as the circumstances attending the acquisition or possession of the property and the manner of the damage or loss.

The rules stated in 485 DM 4 (Required Reports of Accident Investigations), and in 451 DM 1 (Tort Claims Against the United States) are controlling in the investigation, processing and settlement of claims cognizable under the "Military Personnel and Civilian Employees' Claims Act of 1964" insofar as those rules are not inconsistent with these regulations.

.3 Claimants.

A. A claim may be filed by any person who was an employee of the Department of the Interior at the time of the incident which resulted in the damage or loss, or by such a person's authorized agent or legal representative. If the employee is dead, the claim may be filed by his (1) spouse, (2) children, (3) father or mother, or both, and (4) brothers or sisters, or both. Payments in settlement of claims to survivors will be made in the order in which the individuals are listed above.

B. The appropriate Associate, Regional, or Field Solicitor shall in turn forward a copy of the investigative report to the Attorney General and the original copy to the United States Attorney.

C. The appropriate Associate, Regional, or Field Solicitor will notify the Bureau or Office involved and the Associate Solicitor, Division of General Law of the final disposition of the litigation.

.1 Purpose. This chapter prescribes Departmental policies for the settlement of claims against the United States arising after August 31, 1964, for damage to or loss of personal property of employees of the Department of the Interior. The statutory authority for these regulations is contained in the "Military Personnel and Civilian Employees' Claim Act of 1964," 78 Stat. 767, 31 U.S.C. 240.

.2 Scope. Under these regulations claims against the United States, arising after August 31, 1964, are settled for damage to or loss of personal property of employees of the Department of the Interior. The damage or loss must be incident to the employees' service, and possession of the property must be reasonable, useful, or proper in the circumstances. The maximum amount allowable on a claim is $15,000.

In determining whether or not the possession of the property in question is reasonable, useful or proper in the circumstances, the adjudicating authority will consider the claimant's living conditions, his income, his social obligations, the size of his family, his need for the quantity of the property involved, as well as the circumstances attending the acquisition or possession of the property and the manner of the damage or loss.

The rules stated in 485 DM 4 (Required Reports of Accident Investigations), and in 451 DM 1 (Tort Claims Against the United States) are controlling in the investigation, processing and settlement of claims cognizable under the "Military Personnel and Civilian Employees' Claims Act of 1964" insofar as those rules are not inconsistent with these regulations.

.3 Claimants.

A. A claim may be filed by any person who was an employee of the Department of the Interior at the time of the incident which resulted in the damage or loss, or by such a person's authorized agent or legal representative. If the employee is dead, the claim may be filed by his (1) spouse, (2) children, (3) father or mother, or both, and (4) brothers or sisters, or both. Payments in settlement of claims to survivors will be made in the order in which the individuals are listed above.

B. A claim may not be filed by or for the benefit of a subrogee, assignee, conditional vendor or other third party.

.4 Claims Cognizable. Any meritorious claim within the scope of the Military Personnel and Civilian Employees' Claim Act of 1964, which is not specifically prohibited by these regulations may be allowed. The following are examples of allowable claims.

A. Losses in quarters or other authorized places. Damage to or loss of property caused by fire, flood, hurricane, or other serious occurrence, or by theft, while located at:

(1) Quarters, wherever situated, which were occupied by the claimant and were assigned to him (whether or not a charge was made for the quarters) or otherwise provided in kind by the Government.

(2) Quarters outside the 50 States and the District of Columbia which were occupied by the claimant but were neither assigned to him nor provided in kind by the Government, except when the claimant is an employee who was a local inhabitant at the time of the damage or loss.

(3) Any warehouse, office, or other place designated by proper authority for the reception or storage of the property.

B. Transportation losses. Damage to or loss of property incident to transportation or storage pursuant to orders (e.g. change of station), in connection with travel under orders, or in performance of duty, including property in the custody of:

(1) A common carrier or any other commercial concern.

(2) An agent or agency of the Government.

(3) The claimant, including property in a private or public conveyance in which he is traveling.

