

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

MD 7.1	TORT CLAIMS AGAINST THE UNITED STATES	DT-23-13
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<i>Volume 7:</i>	Legal and Ethical Guidelines
<i>Approved By:</i>	Marian L. Zoebler, General Counsel
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<i>Issuing Office:</i>	Office of the General Counsel
<i>Contact Name:</i>	Assistant General Counsel for Labor, Employment, and Contract Law

EXECUTIVE SUMMARY

Management Directive 7.1, “Tort Claims Against the United States,” is revised to—

- Update the name of OGC’s Division of Labor, Employment, and Contract Law, which was revised due to an organizational change; and
- Include in the directive handbook a new Section IV, “Claims,” to describe a claimant’s responsibilities involving third parties.

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I. POLICY

A. Federal Tort Claims Act

It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to establish procedures to cover payment of tort claims against the United States under the Federal Tort Claims Act.

1. The Federal Tort Claims Act applies to tort claims that meet *all* of the following three requirements—
 - (a) The tort is caused by the negligent or wrongful act or omission of any NRC employee,
 - (b) The tort occurs while the NRC employee is acting within the scope of their office or employment, and
 - (c) The tort occurs under circumstances where the United States, if a private person, would be liable to the claimant under the law where the act or omission occurred.
2. The Federal Tort Claims Act covers the following types of claims:
 - (a) Claims for damage to property,
 - (b) Claims for loss of property,
 - (c) Claims for personal injury, and
 - (d) Claims for death.

B. Applicability of the Federal Tort Claims Act

1. The circumstances that are most likely to apply to NRC employees are claims that meet the following criteria:
 - (a) The claim is based upon an act or omission of an employee of the Government,
 - (b) The employee is exercising due care, and
 - (c) The act or omission occurs during one of the following circumstances:
 - (i) During the execution of a statute or regulation, regardless of whether the statute or regulation is valid; or

- (ii) Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Government, regardless of whether that discretion is abused.

2. The types of claims where the Act does not apply are set forth in 28 U.S.C. § 2680.

C. Definition of “Federal Agency”

The Federal Tort Claims Act definition of “Federal agency” includes the NRC but does not include any contractor with the United States.

D. Definition of “Employee of the Government”

The definition of “employee of the Government” includes NRC employees and persons acting on behalf of the NRC in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

II. OBJECTIVES

- Ensure that supervisors and the General Counsel¹ are promptly notified of the facts and circumstances surrounding incidents resulting in damage to or loss of property or personal injury or death caused by acts or omissions of NRC employees while acting within the scope of their employment, and to provide for further investigations by the Inspector General (IG), as deemed necessary.
- Promote the prompt settlement of tort claims arising when individuals are injured or whose property is damaged by acts or omissions of NRC employees while acting within the scope of their employment.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

The authorities under Sections III.A., III.B., and III.C. of this directive may be redelegated in writing, provided copies of the delegation are filed with the Executive Director for Operations or the Secretary of the Commission, as appropriate.

A. General Counsel

1. Receives reports of accidents and claims on forms described in Section I, “General,” of Handbook 7.1.
2. Adjusts, determines, compromises, and settles claims that do not exceed \$25,000 under Title 10 of the *Code of Federal Regulations* (10 CFR) 14.33, “Officials

¹ Wherever there is a requirement in this directive and handbook for referral to the General Counsel, the matter should be referred to the Assistant General Counsel for Labor, Employment, and Contract Law, Office of the General Counsel.

