

FDA Staff Manual Guides, Volume III – General Administration

Administrative Services - Personal Property

Claims

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1. Purpose.

This guide provides instructions for the submission of claims filed under the Military Personnel and Civilian Employees' Claims Act and/or the Federal Tort Claims Act.

Revision/Revocation: This Staff Management Guide (SMG) supersedes SMG 2620.1, Claims, dated October 17, 1997, which is revoked.

Summary of Changes: This SMG updates the publications under the category of Claims by superseding the previous publication, sets forth the scope and policy of this SMG, identifies the roles and responsibilities for specific individuals by duty position for the Food and Drug Administration (FDA), removes the Investigations section, and documents the subrogation process.

2. Scope.

This Staff Manual Guide applies to all FDA Centers..

3. Policy.

To provide complete, accurate, and timely submission of all claims received against the FDA to Health and Human Services (HHS)/Office of the General Counsel (OGC)/General Law Division (GLD) for investigation and adjudication.

4. Responsibility.

- The Office of Facilities Engineering and Mission Support Services, Division of Operations Management and Community Relations, Logistics and Transportation Management Branch, the FDA Claims Liaison is responsible for:
 - providing guidance, and policy governing the process for submitting claims against FDA; and
 - reviewing claims received for completeness prior to submission to HHS/OGC/GLD.
- Center Fleet Operations Managers, Fleet Operations Managers below the Center Level (also known as the Local Fleet Manager), Fleet Operations Representatives, Fleet Vehicle Custodians, Senior Administrative Officers/Administrative Officers, Program Administrative Officers, and Supervisory Administrative Management Specialists are responsible for:
 - adhering to the FDA guidance and policy for submitting claims filed against the FDA from their areas of responsibility; and
 - reviewing, disseminating, and ensuring that all required forms and documents are filled out entirely by all parties, before approving and submitting a claim package to the FDA Claims Liaison.
- Employees, Commissioned Corps Officers, students and contractors assigned to FDA are responsible for:
 - in the event of vehicular accidents, immediately notifying the appropriate Center Fleet Operations Managers, Fleet Operations Managers below the Center Level, Fleet Operations Representatives, Fleet Vehicle Custodians, and the GSA Accident Management Center;

- immediately notifying and reporting all accidents and incidents to their supervisor and Senior Administrative Officers/Administrative Officers, Program Administrative Officers, or Supervisory Administrative Management Specialists; and
 - completing and submitting documentation required for claim submission. (**See Claims Filing Procedure for more details.**)
- Claimant is responsible for completing and submitting a Standard Form 95 (SF-95) - "Claim for Damage, Injury, or Death" - which they may obtain from the Administrative Officer, the Federal Government employee who is alleged to have caused the damages, or online. The SF-95 should include a statement that sets forth the facts and circumstances surrounding the incident including the date and place or the property and persons involved; the nature and extent of the damage, loss, destruction, injury, doctor bills, notes, two repair estimates if claim is for property damage; and the total amount of the claim.
 - HHS/OGC/GLD is responsible for investigating and adjudicating claims.

5. References.

This Guide implements the provisions of:

- The Military Personnel and Civilian Employees' Claims Act of 1964 (31 U.S.C. 240-243). <http://www.gao.gov/assets/420/418097.pdf>
- The Federal Tort Claims Act (28 U.S.C. 2671-2680). <https://www.gpo.gov/fdsys/granule/USCODE-2011-title28/USCODE-2011-title28-partVI-chap171>
- Health and Human Services Logistics Management Manual (HHS LMM) <https://intranet.hhs.gov/manual/logistics-management/introduction>

6. Definitions.

- The Military Personnel and Civilian Employees' Claims Act of 1964 allows for certain property damage claims against FDA by its employees, provided the loss or damage was within the scope of their employment and the employee (claimant) is free of negligence regarding these losses.

- The Federal Tort Claims Act provides for claims by private individuals who are not Agency employees where the activities of the Agency or specific individual Agency employees acting within the scope of their federal employment are negligent and cause death, injuries, or property loss or damage.

7. Claimants.

Claims under the Military Personnel and Civilian Employees' Claims Act may be presented by:

- a. The employee affected, or in case of death, the survivors may file claims incident to lost or damaged property.
- b. Former employees, regardless of the nature of their separation, or their survivors may file claims incident to lost or damaged property that occurred prior to their separation from the agency.

Claims filed under the Federal Tort Claims Act are generally from claimants outside the Federal Government system. Claims can be presented by:

- a. the owner of the property;
- b. the injured party or their duly authorized representative(s);
- c. in the case of death of the claimant, the executor or administrator of the deceased's estate asserting claim on behalf of the deceased;
- d. the insurer of the individual who claims rights under subrogation.

8. Subrogation.

Subrogation is a legal right that allows one party (e.g., your insurance company) to make a payment that is owed by another party (e.g., the other driver's insurance company) and then collects the money from the party that owes the debt after the fact.

In the event of subrogation, a claimant files a claim with their insurance company to pay for deductibles, repairs caused by damages to his/her property, and/or to collect debts owed by the Federal Government when an incident/accident occurs and the Federal Government is at fault.

In addition to requesting payment for damages, the attorney for the claimant's insurance company will provide the required and/or request required documents on behalf of the claimant.

Documents submitted as a claim package by claimant's attorney/insurance company must include completed SF-95 and SF-91 forms. (See Claims Filing Procedure for more details.)

