

INDIAN AFFAIRS MANUAL

- 1.1 Purpose.** This chapter establishes Indian Affairs (IA) policy for the loss compensation program, including clarifying the role of the Federal Tort Claims Act (FTCA) and the Military Personnel and Civilian Employees' Claims Act (MPCECA), and outlines procedures 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) 28 U.S.C. §§ 2671 - 2680, FTCA
 - 2) 31 U.S.C. § 3721, Claims of personnel of agencies and the District of Columbia government for personal property damage or loss (codified the MPCECA)
 - 3) 28 CFR 14, Administrative Claims Under FTCA
 - 4) 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
 - 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

INDIAN AFFAIRS MANUAL

C. Handbooks.

Additional program information is further detailed in the BIA Safety and Health Handbook for Field Operations (Oct. 5, 2004), and is incorporated into this IAM chapter by reference. The handbook can be found here: <https://www.bia.gov/policy-forms/handbooks>

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 Assistance 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 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.
- D. **Regional Director (RD)** will designate an appropriate number of qualified, experienced Tort Claims Officers 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 and BIE.

INDIAN AFFAIRS MANUAL

E. Regional Safety Manager (RSM) is responsible for:

- 1) providing technical assistance to the claimant, managers, supervisors, and tort claims officers 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 or BIE Property Management Office and a member of the program most closely associated with the damage.

F. BIA Regional Tort Claim Officer 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 Tort Claims Officer will ordinarily have priority over any other assignments he/she may have; and
- 2) collecting and submitting the complete investigation file to the appropriate DOI Solicitor's Office (Central Office or regional/field) no later than 30 days after occurrence of the incident.

G. 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.

H. 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

#20-15, Issued: 5/22/20

Replaces #9 (25 IAM 6), Issued: 8/5/04

INDIAN AFFAIRS MANUAL

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** 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 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.

1.7 Standards, Requirements, and Procedures.

Individuals, businesses, or governmental entities that have a claim for money damages resulting from personal injury or property loss or damage caused by IA, IA employees, or Tribes (under the provisions of P.L. 93-638 and P.L. 100-297) that were acting within the scope of their employment may file a claim with IA. A claim may be submitted by the injured party or a duly authorized agent or legal representative.

- A. Employee Claims.** Claims against the United States, arising after August 31, 1964, are settled for damage to, or loss of, personal property of IA employees. The damage or loss must be incident to the employee's service, and possession of the property must be reasonable, useful, or proper in the circumstances. As stated in 451 DM 1 and in 485 DM 7, the investigation, processing, and settlement of claims must comply with the MPCECA.
- B. Processing of Claims.** Proper treatment of claims is the responsibility of the Tort Claims Officer. Claims are processed by preparing a case/report file which includes, where appropriate, photographs, medical records, doctors' statements, itemized bills for medical expenses incurred, itemized estimates for necessary property repairs, police investigation reports, witnesses' statements, and any other pertinent data.

INDIAN AFFAIRS MANUAL

- C. Presentation of Claims.** A claim will be deemed to have been presented when the appropriate office or program receives from a claimant, duly authorized agent, or legal representative, an executed Standard Form (SF) 95: Claim for Damage, Injury or Death. A claim presented to the wrong federal agency must be transferred to the appropriate agency.
- D. Receiving Claims.** The claimant's envelope must be retained, and the claim form must be time and date stamped, recorded, and forwarded immediately to the Tort Claims Officer. The Tort Claims Officer must forward the original claim form no later than 24 hours after receipt, together with all of the original papers, to the appropriate DOI Solicitor's Office (Central Office or regional/field). If the claim is not forwarded within this time, a memorandum stating the reason for the delay must be submitted.
- E. Accident Reporting.** Employees must immediately notify their 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 must immediately notify the appropriate Tort Claims Officer and complete SF 91: Motor Vehicle Accident Report and SF 94: Statement of Witness (if witnessed), when appropriate.
- F. Investigations by Supervisors and BIA RSMs.** The requirements and procedures for investigating accidents set forth in 485 DM 7 must be followed. When investigating accidents which have resulted, or may result, in a tort claim, supervisors and Safety Managers must 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 investigation report by supervisors, Safety Managers, and others involved must be furnished to the Tort Claims Officer.
- G. Serious Accident Investigation.** Upon the recommendations of the Chief, DSRM and the IA-DASHO, a Serious Accident Investigation Team may be assembled to investigate an accident. The serious accident investigation will be conducted in accordance with 485 DM 7.
- H. Notification.** An employee must notify his or her supervisor immediately whenever a lawsuit is threatened or filed in court alleging a tort arising out of government employment.

INDIAN AFFAIRS MANUAL

Part 25
Chapter 5

Safety and Risk Management Program
Loss Compensation Program

Page 6

1.8 Reports and Forms.

A. SF forms mentioned herein are found on the General Services Administration (GSA) Forms Library website here: <https://www.gsa.gov/reference/forms> and on the IA Safety Management System SharePoint site here: <https://doimspp.sharepoint.com/sites/bia-ems/iasafety>

B. The BIA-2502: Tort Claim Payments and Third Party Recoveries Report must be submitted by the RSM to DSRM no later than the 15th day following the end of the quarter (this is for reporting on the previous quarter).

This form can be found on the IA Safety Management System SharePoint site here: <https://doimspp.sharepoint.com/sites/bia-ems/iasafety> and on the IA Forms webpage here: <https://www.bia.gov/policy-forms/online-forms> (on the 'Indian Affairs Specific Forms and Guidance' tab).

C. A comprehensive list of required reports and forms is further detailed in the BIA Safety and Health Handbook for Field Operations; specifically, Topic 18: Accident/Incident Investigations, Topic 25: Loss Compensation, and Topic 28: Recordkeeping and Reporting. This handbook is on the IA Directives webpage here: <https://www.bia.gov/policy-forms/handbooks>

Additional information and resources are available on the IA Safety Management System (a.k.a. IA Safety Connect) SharePoint site here: <https://doimspp.sharepoint.com/sites/bia-ems/iasafety>. This site is accessible to all IA employees through the following: 1) BIA Office 365 Active Directory Accounts [for users with a bia.gov email address], 2) BIE employees with existing Office 365 accounts, or 3) by invitation by going to <https://tinyurl.com/ia-connect>

Approval

JASON FREIHAGE Digitally signed by JASON FREIHAGE
Date: 2020.05.22 12:50:03 -04'00'

Jason Freihage
Deputy Assistant Secretary –Management

Date