- Authorized to Act.” Payments in excess of \$25,000 require written authorization by the Attorney General or designee.
3. For payments more than \$25,000, consults with the U.S. Department of Justice (DOJ) under 10 CFR 14.35, “Limitation on NRC’s Authority,” by preparing and presenting a referral or request in writing to the Assistant Attorney General, Civil Division, DOJ.
 4. Sends notices of the final denial of claims under 10 CFR 14.37, reconsiders final denials upon request under 10 CFR 14.39, and obtains payment of approved claims that are more than \$2,500 through the U.S. Department of the Treasury under 10 CFR 14.41.
 5. Refers matters to the IG to conduct investigations when appropriate.
 6. Refers to the appropriate Federal agency under 28 CFR 14.2, any administrative claim that has been incorrectly filed with the NRC and makes agreements with other Federal agencies as to which agency will investigate and decide the merits of a claim when more than one agency is involved.
 7. Provides legal advice and coordinates litigation with the DOJ.
 8. If a civil action or proceeding is brought in any court against an NRC employee or the employee's estate for damage to or loss of property, personal injury, or death resulting from the employee's operation of a motor vehicle while acting within the scope of their employment:
 - (a) Furnishes the United States Attorney for the district where the action or proceeding is brought, and the Director of the Torts Branch, Civil Division (CD), DOJ, information concerning the commencement of the action or proceeding and expeditious delivery of copies of all process papers and pleadings under 28 CFR 15.2.
 - (b) Submits a report under 28 CFR 15.3 regarding the question of scope of employment to the United States Attorney, with a copy to the Director of the Torts Branch, at the earliest possible date, or within the time fixed by the United States Attorney upon request.
 9. Under the regulations at 28 CFR 50.15, when an NRC current or former employee is being sued or subpoenaed in their individual capacity in any Federal or State criminal proceeding, Federal or State civil action, or congressional proceeding—
 - (a) Receives the employee's request for representation by the DOJ.
 - (b) Submits a statement to the Civil Division or other appropriate litigating division, DOJ, as to whether the employee was acting within their scope of employment, together with a recommendation as to whether representation should be provided.

B. Inspector General (IG)

Conducts tort investigations, as appropriate, upon referral by the General Counsel. Investigates claims alleging fraud, waste, or abuse, and official misconduct, regardless of whether such claims are compensable under the Federal Tort Claims Act.

C. Chief Financial Officer (CFO)

Effects payment of tort claims of \$2,500 or less under 28 U.S.C. § 2672 and 10 CFR 14.41(a).

D. Office Directors and Regional Administrators

1. Informs employees and supervisors under their jurisdiction of the requirements outlined in this MD to ensure that employees and supervisors comply with the procedures specified in Handbook 7.1.
2. Provides each employee-operator involved in an accident while on official travel with a copy of this MD.

IV. APPLICABILITY

The policy and guidance in this MD apply to all NRC employees.

V. DIRECTIVE HANDBOOK

Handbook 7.1 provides the procedures to be followed by NRC employees involved in accidents that may give rise to a tort claim against the United States, and by the supervisors of those employees. These procedures apply to motor vehicle accidents and other types of incidents resulting in damage to or loss of property or personal injury or the death of third persons.

VI. REPORTS

A list of required forms is contained in Section IV, "Reports and Forms," of Handbook 7.1.

VII. REFERENCES***Code of Federal Regulations***

10 CFR Part 14, "Administrative Claims Under Federal Tort Claims Act."

10 CFR Part 15, "Debt Collection Procedures."

28 CFR Part 14, "Administrative Claims Under Federal Tort Claims Act."

28 CFR Part 15, "Certification and Decertification in Connection With Certain Suits Based Upon Acts or Omissions of Federal Employees and Other Persons."

28 CFR 50.15, "Representation of Federal Officials and Employees by Department of Justice Attorneys or by Private Counsel Furnished by the Department in Civil, Criminal, and Congressional Proceedings in Which Federal Employees Are Sued, Subpoenaed, or Charged in Their Individual Capacities."

41 CFR Part 101-38, "Motor Vehicle Management."

41 CFR Part 101-39, "Interagency Fleet Management Systems."

General Services Administration (GSA)

Standard Form 91, "Motor Vehicle Accident (Crash) Report."

Standard Form 94, "Statement of Witness."

Standard Form 95, "Claim for Damage, Injury or Death."

All three forms are available at the General Services Administration (GSA) Web site:
<http://www.gsa.gov/portal/forms/type/SF>.

Nuclear Regulatory Commission Management Directives

MD 4.1, "Accounting Policy and Practices."

MD 7.2, "Claims for Personal Property Loss or Damage."

MD 9.2, "Organization and Functions, Office of the Inspector General."

MD 13.4, "Transportation Management."

United States Code

"Compensation for Work Injuries" (5 U.S.C. § 8101).

Federal Tort Claims Act (generally at 28 U.S.C. § 2671).