9. Claims Filing Procedures.

Vehicular accidents involving GSA leased vehicles must be immediately reported as specified in FDA Staff Manual Guide 2173.1- Motor Vehicle Management, Fleet Management Program and the GSA Fleet Customer Leasing Guide.

Center Fleet Operations Managers, Fleet Operations Managers below the Center Level, Fleet Operations Representatives, Fleet Vehicle Custodians, Senior Administrative Officers/Administrative Officers, Program Administrative Officers, and Supervisory Administrative Management Specialists must electronically submit the claim package consisting of all required forms and documents including the: completed SF-91 "Motor Vehicle Accident Report" form; the SF-95 "Claim for Damage, Injury, or Death" form and other pertinent information regarding the tort claim to the FDA Tort Claims e-mailbox at FDATortClaims@fda.hhs.gov;

Safety Submission Requirements for Tort Claims with Bodily Injuries.

Copies of all tort claims with bodily injuries must also be submitted via email to the Office of Laboratory Safety at: OLS@fda.hhs.gov

10. Documentation and Information To Be Submitted.

Military Personnel and Civilian Employees' Claims.

Property Loss or Damage.

(Note: Claims for money, theft from the workplace, or damage to clothing by accidents occurring at the workplace are generally not payable.)

- a. Form HHS-481, "Employee Claim for Loss or Damage to Personal Property" (see Attachment A). The claim form must be completed and signed prior to submission. Proof of Ownership, Value (sales receipts, copies of cancelled checks, copies of warranties or other proof of purchase, value, etc.). If unavailable, state brand names and place of purchase.
- b. Cost of Repair. If property has been damaged and claim is more than \$50.00, submit (1) a receipt for the cost of repair or (2) an estimate of the cost of repair on the letterhead of a reputable company. In most cases, one estimate is sufficient. If an item has been damaged beyond repair, evidence of this condition should be submitted.
- c. Photographs may be submitted, if desired.

- d. Copies of private claims, correspondence and settlements received pertaining to the loss or damage being claimed. Pursuant to regulations, a claim must be filed seeking recovery from the private insurer, if there is insurance coverage, before the FDA claim can be paid.
- e. Police report and/or other agency report of the incident and witness statements, if appropriate.

Tort Claims.

Note: Any individual who states that they have suffered personal injury or property damage or loss resulting from the action of an FDA employee or Commissioned Corps Officer who was acting within the scope of employment should be advised of their right to file an administrative claim against FDA under the Federal Tort Claims Act. This is done by having the claimant complete and submit Form SF-95 (see Attachment C). Form SF-95 must be electronically submitted to the FDA Tort Claims mailbox. The date of the e-mail is the official "date stamp" by the office initially receiving the claim.

This can be particularly crucial in situations in which the statute of limitations may be the sole legal issue. An individual cannot seek court action until the administrative claim procedures have been exhausted.

Property Damage or Personal Injury.

- a. Form SF-95, "Claim for Damage, Injury or Death", or other written notification of an incident accompanied by a claim for money damages in a sum certain
- b. Form SF-94, "Statement of Witness" (see Attachment C), if any, or equivalent written statement
- c. Investigation reports and official police reports are required
- d. An itemized receipt of payment for necessary repairs or two (2) itemized written estimates of the cost of such repairs
- e. A statement listing date of purchase, purchase price and salvage value, where repair is not economical
- f. Photographs of damage and/or scene of accident (if available)

Vehicle Accidents.

If the accident in question involves the operation of a Government vehicle or a privately-owned vehicle used by a FDA employee incident to employment, then in addition to the above, the following information is required:

- a. Form SF-91, "Motor Vehicle Accident Report" (Attachment D)
- b. Copy of any traffic regulations or ordinance which was violated
- c. Results of any trial or disposition of the summons, if any arrests were made or charges preferred

Death.

Form SF-95 "Claim for Damage, Injury, or Death", or other written notification of an incident, accompanied by a claim for money damages in a sum certain for death alleged to have occurred by reason of the incident.

- a. An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent
- b. Itemized bills for medical and funeral expenses incurred (if appropriate)
- c. Autopsy report (if available)
- d. Documentation of appointment of executor or administrator of the decedent's estate (if available)
- e. Additional information or documentation may be required as cited in the HHS LMM

Household Relocation Claims.

Claims for damages to household goods during relocations MUST be submitted to the Bureau of the Public Debt; Relocation Services Branch. For additional information please contact: pcstravel@fiscal.treasury.gov.

11. Referral of Claims.

Upon receipt of a claim with all pertinent information and evidence, the FDA Fleet Claims Liaison will submit all approved/completed motor vehicle tort claims electronically to the HHS/OGC/GLD. After the review and determination has been accomplished by the GLD, the GLD Claims Officer will thereafter investigate further and decide the merits of the claim. Once the claim has been adjudicated, the claimant shall be notified of the determination by the GLD Claims Officer.

For the status of all claims, contact OGC by email at hhs-ftca-claims@hhs.gov.

12. Effective Date

The effective date of this guide is February 1, 2022.

13. Document History – SMG 2260.1, “Claims”

Status (I, R, C)	Date Approved	Location of Change History	Contact	Approving Official
Initial	02/01/2022	N/A	OC/OO/OFEMS/ DOMCR/LTMB	Donald E. Demers, Director, OC/OO/OFEMS
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