

**FOREST SERVICE EMPLOYEES' USE OF VEHICLES
WHILE CONDUCTING OFFICIAL BUSINESS**

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FOREST SERVICE EMPLOYEES' USE OF VEHICLES WHILE CONDUCTING OFFICIAL BUSINESS

A. USE OF PERSONALLY-OWNED VEHICLES FOR OFFICIAL BUSINESS

Authorities Cited:

- 5 U.S.C. § 5704
- 41 C.F.R. 301, Federal Travel Regulation
- 31 U.S.C. § 3721, Military Personnel and Civilian Employees' Claims Act
- USDA Departmental Regulation 2510-1, January 25, 1995
- FSH 6509.11h, Service Wide Claims Management Handbook, Chapter 40, Employee Claims
- 28 U.S.C. §§ 1346, 2401 and 2671-2680, Federal Tort Claims Act

1. DAMAGES TO AN EMPLOYEE'S PERSONALLY-OWNED VEHICLE

a. Under 5 U.S.C. § 5704 and the Federal Travel Regulation, a Federal employee is entitled to receive reimbursement for use of their private vehicle for official business on a "rate per mile" basis rather than for actual expenses incurred. This reimbursement is intended to cover costs incurred by the employee for gas, wear and tear, and insurance. The only additional reimbursement allowed is limited to parking fees; ferry fees; bridge, road-use and tunnel fees; aircraft or airplane parking; and tie-down fees. Since the mileage reimbursement is in lieu of actual expenses, **no additional reimbursement is allowed to compensate for damage to, or loss of, a motor vehicle.**

b. Under 31 U.S.C. § 3721, the Military Personnel and Civilian Employees' Claims Act (MP&CE Claims Act), an employee may be compensated for damage to, or loss of, personal property under explicit circumstances. The Act allows payment of an employee's claim for personal property if the loss or damage was incident to the employee's service and possession of the property was reasonable, useful or proper under the circumstances. The Act also allows for reimbursement when the property was used for the benefit of the Government **at the direction of a superior authority.** However, the Act contains no specific language regarding vehicles.

USDA Departmental Regulation (DR) 2510-1 addresses the types of claims that may be awarded under the MP&CE Claims Act. DR 2510-1 Section 9b(4)(o) states the Department **will not** award claims under the MP&CE Claims Act for "loss or damage incident to the operation of motor vehicles, **unless allowable under section 9b(3)(b).**" **Section 9b(3)(b) permits only claims for damage to, or loss of, vehicles that are subjected to extraordinary risks in the performance of the employee's official duties.** "Extraordinary risk" circumstances are defined as "in connection with a civil disturbance, common or natural disaster, or efforts to save human life or Government property." The Department emphasizes that, pending any change to the Regulation, the Forest Service must abide by the terms of DR 2510-1.

****NOTE:** Employees considering use of their personally-owned vehicles to conduct official business, and their supervisors, should be aware of the probability that the Government will **not** be able to reimburse the employees for any damage that occurs to the personally-owned vehicles incident to such use. Employees are encouraged to contact their insurance companies for further assistance.**

c. If damage occurs to an employee's vehicle due to the actions of another Federal employee who was acting within the scope of employment, the vehicle owner would have the standing of any private party, including the right to file a claim under the Federal Tort Claims Act (see item 2, below).

d. In very specific circumstances, limited recovery for employees' damaged personal property **may** be available under the following authorities:

1. 16 U.S.C. § 502, Loss, Damage, or Destruction of Hired Equipment
2. 16 U.S.C. § 574, Claims for Damage to or Destruction of Private Property in the Protection, Administration, and Improvement of the National Forests

Employees should contact their Unit Claims Specialists for information regarding these authorities.

2. DAMAGES/INJURIES SUFFERED BY A THIRD PARTY

Claims for recovery for property damage or personal injuries suffered by a third party are considered under the provisions of the Federal Tort Claims Act (FTCA). The Government **may** be liable for such damages **if**:

- a. The employee had written supervisory approval prior to travel to use their personal vehicle.
- b. The employee was acting within the scope of employment when the accident occurred.
- c. The accident was the result of negligence on the part of the employee.