Inspector General Act (5 U.S.C. 401-424).

"Time for Commencing Action Against United States" (28 U.S.C. § 2401).

"Tort Claims Procedure" (28 U.S.C. §§ 2671-2680).

"United States as Defendant" (28 U.S.C. § 1346).

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I. GENERAL

A. Coverage

1. The Federal Tort Claims Act waived the Government's sovereign immunity from being sued for the negligent or wrongful act or omission of a Federal employee who is acting within the scope of their employment only under circumstances where the United States, if a private person, would be liable to the claimant under the law where the act or omission occurred.
2. By listing numerous exceptions, Congress intended that the Act would permit suit against the Government only with respect to ordinary common law torts, such as those involving vehicular and other types of accidents.

B. Scope of Employment

1. An employee generally is acting within the scope of employment if, at the time of the accident, they were engaged in the performance of their official duties.
2. If, for example, an employee deviated from the route to or from their authorized destination to accomplish a personal objective or was engaged in some personal activity that was not related to their official duties, then the employee was not acting within the scope of their employment.

C. Tort Claims

1. Tort Claims Against Government Employees (Operating Motor Vehicles)
 - (a) If a Federal employee, who was driving a motor vehicle and was acting within the scope of their employment, commits a negligent or wrongful act or omission that

causes injury or loss of property, or personal injury or death, the exclusive remedy of the injured party is against the United States.¹

- (b) Employees should act promptly to complete the reports described in Section V, "Reports and Forms," of this handbook.
 - (i) The U.S. Nuclear Regulatory Commission's (NRC) Office of the General Counsel (OGC) will then transmit a report on scope of employment to the United States Attorney.
 - (ii) If the United States Attorney determines that the employee was acting within the scope of employment, the employee will be provided representation by the United States Attorney's office.
 - (c) Employee drivers should also make a full report to their supervisors with respect to any citations that were issued for alleged traffic violations.
 - (i) A plea of guilty to a traffic charge could prejudice the United States Attorney's efforts to avoid civil liability under the Federal Tort Claims Act.
 - (ii) The United States Attorney's office might wish to represent the employee at the hearing with respect to the traffic charge.
 - (iii) If an employee is sued in a State Court or subpoenaed in any legal proceeding, copies of the process and pleadings should be submitted immediately to their supervisor who will submit the documents to OGC.
 - (iv) If the United States Attorney determines that the employee was acting within the scope of employment, the State Court proceeding will be removed to the United States District Court. If the proceeding is removed to the United States District Court, OGC will notify the employee of the removal and provide the employee with updates on subsequent developments in the case.
2. Tort Claims Against Government Employees (Not Operating Motor Vehicles)
- (a) The injured party, in this type of tort, can proceed against both the employee and the United States or against either.
 - (b) If an employee is sued, the employee should submit a written request for representation by the Department of Justice under 28 CFR 50.15, "Representation of Federal Officials and Employees by Department of Justice Attorneys or by Private Counsel Furnished by the Department in Civil, Criminal, and Congressional Proceedings in which Federal Employees are Sued, Subpoenaed, or Charged in Their Individual Capacities," to their supervisor.

¹ Sections II, III, and V of this handbook describe the procedures with respect to torts involving motor vehicles.

(c) The request should be accompanied by a report on scope of employment and copies of all process papers and pleadings served upon them.

(d) The supervisor shall submit the documents to OGC.

D. Time Limitations

1. Those who seek to recover money damages under the Federal Tort Claims Act must present a claim within 2 years after the claim accrues.
2. A claim generally accrues at the time of the accident.
3. In medical malpractice and some other cases involving claimants who did not realize they had been injured, Courts have held that their claims accrued when the injury was discovered.
4. NRC has 6 months from the time that a claim is presented to investigate and attempt to settle the claim. If no action is taken within the 6-month period, or if the claim is denied within the 6-month period, the claimant then has 6 months to commence legal proceedings.

II. NRC EMPLOYEE/OPERATOR PROCEDURES FOR MOTOR VEHICLE ACCIDENTS

The following procedures are to be followed by an NRC employee/operator involved in a motor vehicle accident while acting within the scope of employment.