C. Disaster losses. Damage to or loss of property caused by a marine, rail, aircraft, or other common disaster, provided the claimant was on duty at the time and place of the damage or loss.

D. Public service losses. Damage to or loss of property used for the benefit of the Government at the direction of proper authority.

E. Losses incident to extraordinary risks. Damage to or loss of property subjected to extraordinary risks incurred in the performance of duty, such as risks incident to enemy action, overseas hostilities, civil disturbance, public disorder, or disaster alleviation, or incurred in efforts to save human life or Government property.

F. Money losses. Losses of money when:

(1) Accepted by Government personnel with apparent authority to accept it for such purposes as safekeeping, purchase of United States bonds or other authorized disposition.

(2) Caused by fire, flood, hurricane, or other serious occurrence, or by theft, while located at quarters as qualified in .4A(1) or .4A(2), or caused by marine, rail, aircraft, or other common disaster as qualified in .4C. In instances of theft from quarters it must be conclusively shown that reasonable precautions were used to safeguard the money.

.5 Ownership and Possession of Property. Compensation may be allowed even though the property was not in the possession of the claimant at the time of the damage or loss, provided the claimant was the owner of the property. Compensation may also be allowed even though the claimant was not the owner of the property, provided it was lawfully in his possession, or lawfully under his dominion and control (e.g. borrowed from others), and the Government will not be required to pay the owner of such property.

.6 Claims not Cognizable.

A. In general. Any property for which the Government has paid to the employee a rental fee or other use fee (e.g. an automobile for which the Government pays a mileage allowance).

B. Contributory negligence. Any property damaged or lost, in whole or in part, as a result of any negligence or wrongful act of the claimant, or any agent or employee of the claimant acting within the scope of the agency or employment.

C. At quarters. Any property damaged or lost while located at quarters within one of the 50 States or the District of Columbia which were occupied by the claimant, but were neither assigned to him nor otherwise provided in kind by the Government.

D. Intangible property. Any intangible property such as checks, promissory notes, stock certificates, bonds, bills of lading, warehouse receipts, baggage checks, insurance policies, money orders, travelers' checks, and bank books.

E. Government property. Any Government property, except that for which the claimant is responsible to a Government agency other than the Department of the Interior.

F. Property for business. Any property to be disposed of by sale or for use in a private business enterprise.

G. Clothing. Any clothing or articles being worn, except when involved in a marine, rail, aircraft, or other common disaster, as qualified in .4C, or when subjected to extraordinary risks as qualified in .4E.

H. Motor vehicles. Any motor vehicle or trailer, except when used for the benefit of the Government as qualified in .4D, or when subjected to extraordinary risks as qualified in .4E.

I. Money. Any money or currency, except as provided in .4F.

J. Valuable items. Small items of substantial value, such as expensive cameras, watches, jewelry, and furs, which, during shipment by ordinary means (e.g. with household goods, or hold baggage), are lost, damaged, or stolen.

K. Contractual coverage. Any claim, or any portion of a claim, which is recovered or is recoverable pursuant to contract, express, or implied, including a policy of insurance. Recoverable here means actually recoverable and not that the claim or some part of it technically should be recoverable. (See paragraph.8.)

L. Mysterious disappearance. Any property which has mysteriously disappeared. In any claim for missing property, there must be satisfactory evidence that the property was stolen or destroyed.

.7 Filing of Claim.

A. Statute of limitations. No claim may be paid under these regulations unless it is presented in writing within two years after it accrues. For the purposes of these regulations, a claim accrues at the time of the incident causing the loss or damage, or at such time as the loss or damage is or should have been discovered by the claimant in the exercise of due diligence.

If a claim accrues in time of war or in time of armed conflict in which any armed force of the United States is engaged or if such war or armed conflict intervenes within two years after it accrues, and if good cause is shown, the claim may be presented not later than two years after that cause ceases to exist, or two years after the war or armed conflict is terminated, whichever is earlier.

B. Presentation. Claims should be submitted to the head of the bureau or agency (or his designated representative) which employs the claimant.