If the third party seeks to recover damages from the employee in a court action, the Government **may** be substituted for the employee under the provisions of 28 U.S.C. § 2679, provided the employee was acting within the scope of employment. The Department of Justice (DOJ), not the Office of the General Counsel (OGC) or the Forest Service, makes this determination. Scope of employment involves considerably more than "being on the clock." If the DOJ rules that the employee deviated from a straight-line route and was conducting personal business rather than business of the Government when the accident occurred, the employee is considered

outside the scope of employment and will not be entitled to DOJ representation if sued. Factors vary, depending upon applicable State laws.

3. INJURIES SUSTAINED BY THE EMPLOYEE

Compensation for personal injuries suffered by the employee are considered under the Federal Employees' Compensation Act through the Office of Workers' Compensation (Department of Labor), if the employee was conducting official business at the time of the incident.

B. USE OF RENTED VEHICLES FOR OFFICIAL BUSINESS

Authorities Cited:

- Military Traffic Management Command U.S. Government Car Rental Agreement No. 3, effective 10/01/02
- 28 U.S.C. §§ 1346, 2401 and 2671-2680, Federal Tort Claims Act
- 41 C.F.R. 301, Federal Travel Regulation
- Bank of America Visa Auto Rental Insurance, Government-issued Travel Card

When selecting a commercially-rented vehicle, employees are required to exhaust all possibilities of rental vehicles available from carriers included under the Military Traffic Management Command U.S. Government Car Rental Agreement (MTMC Car Rental Agreement). This Agreement governs the rental of cars and passenger vans by Federal employees when the Government authorizes such rentals. **The terms and conditions of this agreement take precedence over the policies and provisions of any contrary rental document the employee signs when renting a vehicle.**

In addition to the competitive rates set forth in the MTMC Car Rental Agreement, each participating company may charge the renter a standard mandatory Government Administrative Rate (GARS) supplement of \$5.00 per day. GARS reimburses the participating companies for those costs incurred that are peculiar to doing business with the Government. GARS is a reimbursable charge paid by each renter (employee).

Not all car rental companies participate in the MTMC Car Rental Agreement and not all types of vehicles are included. Generally excluded are all sizes of trucks; cargo vehicles; utility vehicles; and vehicles operated off paved, graded, state, or professionally maintained roads. In some cases, vans are also excluded.

In order to protect themselves and the Government when renting vehicles, employees should be aware of the following:

1. RENTAL OF VEHICLES UNDER THE MTMC U.S. GOVERNMENT CAR RENTAL AGREEMENT

a. Employee Identification. A Travel Order, Travel Authorization or a Government-issued credit card are evidence of an employee's official travel status. When the

Government credit card is used as identification of official travel status, the cost of rental will be charged to that card. Acceptance of a Government credit card by the rental company is mandatory under the MTMC Car Rental Agreement. Precharging credit cards with the estimated amount of the rental and making adjustments when the car is returned are prohibited.

b. Authorized Drivers. Persons authorized to operate vehicles rented under the MTMC Car Rental Agreement, if properly licensed, include the renter and, without additional charge, the renter's fellow employees while acting within the scope of their employment.

c. Insurance and Damage Liability. Government renters (acting within the scope of employment) will not be responsible for loss or damage to the vehicle except as stated below. Personal accident insurance, personal effects coverage, or other optional coverage may be offered to the renter but is not a prerequisite for renting a vehicle. **The Forest Service has no authority to reimburse employees for the cost of the personal or optional coverage.**

(1) Notwithstanding the provisions of any rental agreement executed by the Government employee when renting a vehicle under the terms of the MTMC Agreement, the rental company will maintain in force, at its sole cost, insurance coverage which will protect the Government and its employees using vehicles rented under the MTMC Agreement against liability for personal injury, death, and property damage arising from the use of the vehicle. The personal injury/wrongful death limits will be \$100,000 for each person for each accident or event, \$300,000 for all persons in each such accident or event, and property damage limits of \$25,000 for each such occurrence.