A. Action by Employee/Operator

The employee/operator shall—

1. Notify the police as required by local law. Generally, police must be called if there is any personal injury or if property damage is other than minor.
2. Obtain the names, addresses, and telephone numbers of persons involved in the accident and of any witnesses, license numbers of all vehicles involved in the accident, and insurance company affiliations.
3. Gather as much information as possible concerning the accident so that the information may be included in the accident report. See Section II.B, "Expeditious Delivery of Process Papers and Pleadings," of this handbook. Types of information that would be particularly helpful include acts by other parties that may have caused or contributed to the accident and the insurance coverage of other parties.
4. Not sign any statement or furnish any information (other than their name and address) to persons other than NRC representatives, unless prior approval of the General Counsel is obtained. This does not preclude an employee from showing their driver's

- license or vehicle registration to police or from furnishing any other information, as required, to police, but does preclude admitting negligence.
5. File all required reports with State or other official agencies.
 6. Do nothing to jeopardize their insurance coverage.
 - (a) Notify the insurance carrier concerning the accident as soon as practicable, and discuss the accident with the carrier if the carrier so requests.
 - (b) However, the employee/operator shall not sign any document or statement for the carrier without approval of the General Counsel.²
 - (c) Automobile liability insurance policies customarily provide that the insured must cooperate with the carrier in the investigation and defense of claims.
 - (d) An employee/operator's liability insurance coverage may inure to the benefit of the Government, even though the employee themselves may not be liable for damages because the Federal Tort Claims Act passes on their liability to the Government.
 7. Refer other persons involved in motor vehicle accidents or their representatives (such as insurance investigators) to the General Counsel or obtain their names, addresses, telephone numbers, and other pertinent information (such as insurance company affiliation) and transmit the same to the General Counsel. The employee/operator shall not furnish any document or make any statement to those persons without the approval of the General Counsel.
 8. Not execute a general release or settlement agreement or sign any other document (other than those required by police) unless prior approval of the General Counsel is obtained.
 9. Regarding accident reporting—
 - (a) Immediately inform their supervisor (by telephone or by other appropriate NRC-approved communication technology, if necessary) of the accident.
 - (b) Promptly complete Standard Form (SF) 91, "Motor Vehicle Accident (Crash) Report" (which is available at the General Services Administration (GSA) Web site at <http://www.gsa.gov/portal/forms/type/SF>), and furnish it to their supervisor. All accidents must be reported on an SF 91, even if other parties involved state that no claim will be filed against the Government or its employees or even if only Government personnel, equipment, vehicles, or property are involved.

² Wherever there is a requirement in this directive and handbook for referral to the General Counsel, the matter should be referred in the first instance to the Assistant General Counsel for Labor, Employment, and Contract Law, Office of the General Counsel.

- (c) Request that witnesses complete an SF 94, "Statement of Witness," and submit the completed SF 94 to the supervisor. SF 94 is available at the [GSA Web site](#).

B. Expeditious Delivery of Process Papers and Pleadings

The employee/operator shall—

1. Advise the supervisor immediately (by telephone or by other appropriate NRC-approved communication technology, if necessary) upon the receipt of any papers (including claim letters, process papers, and pleadings) or any information regarding the commencement of a civil action or proceeding against the employee/operator.
2. Deliver all papers served upon the employee/operator or attested true copies immediately to the supervisor.

C. Injured Employee/Operator

The supervisor shall promptly inform the General Counsel if any employee/operator is physically unable to comply with the preceding instructions so that appropriate actions may be taken.

III. SUPERVISORY PROCEDURES FOR MOTOR VEHICLE ACCIDENTS

The following procedures are to be followed by the supervisor (or other person designated by the director of the office or division concerned) when an employee/operator is involved in a motor vehicle accident while acting within the scope of employment.

A. Forwarding of Information

The transmittal of the information covered by Sections III.A.1 and III.A.2 of this handbook must not be delayed by the supervisor pending preparation of the report as required by Section III.B, "Report on Scope of Employment," of this handbook.

1. Accident Reports

The supervisor shall immediately notify the General Counsel of any accident involving personal injury or property damage and shall promptly transmit (through applicable supervisory channels) to the General Counsel the following completed standard forms concerning the accident.

