

INDIAN AFFAIRS MANUAL

1.1 Purpose. This chapter establishes Indian Affairs' (IA) policy for the Loss Compensation Program, including clarifying the responsibilities for investigating and documenting accidents and incidents.

1.2 Scope. This policy applies to all offices under the authority of the Assistant Secretary - Indian Affairs (AS-IA), including offices reporting to the AS-IA, the Bureau of Indian Affairs (BIA), and the Bureau of Indian Education (BIE).

1.3 Policy. It is the policy of IA to comply with all applicable federal laws and regulations, and Department of the Interior (DOI) policies and procedures on loss compensation, and ensure that resources are available to facilitate compliance.

1.4 Authority.

A. Statutes and Regulations.

- 1) P.L. 79-601, Federal Tort Claims Act (FTCA)
- 2) 28 U.S.C. 171, Tort Claims Procedure
- 3) 31 U.S.C. 3721, Claims of personnel of agencies and the District of Columbia government for personal property damage or loss (codified the Military Personnel and Civilian Employees' Claims Act (MPCECA))
- 4) 28 CFR 14, Administrative Claims Under FTCA
- 5) 31 CFR Chapter IX, Federal Claims Collection Standards (Department of the Treasury – Department of Justice)
- 6) 41 CFR Subpart 101-39.4, Accidents and Claims
- 7) 43 CFR 22, Administrative Claims Under the FTCA and Indemnification of Department of the Interior Employees

B. Guidance.

- 1) 209 Departmental Manual (DM) 3: Delegations, Solicitor
- 2) 451 DM 1: Tort Claims Against the United States

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- 3) 451 DM 3: Loss or Damage - Employee's Personal Property
- 4) 451 DM 4: Defense of Suits Against Federal Employees
- 5) 485 DM 7: Incident/Accident Reporting/Serious Accident Investigation
- 6) DOI Serious Accident Investigation Guide, January 2022

C. Handbooks.

- 1) 25 IAM 5-H: Indian Affairs Loss Compensation Program Handbook

1.5 Responsibilities.

- A. **Director, Office of Facilities, Property, and Safety Management (OFPSM)** is the IA-Designated Safety and Health Official (IA-DASHO) and is responsible for managing and administering the IA Safety and Risk Management Program (SRMP). The Director reports to the IA Deputy Assistant Secretary – Management (DAS-M) and is also responsible for oversight, policy, and procedures governing IA facilities management and construction, property, safety, and risk management, including the administration and management of the Loss Compensation Program.
- B. **Chief, Division of Safety and Risk Management (DSRM), OFPSM** is the IA Tort Claims Officer (TCO) and serves as the Safety Manager for the AS-IA offices, and is responsible for:
 - 1) providing staff assistance on tort claims matters;
 - 2) ensuring the prompt and full investigation of accidents which may result in tort claims against the government prior to the filing of a claim; and
 - 3) investigating serious accidents or incidents resulting in one or more fatalities, hospitalizations of three or more persons, and structural fires or property damage in excess of \$500,000, and reporting these accidents to the IA-DASHO.
- C. **Directors, BIA and BIE** are responsible for ensuring that managers, supervisors, and employees comply with the requirements of the Loss Compensation Program.

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- D. Regional Director (RD)** will designate an appropriate number of qualified, experienced TCOs to:
- 1) provide staff assistance on tort claims matters;
 - 2) ensure 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 related to tort claims involving the BIA.
- E. BIA Regional Safety Manager (RSM)** is responsible for:
- 1) providing technical assistance to the claimant, managers, supervisors, and TCOs pertaining to tort and employee loss compensation claims;
 - 2) investigating accidents involving employee use of a rental vehicle when appropriate; and
 - 3) investigating property damage accidents in which the government may pursue a claim for damage. The Safety Manager should be assisted by a member of the regional Property Management Office and a member of the program most closely associated with the damage.
- F. BIA Regional TCO** is responsible for:
- 1) the prompt investigation of every incident while witnesses are available, and before damage has been repaired, to secure all relevant information. The duties of the employee in his/her capacity as a TCO will ordinarily have priority over any other assignments he/she may have; and
 - 2) collecting and submitting the complete investigation file to the DOI, Office of the Solicitor, Division of General Law, Torts Practice Branch no later than 30 days after occurrence of the incident.
- G. BIE Human Resources TCO** is responsible for:
- 1) providing technical assistance to the claimant, managers, supervisors, and TCOs pertaining to tort and employee loss compensation claims;
 - 2) investigating accidents involving employee use of a rental vehicle when appropriate;
 - 3) investigating property damage accidents in which the government may pursue a claim for damage. The TCO should be assisted by a member of the BIE Property Management Office and a member of the program most closely associated with the damage;

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- 4) the prompt investigation of every incident while witnesses are available, and before damage has been repaired, to secure all relevant information. The duties of the employee in his/her capacity as a TCO will ordinarily have priority over any other assignments he/she may have; and
- 5) collecting and submitting the complete investigation file to the DOI, Office of the Solicitor, Division of General Law, Torts Practice Branch no later than 30 days after occurrence of the incident.

H. Managers/Supervisors are responsible for implementing preventive actions by:

- 1) taking reasonable steps to prevent situations which give rise to tort claims;
- 2) providing proper training and supervision of employees;
- 3) ensuring adequate safety measures are in place; and
- 4) facilitating accident prevention programs.

I. DOI Office of the Solicitor is responsible for:

- 1) the administrative determination as to the merit of any tort claim presented to the Office of the Solicitor. Judicial determination is a function of the courts; and
- 2) upon receipt of a claim and investigative report, making a determination of the claim. The determination may either deny, compromise, or pay the claim in full.

1.6 Definitions.

- A. Employees of the government** includes: (1) officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 115, 316, 502, 503, 504, or 505 of Title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation; and (2) any officer or employee of a federal public defender organization, except when such officer or employee performs professional services in the course of providing representation under Section 3006A of Title 18.
- B. Federal Tort Claims Act (FTCA)** 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 a federal agency while acting within the scope of his office or

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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 federal agency within two years after the cause of action accrues.

Approval

JASON FREIHAGE Digitally signed by JASON
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Jason Freihage
Deputy Assistant Secretary –Management

Date