(2) Loss or Damage to Vehicle. Government renters will not be subject to any fee for loss or collision damage waiver (CDW) and, in the event of an accident, will not be responsible for loss or damage to the vehicle except as specified below:

“The [rental] Company, hereby, assumes and shall bear the entire risk of loss of or damage to the rented vehicles (including costs of towing, administrative costs, loss of use, and replacements), from any and every cause whatsoever, including without limitation, casualty, collision, fire, upset, malicious mischief, vandalism, tire damage, falling objects, overhead damage, glass breakage, strike, civil commotion, theft and mysterious disappearance, except when the loss or damage is caused by one or more of the following:

- 1. Obtaining the vehicle through fraud or misrepresentation, or the damage or loss is caused intentionally by an authorized driver.*
- 2. Operation of the vehicle by a driver who is under the influence of intoxicants or any prohibited drugs;*
- 3. Use of the vehicle for any illegal purpose;*

4. *Use of the vehicle in pushing or towing another vehicle;*
5. *Use or permitting the vehicle to carry passengers or property for hire;*
6. *Operation of the vehicle in live artillery fire exercises, or used in training for tactical maneuvers;*
7. *Operation of the vehicle in a test, race, or contest;*
8. *Operation of the vehicle by a person other than an authorized driver¹;*
9. *Operation across international boundaries, unless specifically authorized at the time of rental;*
10. *Theft of the rented vehicle and the renter cannot produce vehicle keys, unless the renter can show the keys were stolen through theft or robbery; or*
11. *Operation of the vehicle off paved, graded, state, or professionally maintained roads, or driveways, except when the company has agreed to this in writing beforehand.”*

d. Billing for Damages. Charging the renter’s credit card for damage to the rental vehicle is prohibited if the renter was on official duty and in the scope of employment at the time the damage occurred. When loss or damage is due to an exception stated above, the rental company will submit its bills directly to the renter’s (employee’s) agency, to the attention of the renter at the official duty address. If the Government denies liability on the basis that the renter or other authorized driver was not operating the vehicle for an official purpose within the scope of employment at the time of damage or loss, the rental company may handle the matter directly with the renter.

e. Accident or Repairs. In the event of an accident or if repairs become necessary, the renter (employee) should immediately notify the rental company and request instructions. The renter will notify the rental company of any accident and will obtain a police report for the rental company if one is reasonably available.

f. Details regarding the MTMC Car Rental Agreement and a list of participating companies can be accessed via the Internet at <http://www.mtmc.army.mil/>.

2. RENTAL OF VEHICLES NOT COVERED BY THE U.S. GOVERNMENT CAR RENTAL AGREEMENT

a. If an appropriate (covered) vehicle is unavailable under the MTMC Car Rental Agreement, the employee should try to obtain rental vehicles through the Unit Procurement Staff. **Renting a vehicle from a rental company that does not participate in the MTMC Car Rental Agreement should be a last resort.**

b. If an employee rents a vehicle that is not covered under the MTMC Car Rental Agreement, the terms of the individual rental agreement apply and are binding. **The employee should read any rental agreement carefully before signing.**

¹ See section 1.b. above for information regarding authorized drivers.

c. If an employee rents a vehicle that is not covered under the MTMC Car Rental Agreement, they may choose to purchase optional insurance coverage such as the loss or Collision Damage Waiver (CDW) or personal effects coverage. **However, the Forest Service has no authority to reimburse the employee for the cost of the optional coverage.**

d. In most cases, if the employee does not purchase optional insurance coverage, they **can be** held personally liable to the car rental company for any loss or damage to the vehicle, regardless of the cause. The company may make demands for damages against the employee personally, rather than against the Forest Service. If this occurs, the employee should immediately contact the Unit Claims Specialist. If the car was being used for official business, the Forest Service will request substitution of the Government for the employee in resolving the claim. However, **if the Government denies the claim, the car rental company could continue to hold the employee personally liable.**