- (a) SF 91, "Motor Vehicle Accident (Crash) Report."
- (b) SF 94, "Statement of Witness."

2. Expeditious Forwarding of Process Papers and Pleadings

The supervisor shall immediately transmit to the General Counsel all information and papers regarding commencement of a civil action or proceeding against an employee/operator.

B. Report on Scope of Employment

1. For the United States to be held liable for damages resulting from a motor vehicle accident involving an NRC employee, the employee must have been acting within the scope of their employment when the accident occurred.
2. This matter is determined under the law of the State where the accident occurred.
3. A determination of the scope of employment issue cannot be made merely based on conclusive statements by the employee.
4. Therefore, after the employee has completed Sections I through IX of SF 91, "Motor Vehicle Accident (Crash) Report," the supervisor shall complete Section X of SF 91 and promptly transmit the form to OGC.

IV. CLAIMS

A. Evidence in Support of a Claim

A claim must be supported by the data required by the NRC (SF 95, "Claim for Damage, Injury, or Death," available in the NRC Forms Library on SharePoint), including the following, as applicable:

1. Corroborating statement(s) from person(s) having personal knowledge of the facts concerning the claim, including the supervisor's endorsement, as appropriate (see Section III.B, "Supervisory Procedures for Motor Vehicle Accidents," of this handbook).
2. Itemized costs incurred resulting from injury/damage sustained (e.g., medical statements, receipts, and other supporting documentation).
3. Copies of any pertinent correspondence with third parties and insurers.
4. Other evidence as may be required, including travel authorizations, accident reports, or police reports.

B. Claimant's Responsibilities Involving Third Parties

1. The claimant shall furnish to OGC an itemized statement of the settlement by the insurance company or other third party.

2. The following apply, unless the collateral source rule³ governs in the state where the injury, loss, or damage occurred.
 - (a) When a claim has been paid by the NRC and the claimant subsequently receives compensation for the same loss or damage from an insurer or other third party, the claimant shall reimburse the Government to the extent of the amount paid by the NRC, subject to the criteria set forth in Section II.D.3(a) of this handbook.
 - (b) If the provisions of Section II.D.3 and Section II.D.4 of this handbook would permit a recovery by a claimant from a third party and the NRC that, in combination, exceeds the amount of claimant's loss or damage, the amount of reduction by or reimbursement to the NRC must be adjusted to avoid that result.
3. When a claim has been paid by the NRC, the claimant is responsible for making any required reimbursements to the claimant's insurance company.
4. Once the NRC approves a claim, the U.S. Department of Treasury processes the payment of that claim. If the claimant owes an outstanding debt to the Federal Government, then the Department of Treasury will deduct the amount of that debt from the claimant's payment.

C. Determination of the Amount of a Claim

Amount Payable

1. The NRC may not pay a claim more than \$25,000 under the Federal Tort Claims Act. The DOJ must review and approve any claims over \$25,000.
2. Loss or damage of less than \$10 in amount will be regarded as insignificant and will not be considered for allowance.

V. REPORTS AND FORMS

To provide uniformity in the reporting of accidents and to facilitate the processing of claims filed under the Federal Tort Claims Act, the following standard forms must be used.

³ The collateral source rule is a law in state jurisdictions that prevents the reduction of damages awarded to a plaintiff for injury, illness, or disability by the amount already recovered from a third party such as an insurer. The rule varies by state but generally mandates that damages awarded to a plaintiff in court cannot be reduced by any amount that is paid from other sources, including health insurance and workers' compensation, that cover the damages.

A. Reports and Forms Applicable to Motor Vehicle Accidents

For tort claims involving motor vehicle accidents, the claimant must complete the following forms, which are available at <http://www.gsa.gov/portal/forms/type/SF>:

1. SF 91, "Motor Vehicle Accident (Crash) Report."
2. SF 94, "Statement of Witness."

B. SF 95, "Claim for Damage, Injury or Death" Reports and Forms Applicable to Other Types of Accidents

1. SF 94, "Statement of Witness."
2. In addition to the SF 94, the reports listed in Section IV.C, "Forms Applicable to All Tort Claims," of this handbook also apply to tort claims arising from these accidents.

C. Form Applicable to All Tort Claims

SF 95, "Claim for Damage, Injury or Death."