C. Form of claim. The claim will ordinarily be submitted in triplicate on the form provided by the Department for this purpose (DI Form 570). However, any writing timely received by the proper bureau or agency head (or his designated representative) will be considered as a claim, if

it constitutes a demand for compensation from the United States, sets forth the facts and circumstances in detail, and establishes that such a claim is within the scope of these regulations.

.8 Recovery From Third Parties.

A. Recovery from carrier, insurer, or other third party. Whenever compensation for property damaged or lost incident to service has been recovered or is recoverable from a carrier, insurer or other third party, the amount otherwise allowable under these regulations will be reduced to the extent of the compensation so recovered, or recoverable, as hereinafter provided. The rules and procedures set forth are provided for the benefit of the claimant in obtaining recovery from a carrier or insurer and thereby receiving the maximum amount of compensation for the loss or damage. Failure of the claimant to comply with the following rules and adhere to the required procedures may reduce or preclude payment under these regulations.

B. Demand on carrier. When it appears that damage to or loss of property has occurred under circumstances in which a commercial carrier is responsible, the claimant will make timely and prompt demand in writing upon the last common carrier under the Government bill of lading or contract known or believed to have handled the shipment. If more than one bill of lading or contract was issued, a separate demand must be made on the last common carrier under each bill of lading or contract.

C. Demand on insurer. When the property damaged or lost was insured in whole or in part, the claimant will, within the time prescribed in the insurance policy, and prior to or concurrently with presenting his claim against the Government, make a demand in writing on the insurer for reimbursement under the terms and conditions of the policy. The claimant must comply with all applicable provisions of the policy.

D. Demand on other third party. When it appears that damage to or loss of property has occurred under circumstances in which any other third party or third parties may

be responsible, the claimant will make a demand for payment in writing upon each and every third party who might reasonably be liable for the damage or loss.

E. Action subsequent to demand. Subsequent to or concurrent with making the demand or demands as required in .8B, .8C, and .8D, the claimant may present his claim against the Government. A copy of all demands and related correspondence in the possession of the claimant, his agent or employee, will be submitted with the claim. Any offer by a third party to the claimant to settle the matter for less than the amount of the demand will be submitted to the head of the bureau or agency (or his designated representative) which employs the claimant prior to the claimant's accepting the offer. The head of the bureau or agency (or his designated representative) will submit the offer as part of the administrative record to the adjudicating authority. Any acceptance by the claimant of partial payment from a third party in settlement of the claim without the approval of the adjudicating authority may preclude payment under the regulations.

F. Application of recovery. When the amount recovered or recoverable (actually recoverable, not that which technically should be recoverable) from third parties is equal to or greater than the total loss, no compensation will be allowed under these regulations. When the amount recovered or recoverable is less than the total loss, the amount recovered or recoverable will be deducted from the amount otherwise allowable under these regulations, except:

(1) When the claim against the third party included a demand for compensation in excess of $6,500, the amount recovered or recoverable will be applied first to that portion of the claim which is in excess of $6,500.

(2) When the claim against the third party included a demand for compensation for items of property for which allowance is precluded by these regulations, the amount recovered or recoverable from the third party will be applied to items or property for which allowance is precluded by these regulations before any deduction is made from the amount allowable under these regulations, unless it appears conclusively that the amount recovered or recoverable is not for these items.

G. Failure to make required demand. When a demand on any third party is required and the claimant fails to make such demand timely, or fails to make reasonable efforts to recover from the third party, the amount allowable under these regulations will be reduced by the maximum amount which would have been recoverable. However, this reduction will not be applied in cases in which the claimant's duty precluded timely demand or diligent prosecution of recovery from the third party, or when such demand and prosecution was impracticable.

H. Transfer of rights. The claimant will assign to the United States to the extent of any payment on his claim accepted by him, all his right, title and interest in any claim he may have against any third party, arising out of the incident on which the claim against the United States is based. He will also, upon request, furnish such evidence as may be required to enable the United States to enforce the claim. After payment of his claim by the United States, any payment by a third party will be applied as stated in paragraph .8F.

