

**CAPITOL POLICE BOARD REGULATIONS FOR SETTLEMENT
AND PAYMENT OF FEDERAL TORT CLAIMS ACT ADMINISTRATIVE CLAIMS
AND CLAIMS UNDER THE MILITARY PERSONNEL
AND CIVILIAN EMPLOYEES CLAIMS ACT**

Whereas, Pub.L. 108-447, 118 Stat. 2809 (December 8, 2004), authorizes that the Chief of the United States Capitol Police, in accordance with regulations prescribed by the Attorney General and any regulations as the Capitol Police Board may prescribe, may consider, ascertain, determine, compromise, adjust, and settle, in accordance with the provisions of Chapter 171 of Title 28, United States Code, any administrative claim (S. Rep. No. 108-307, §1008, July 15, 2004) 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 Capitol Police 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.

Whereas, Pub.L. 108-447, 118 Stat. 2809 (December 8, 2004), further authorizes the Chief of the United States Capitol Police, in accordance with the provisions of Chapter 37 of Title 31, United States Code, to settle and pay a claim made by an employee of the Capitol Police against the United States Capitol Police for damage to or loss of personal property incident to government service.

Pursuant to such authority, the Capitol Police Board hereby promulgates regulations as follows:

SECTION 1. DEFINITIONS

For the purposes of these regulations, the terms shall be defined as follows:

- A. Capitol Police** – The term “Capitol Police” means the United States Capitol Police (USCP).
- B. Chief of Police** – The term “Chief of Police” means the Chief of the United States Capitol Police.
- C. Federal Tort Claims Act (FTCA)** – FTCA means the Federal Tort Claims Act, as amended, 28 U.S.C. 2671 et seq.
- D. Military Personnel and Civilian Employees Claims Act (MPCECA)** – MPCECA means the Military Personnel and Civilian Employees Claims Act of 1964, as amended, 31 U.S.C. 3721.
- E. Head of Agency** – For purposes of section 2672 of Title 28 and Chapter 37 of Title 31, United States Code; the term “Head of Agency” means the Chief of Police.
- F. Applicable Committee** – The term “Applicable Committee” means the Committee on Rules and Administration of the United States Senate, in the case of a claim of a Senator or an officer or employee whose pay is disbursed by the Secretary of the Senate; or the Committee on House Administration of the United States House of Representatives, in the case of a Member of the House of Representatives (including a Delegate or Resident Commissioner to the Congress)

or an officer or employee whose pay is disbursed by the Chief Administrative Officer of the House of Representatives.

G. **Standard Form 95 (SF95)** – SF95 means the Standard Form 95, Claim for Damage, Injury, or Death.

H. **Standard Form 1145 (SF1145)** – SF1145 means the Standard Form 1145, Voucher for Payment Under the Federal Tort Claims Act.

SECTION 2. SCOPE

The provisions of these regulations apply only to administrative claims asserted under:

A. The FTCA for money damages against the United States because of damage to or loss of property or personal injury or death, caused by the negligent or wrongful act or omission of any employee of the USCP while acting within the scope of his/her employment, and

B. The MPCECA for claims of USCP personnel for personal property damage or loss incident to service for the USCP.

SECTION 3. FTCA PROCESSING

A. Administrative claim; when presented; place of filing

(1) For purposes of these regulations, a claim shall be deemed to have been presented when the United States Capitol Police receives, at a place designated in paragraph (3) of this section, original executed forms SF95 and SF1145, or other written notification of an incident accompanied by a claim for money damages in a sum certain for damage to or loss of property, for personal injury, or for death, alleged to have occurred by reason of the incident. A claim which should have been presented to the USCP, but which was mistakenly addressed to or filed with another federal entity, shall be deemed to be presented to the USCP as of the date that the claim is received by the USCP. A claim mistakenly addressed to or filed with the USCP shall, as soon as is practical, be transferred to the appropriate federal entity, if ascertainable, or returned to the claimant.

(2) A claim presented in compliance with paragraph (1) of this section may be amended by the claimant at any time prior to final action by the Chief of Police, or his designee, or prior to the exercise of the claimant's option to bring suit under 28 U.S.C. 2675(a) in U.S. District Court. Amendments shall be submitted in writing and signed by the claimant or a duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the USCP shall have one hundred and eighty (180) days in which to make a final "agency" decision relative to the claim, as amended, and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until one hundred and eighty (180) days after the filing of an amendment. Any appropriately filed claim which is not finally adjudicated by

the USCP within one hundred and eighty (180) days of proper filing shall be deemed an “agency” denial under the FTCA and the claimant shall have standing to file suit in U.S. District Court.

