

# NIH Policy Manual

## 1172 - Defense of Suits Against NIH Employees Operating Motor Vehicles in Scope of Employment

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**Approving Official(s):** DDM

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Transmittal Notice

### 1. Explanation of Material Transmitted:

This chapter establishes policy and describes procedures for handling lawsuits against National Institutes of Health (NIH) Federal employees, related to the operation of a motor vehicle, within the scope of one's employment. It is being revised at this time to: a) incorporate plain language requirements; b) to comply with the NIH Manual 1710 requirement to update manual issuances every 5 years; and c) to reflect organizational changes in the Office of Research Services (ORS).

### 2. Filing Instructions:

**Remove:** NIH Manual Chapter 1172 dated: 07/18/17

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**PLEASE NOTE:** For information on:

- Content of this chapter, contact the issuing office listed above.
- NIH Policy Manual, contact the Division of Compliance Management, OMA on 301-496-4606, or enter this URL: <https://oma.od.nih.gov/DMS/Pages/Manual-Chapters.aspx>

### A. Purpose

This chapter describes the procedures to be followed by a NIH employee if they are sued for damages to property, or for personal injury or death, due to the operation of a motor vehicle within the scope of employment.

## **B. Scope**

This chapter applies to all NIH federal employees during the course of performing their duties. This chapter does not apply to contractors.

## **C. Background**

Public Law 87-258 (28 United States Code (U.S.C.) Sec. 2679) amended the Federal Tort Claims Act to require the Department of Justice (DOJ) to defend such suits and gives that Department responsibility for determining whether the employee involved in such a suit was driving the motor vehicle within the scope of employment when the accident occurred. Also, it provides that a lawsuit against the Government is the exclusive remedy available when a Federal employee operating a motor vehicle within the scope of their employment is involved in an accident.

## **D. Policy**

Any NIH employee (or personal representative, if the action is brought against the estate) must inform their immediate supervisor as soon as possible, after receiving information or papers, that the employee is or will be sued for damages or that a claim has been filed based on the employee's operation of a motor vehicle in the scope of their federal employment.

## **E. Responsibilities**

### **5. Division of Police**

- a. Provides all pertinent documentation to the appropriate parties about any incidents occurring on:
  1. NIH main campus in Bethesda Maryland – 9000 Rockville Pike, Bethesda, MD 20892
  2. Rocky Mountain Labs (RML) - 903 S 4th St. Hamilton, MT 59840

### **6. NIH Police Officer**

- a. Performs normal duties, which includes the handling of basic traffic incidents.

### **7. NIH Employee Operating Motor Vehicle in Scope of Employment**

- a. All employees are responsible for operating motor vehicles within traffic laws and reporting any related incidents or accidents that occur while performing their official work (or in the scope of their employment).
- b. As soon as the employee receives documents concerning the suit, the employee must deliver the documents or a complete copy thereof to their supervisor.

### **8. NIH Supervisor**

- a. The NIH supervisor serves as the liaison between the employee and the Office of the General Counsel (OGC), Department of Health and Human Services (HHS) and manages the appropriate reporting process for their area.

### **9. HHS Office of the General Counsel**

- a. The HHS OGC is responsible for all legal actions related to any incident.

## **F. Procedures**

### **4. NIH Police Officer**

- a. The NIH police officer must record all pertinent incident information on the appropriate documents concerning any traffic incident at the facility locations listed above: E.1.a.1) and E.1.a.2).

### **5. NIH Employee Operating Motor Vehicle in Scope of Employment**

- a. Incident – NIH employees must immediately inform their supervisor if they are in an accident while operating a motor vehicle in the scope of Federal employment.
- b. Claim – NIH employees (or personal representative), if the action is brought against the estate, must immediately inform their supervisor upon notification that a claim or suit has been, or will be filed related to damages that occurred as a result of the employee's operation of a motor vehicle in the scope of their Federal employment.

### **6. NIH Supervisor**

- a. The NIH supervisor must immediately inform the HHS OGC of any claims brought against any employee under their supervision. The supervisor must immediately send all documents relating to the motor vehicle incident, including a completed [Standard Form 91 \(Motor Vehicle Accident Report\)](#), to HHS OGC.
- b. Contact information for HHS OGC is located at:  
<http://www.hhs.gov/about/agencies/ogc/key-personnel/general-law-division/index.html#>).

### **7. HHS OGC**

- a. The HHS OGC will make the final determination regarding the disposition of administrative tort claims and coordinate with the DOJ for the defense of suits against the government.

## **G. References**

1. [Federal Tort Claims Act, 28 U.S.C. § 2671 et seq.](#)
2. [Federal Tort Claims Act, 28 U.S.C. 2672](#)
3. [Tort Claims Against the Government, 45 C.F.R. Part 35](#)
4. [NIH Policy Manual Chapter 1743 - Managing Federal Records](#)
5. [NIH Policy Manual, Chapter 26101-38 - Official Use of Government Motor Vehicles](#)

## **H. Definitions**

1. **Tort** – A wrongful act, not including a breach of contract or trust, that results in injury or harm to another person, and to one's person, property, reputation, or the like, and

for which the injured party is entitled to compensation.

2. **Tort Claims** –The area of law that covers most civil lawsuits. Essentially, every **claim** that arises in civil court with the exception of contractual disputes falls under **tort** law. The concept of **tort** law is to redress a wrong done to a person, usually by awarding them monetary damages as compensation.
3. **Suits/lawsuits** – Any proceeding brought by one or more parties against another one or more parties in a court of law.