.9 Settlement of Claims.

A. Responsibility. The responsibility for the investigation, processing and settlement of claims under the regulations is the same as that for tort claims as stated in 451 DM 1 insofar as what is stated there is not inconsistent with regulations.

B. Evidence. The evidence in support of the claim must be of the type and nature sufficient to support the claim by a preponderance of the evidence unless specifically stated otherwise in these regulations. All evidence in the administrative record will be considered, including that submitted by the claimant, and that revealed by the investigation conducted by the Government.

C. Determination of compensation. When compensation is allowed, the amount of compensation allowable will be determined as follows:

(1) Lost or destroyed property. The allowable compensation for lost, stolen, or destroyed property will normally be, and in no event exceed, the actual value of the property at the time of the loss. It will be determined from a consideration of all relevant factors, including the purchase price (or value at the time of acquisition) and the replacement cost of the property involved. When appropriate, depreciation will be applied in accordance with the type of property involved and its age and condition at the time of the loss.

(2) Damaged property. The allowable compensation for damaged items will normally be the cost of repairs, but not to exceed the actual value of the property at the time of the damage. In the event that any item is determined to have been damaged to such an extent that it is beyond economic repair, the compensation will be the actual value at the time of damage, less any salvage value which the property may have.

D. Replacement in kind. The Government may at its option replace the property in kind rather than pay compensation.

E. Settlement authority. The appropriate Associate, Regional, or Field Solicitor, or his designee, may administratively determine and settle claims under these regulations for the Department of the Interior.

F. Final denial and reconsideration. Any claimant who is dissatisfied with an administrative determination of his claim may ask for reconsideration within a period of six months from the date of the determination. Notice of the determination shall be in writing and sent to the claimant, his authorized agent, or legal representative by certified or registered mail.

Upon timely filing of a request for reconsideration, the agency shall have six months from the date of filing in which to make a final disposition of the claim. Notice of final action on a request for reconsideration shall be effected in the same manner as above.

.1 Authority. The Act of September 21, 1961, 75 Stat. 539, 28 U.S.C. § 2679(b)-(e) (1964), as amended (Supp. IV, 1965-68), commonly known as the Government Drivers Act, amended the Federal Tort Claims Act to provide that any civil action or proceedings brought against any employee of the Government, or his estate, for damage to property or for personal injury, including death, resulting from the operation of any motor vehicle (Government-owned or leased, or privately owned) while the employee was acting within the scope of his employment will be deemed to be an action or proceeding against the United States and will be defended by the Attorney General. In practical terms this means that the Department of Justice and the local United States Attorney will defend the civil action or proceeding brought in any State or Federal Court against the Federal employee (or his estate) whose act or omission gave rise to the claim.

.2 Determination by the Department of Justice. The Department of Justice is the agency charged with making the determination of whether the Federal employee involved in such a suit was acting within the scope of his employment at the time the accident occurred. In order to enable the Department of Justice to make such determination, the Bureau or Office of this Department employing the person involved in the accident must submit to the Solicitor's Office Optional Form 26 for transmittal to the Department of Justice which contains detailed information concerning the question whether or not the employee was acting within the scope of his employment at the time of the accident out of which the suit arose.

.3 Purpose. The purpose of this chapter is to prescribe procedures for the execution and submission of the necessary papers and reports to the Department of Justice and to the appropriate United States Attorney.

.4 Operator's Responsiblity. Any employee of this Department who is the operator of a motor vehicle involved in an accident while carrying out official duties shall, if not incapacitated, be responsible for the following:

A. Preparation of Optional Form 26, Data Bearing Upon Scope of Motor Vehicle Operator. Optional Form 26 has been designed to preserve pertinent facts relating to motor vehicle accidents and to facilitate the defense of suits against Federal employees which arise out of their operation of a motor vehicle while acting within the scope of their employment.