- (3) Forms may be obtained and claims shall be filed with the United States Capitol Police, Office of the General Counsel (OGC), 119 D Street, N.E., Suite 701, Washington, DC 20510. In the event of address change of the Office of the General Counsel, the General Counsel is hereby authorized to make appropriate adjustments to claimant forms and place of filing without further review by the Capitol Police Board.

B. Administrative claims; who may file

- (1) A claim for injury to or loss of property may be presented by the owner of the property interest that is the subject of the claim, or a duly authorized agent or legal representative, provided the OGC receives written verification of the legal representation and authority to make a claim on behalf of the claimant.
- (2) A claim for personal injury may be presented by the injured person or a duly authorized agent or legal representative, provided the OGC receives written verification of the legal representation and authority to make a claim on behalf of the claimant.
- (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 under applicable state law, provided the OGC receives written verification of lawful authority to act as the claimant's legal representative in the above referenced capacity.
- (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 insurer or the insured, individually or jointly, as their respective interests appear. Whenever an insurer presents a claim asserting the rights of a subrogee, the insurer shall present to the OGC, along with the claim, appropriate evidence in writing that the insurer has the rights of a subrogee.
- (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 authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

C. Evidence to be submitted

- (1) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information, as well as other information as the OGC deems relevant and appropriate for proper investigation and administrative adjudication:
 - (a) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.
 - (b) Decedent's employment or occupation at time of death, including monthly or yearly salary or earnings (if any), and the duration of last employment or occupation.
 - (c) 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 death.
 - (d) Degree of support afforded by the decedent to each survivor dependent upon the decedent for support at the time of death.
 - (e) Decedent's general physical and mental condition before death.
 - (f) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payments for such expenses.
 - (g) 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.
 - (h) Any other evidence or information that may have a bearing on the issue of responsibility of the United States for the death or the damages claimed.
- (2) *Personal Injury.* In support of a claim for personal injury, including pain and suffering, the claimant may be required to submit the following evidence or information, as well as other information as the OGC deems relevant and appropriate for proper investigation and administrative adjudication:
 - (a) A written report by the claimant's attending physician, dentist or other medical doctor setting forth the nature and extent of the injury, nature and extent of treatment, any degree of temporary or permanent disability, the prognosis, period of hospitalization, and any diminished earning capacity. In addition, the claimant may be required to submit to a physical or mental examination by a physician employed or designated by the USCP. A copy of the report of the examining physician may be made available to the claimant upon the claimant's written request provided that the claimant has furnished the report referred to in the first sentence of this subparagraph,

and has made, or agrees in writing to make available to the USCP, any other physician's reports previously or thereafter made regarding the physical or mental condition which is the subject matter of the claim.

- (b) Itemized bills for medical, dental, hospital and related expenses incurred, or itemized receipts of payment for such expenses.
- (c) If the prognosis reveals the necessity for future treatment, a statement of the expected duration of and expenses for such treatment.
- (d) If a claim is made for loss of time from employment, a written statement from the claimant's employer showing actual time lost from employment, whether the claimant is a full or part-time employee, and wages or salary actually lost.
- (e) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.
- (f) Any other evidence or information that may have a bearing on the issue of responsibility of the United States for the personal injury or the damages claimed.

(3) *Property Damage.* In support of a claim for damage to or loss of property, real or personal, the claimant, at the discretion of the OGC, may be required to submit the following evidence or information:

- (a) Proof of ownership.
- (b) At least two (2) written estimates for the cost of repairs from reliable commercial establishments.
- (c) A detailed statement of the amount claimed with respect to each item of property.
- (d) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.
- (e) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, in circumstances wherein the claimant or facts indicate that repair is not possible or economically feasible.
- (f) Any other evidence or information that may have a bearing on the issue of responsibility of the USCP either for the injury to or loss of property, or for the damage claimed.

(4) *Time limit.* All evidence required to be submitted by this section shall be furnished by the claimant within a reasonable time. Failure of a claimant to furnish evidence necessary to a determination of the claim within ninety (90) days after a request has been mailed to the last known address of claimant shall be deemed an abandonment of the claim. The abandonment of the claim shall be a denial of such claim.

D. Investigation, examination, and determination of claims

- (1) The OGC, subject to the approval by and direction of the General Counsel, shall be responsible for making recommendations to the Chief of Police regarding adjustments, determinations, compromises and settlements of all administrative tort claims filed with the USCP.
- (2) In carrying out these functions, the OGC shall conduct such investigations as are necessary for a determination of the validity of the claim(s).
- (3) The OGC shall be responsible for submitting all documentation and a recommendation for the resolution of all claims to the Chief of Police.
- (4) The decision of the Chief of Police shall be a final agency decision for purposes of 28 U.S.C. 2675.
- (5) The Office of the Chief of Police shall notify immediately the OGC when each claim is approved and submitted to the Office of Financial Management (OFM) for payment.

E. Final denial of claim

- (1) Final denial of an administrative claim shall be in writing and sent to the claimant, claimant's attorney, or legal representative by certified or registered mail.
- (2) Prior to the commencement of suit and prior to the expiration of the one hundred and eighty (180) day period after the date of mailing by certified or registered mail of notice of final denial of the claim as provided in 28 U.S.C. 2401(b), a claimant, a duly authorized agent, or a legal representative, may file a written request with the USCP for reconsideration of a final denial of a claim in accordance with procedures for amending a claim under paragraph A of this section. Upon the timely filing of a request for reconsideration, the USCP shall have one hundred and eighty (180) days from the date of this filing in which to make a final disposition of the claim, and the claimant's option under 28 U.S.C. 2675(a) to bring suit shall not accrue until one hundred and eighty (180) days after the filing of a request for reconsideration. Final action on a request for reconsideration shall be effected in accordance with the provisions of paragraphs A(2) and E(1) of this section.

F. Payment of approved claim

- (1) Upon receipt of a claim approved for final payment by the Chief of Police, OFM shall, within thirty (30) days of receipt of such claim, pay the claim in accordance with the SF1145 voucher for payment and applicable OFM internal procedures, and immediately advise the OGC of such payment. If, in the event that it shall become impractical for OFM to make payment within such time period noted above, OFM shall make a written notification to the Chief of Police and the General Counsel of the reason for any projected delay in payment and a reasonable estimate of actual payment time.
- (2) The claimant or duly authorized agent must sign a SF1145 voucher for payment before payment is made.
- (3) When the claimant is represented by an attorney, the SF1145 shall designate both the claimant and the attorney as "Payees." The payment shall be delivered to the attorney whose address appears on the voucher for payment.
- (4) No attorney shall charge, demand, receive, or collect for services rendered, in excess of 20 percent of any administrative settlement, or otherwise in accordance with the provisions of 28 U.S.C. 2678.

G. Release

Acceptance by the claimant, the claimant's agent or legal representative of any award, compromise or settlement made hereunder, shall be final and conclusive on the claimant, agent, subrogee or legal representative and any other person on whose behalf or for whose benefit the claim has been presented, and shall constitute a complete release of all claims against the USCP, the United States or any employee of the federal government arising out of the same subject matter. The execution by the claimant or the legally authorized representative of the SF1145, and payment thereof, shall be the release of the United States, the USCP, and/or any employees thereof, in full satisfaction of the claim.

H. Penalties

A person who files a false claim or makes a false or fraudulent statement in a claim against the United States may be imprisoned for not more than 5 years, pursuant to 18 U.S.C. 287 and 1001. In addition, that person may be liable for a civil penalty of not less than \$5,000 and not more than \$10,000, and damages of triple the loss or damage sustained by the United States, as well as the costs of a civil action brought to recover any penalty or damages, pursuant to 31 U.S.C. 3729.