Form 26 shall be filled out by the operator of the vehicle at the time and at the scene of the accident, insofar as possible, in the following instances:

(1) Any accident involving a Government-owned vehicle which results in actual or alleged damage to, or destruction of, private property, or personal injury, including death, to persons other than Government employees, and

(2) Any accident involving a non-Government-owned motor vehicle operated by a departmental employee who has been previously authorized to use such vehicle to carry out his assigned duties, which results in actual or alleged damage to, or destruction of, private property, or personal injury, including death, to persons other than Government employees.

B. Submission of Optional Form 26 to Supervisor. The operator shall send completed Optional Form 26 to his immediate supervisor or such other official as may be designated by the head of the Bureau or Office.

C. Submission of Process Papers. An employee against whom a civil action or proceeding is brought resulting from his operation of a motor vehicle while acting within the scope of his employment shall:

(1) Notify his immediate supervisor, or such other official as may be designated by the head of the Bureau or Office, by giving informal notice, immediately upon receipt of process papers and pleadings or upon receipt of information regarding the commencement of such civil action or proceedings, and

(2) Deliver immediately all process papers and pleadings served upon him to his immediate supervisor or other designated official.

.5 Bureau or Supervisor's Responsibility. The immediate supervisor of an employee involved in a motor vehicle accident, or such other official as may be designated by the head of the Bureau or Office shall be responsible for the following:

A. Processing Form 26. Reviewing, signing, and prompt processing of Form 26 in accordance with pertinent regulations under 370 DM, 395 DM, and 451 DM 1. Completing and executing Form 26 when the employee is incapacitated.

B. When Notified of Commencement of Civil Action Against Employee. Whenever the immediate supervisor or designated official has been notified of the commencement of a civil action against an employee he shall:

(1) Notify promptly, but in no event later than 24 hours, the appropriate Associate, Regional or Field Solicitor of the commencement of such civil action or proceeding.

(2) Forward all process papers and pleadings, in triplicate, including the completed Form 26 and other investigative material, to the appropriate Regional or Field Solicitor.

.6 Solicitor's Office Responsibility. Upon receipt of information concerning the commencement of a civil action or proceeding against an employee involved in a motor vehicle accident the appropriate Associate, Regional or Field Solicitor shall be responsible for furnishing one copy of all process papers and pleadings and one copy of the investigation material, including Form 26, to the United States Attorney for the District wherein the action or proceeding is brought. (See Appendix 1.) A duplicate copy of each document shall be sent to the Assistant Attorney General, Civil Division, U.S. Department of Justice.

.7 Proof of Financial Responsibility. If, as a result of an accident occurring within the scope of his employment, an employee is served with papers requiring him to prove financial responsibility under State laws imposing such a requirement with respect to automobile accidents, and his own insurance carrier disclaims liability because of the Government Drivers Act, the employee shall immediately forward the papers to the appropriate Associate, Regional or Field Solicitor through his immediate supervisor together with the completed Form 26 and other investigative material, if this has not already been done. For the purposes of financial responsibility laws, the appropriate Associate, Regional, or Field Solicitor will make or secure a finding concerning the applicability of the Federal Tort Claims Act as amended by the Government Drivers Act. This finding shall be forwarded to the State agency as proof of financial responsibility.

.8 Liability Insurance. The Government Drivers Act does not provide absolute protection or immunity. For example, if the Department of Justice or the Court determines that an employee was not acting within the scope of his employment in a given case, the employee may then be personally liable for the property damage and personal injuries involved. Even though the Department makes no recommendation or suggestion regarding an employee carrying broad form personal liability insurance, we should call to the attention of motor vehicle operators the availability of such insurance. Employees must make their own decision on the desirability of carrying such insurance. Based on past experience, employees have in some instances, paid premiums for insurance only to discover that the policy did not cover the liability they intended to have covered. Consequently, those employees who decide to carry broad form personal liability insurance should be sure to specify the coverage intended and select the policy that will completely fit their own requirements. The possibility of personal liability still existing under the Government Drivers Act should be explained to all motor vehicle operators.

Questions within this area may be addressed to the appropriate Associate, Regional, or Field Solicitor.