I. Limitation on authority of USCP to pay claims

- (1) An award, compromise or settlement of a claim under these regulations in excess of \$25,000 shall be effected only with the prior written approval of the U.S. Attorney General or designee. For the purposes of this paragraph, a principal claim and any derivative or subrogated claim shall be treated as a single claim.
- (2) An administrative claim may be adjusted, determined, compromised or settled hereunder only after consultation with the Department of Justice (DOJ) when, in the opinion of the OGC:
 - (a) A new precedent or a new point of law is involved; or
 - (b) A question of policy is or may be involved; or
 - (c) The USCP is or may be entitled to indemnity or contribution from a third party and the USCP is unable to pursue independently the third party claim; or
 - (d) The compromise of a particular claim, as a practical matter, will or may control the disposition of a related claim in which the amount to be paid may exceed \$25,000.
- (3) An administrative claim may be adjusted, determined, compromised, or settled by the USCP hereunder only after consultation with the DOJ when USCP is informed or is otherwise made aware of the fact that the United States or an employee, agent, or cost-plus contractor of the United States is involved in litigation based on a claim arising out of the same incident or transaction.

J. Relationship to other agencies

These regulations hereby incorporate by reference the regulations of the U.S. Attorney General under part 14 of Chapter 1 of Title 28, Code of Federal Regulations, as amended. The regulations of the U.S. Attorney General, including subsequent amendments thereto, and the provisions of these regulations, apply to the consideration by the USCP of administrative claims under the FTCA.

SECTION 4. SPECIAL RULE FOR CLAIMS MADE BY MEMBERS OF CONGRESS, OFFICERS AND CONGRESSIONAL EMPLOYEES

A. In general, with respect to any claim described above and filed in accordance with procedures set out in Section 3, above, that is made by a Member of the Congress or any officer or employee of Congress, the Chief of Police shall:

- (1) not later than 14 days after the receipt of such claim, notify the Chairman of the Applicable Committee of the receipt of the claim; and

(2) not later than 90 days after the receipt of such claim, submit a proposal for the resolution of such claim, which shall be subject to the approval of the Chairman of the Applicable Committee, as defined above in Section 1.

B. Extension

The 90-day period in subparagraph A(2) of Section 4, above, may be extended for an additional period (not to exceed 90 days) for good cause as determined by the Chairman of the Applicable Committee, upon the request of the Chief of Police.

C. Approval consistent with Federal Tort Claims Act

Nothing in this paragraph may be construed to permit the Chairman of an Applicable Committee to approve a proposal for the resolution of a claim described above which is not consistent with the terms and conditions applicable under Chapter 171 of Title 28, United States Code, to the resolution of claims for money damages against the United States.

SECTION 5. PERSONAL PROPERTY CLAIMS OF EMPLOYEES OF THE CAPITOL POLICE

A. This section pertains to all claims filed by or on behalf of USCP employees for loss of, or damage to, personal property incident to service with the USCP under the MPCECA, 31 U.S.C. 3721. All claims must be filed in accordance with procedures as described in Section 3, above, must be substantiated, and the possession of the property, incident to the service, must be determined to be reasonable, useful, or proper. The OGC is hereby authorized to develop any forms as may be determined necessary to enhance efficiencies.

B. Maximum payment under this part. The Chief of Police may settle and pay not more than \$40,000 for a claim, as described in this part, against the USCP made by a USCP employee. If, however, the claim arose from an emergency evacuation or from extraordinary circumstances, the amount settled and paid may exceed \$40,000, but may not exceed \$100,000. A claim may be paid in money or the personal property replaced in kind in accordance with provisions of the MPCECA.

SECTION 6. PAYMENT LIMITATIONS

A. Nothing in this regulation may be understood or construed to affect:

(1) Any payment under Section 1304 of Title 31, United States Code, (DOJ Judgment Fund), of a final judgment, award, compromise settlement, and interest and costs specified in the judgment based on a claim against the Capitol Police; and

CPB Regulations for Settlement of FTCA and MPCECA Claims

(2) Any authority for any settlement under Section 414 of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1414, or payment under Section 415 of that Act, 2 U.S.C. 1415.

B. No claim under the provisions of this regulation shall be made in any case or matter that is not settled or paid as an administrative claim pursuant to the FTCA and the authority of the Head of the Agency as defined above in Section 1, or pursuant to a payment under MPCECA. Provided further that no payments shall be made pursuant to these regulations that would otherwise be payable under 2 U.S.C. 1415 of the CAA or for any matter brought before the U.S. District Court pursuant to the provisions of the FTCA.

By unanimous concurrence of the Capitol Police Board these regulations are hereby adopted by the Capitol Police Board this 16th day of MARCH, 2005.



William H. Pickle
Chairman
Capitol Police Board



Wilson Livingood
Member
Capitol Police Board



Alan M. Hantman
Member
Capitol Police Board