3. RENTAL OF VEHICLES THROUGH THE GOVERNMENT VISA TRAVEL CARD

a. Under a General Service Administration (GSA) contract, a Bank of America Visa credit card is supplied to approved Department employees for use when on official travel. Department employees are required to use their Government Visa Travel Cards to pay for all official travel expenses that will be reimbursed by their agencies, except for specific charges or when the employee has an exemption (41 C.F.R. 301-51.1; 301-51.2). According to the Visa Services and Benefits Guide distributed by Bank of America with each Government Visa Travel Card, use of the card to rent a vehicle includes Auto Rental Insurance (ARI). The Visa ARI provides coverage at no additional cost for damage due to collision or theft up to the actual cash value of most rental vehicles when certain terms and conditions are met.

b. Despite the Visa ARI coverage, employees should make every effort to rent from companies participating under the MTMC Car Rental Agreement for three reasons. First, Federal travel regulations advise employees to utilize “rental car arrangements in which [their] agenc[ies] participate” (41 C.F.R. 301-50.3). **Second,** the MTMC Agreement provides more than just coverage in the event of loss of or damage to the rental vehicle. The MTMC Car Rental Agreement also provides for flat rates with unlimited mileage² and other benefits more advantageous than those that would be offered by non-participating rental companies. **Third,** unlike the ARI, the MTMC Car Rental Agreement protects against liability for personal injury, death, or property damage to third parties. Under the ARI, all losses of or damage to property other than the rental vehicle, and injuries to persons, would need to be addressed by different sources.

c. When an entire rental transaction is charged to the Government Visa Travel card and the Collision Damage Waiver is declined, the ARI provides coverage for loss of

² Except for one-way rentals

or damage to the rented vehicle. However, when the Government employee rents from an MTMC participating company using the Government Visa Travel Card, the MTMC Car Rental Agreement rather than the ARI will cover loss or damage to the vehicle.

d. If, for some reason, an employee is unable to rent a vehicle from an MTMC participating company, the ARI is of the greatest benefit. In these instances, the employee should decline the CDW in accordance with Federal travel regulations and the terms of the ARI coverage (41 C.F.R. 301-10.451; Visa Services and Benefits Package Guide). In the event of loss of or damage to the vehicle, the ARI will provide coverage up to the actual cash value of the vehicle. Claim procedures for the ARI coverage listed in each employee's Visa Services and Benefits Package Guide are as follows:

“You, the cardholder, are responsible for reporting your claim to the Program Administrator within 20 days of the date of loss, or your claim will be denied. Notice to any other party will not suffice. Furthermore, we reserve the right to deny any claim that contains charges that would not have been included had the Program Administrator been notified before those expenses were incurred. We therefore advise you to notify us immediately after any loss.

Complete and sign the claim form you receive from your call to the Program Administrator [at 1-800-847-2911 (1-800-Visa-911)], and mail the following documentation to the Program Administrator:

- 1. The completed and signed Visa Auto Rental Insurance Claim form. **Your completed claim form must be postmarked within 90 days of the loss, even if all other required documentation is not yet available, or your claim will be denied.***
- 2. A copy of your receipt or monthly billing statement as proof that the entire vehicle rental was charged and paid for with your Visa card.*
- 3. A written confirmation from your employer that the rental was primarily for business purposes.*
- 4. If the rental was for personal use, enclose a statement from your insurance carrier showing the costs you are responsible for and any amounts that have been paid toward the claim. Of, if you have no other applicable insurance, please provide a notarized statement to that effect.*
- 5. A copy of the declaration page from your primary automobile insurance carrier if the rental was for personal use.*

Enclose all the documents you received from the car rental company:

- 1. A copy of their Accident Report Form.*
- 2. A copy of the repair estimate or itemized repair bill.*
- 3. A copy of the entire auto rental agreement(s).*

4. *Two photographs of the damaged vehicle, if available.*
5. *A police report, if obtainable.*
6. *Any other documentation deemed necessary by the Program Administrator to substantiate the claim.*

If you experience difficulty in obtaining all the required documents within 90 days of the date of loss, just submit the claim form and any documentation you already have available.

NOTE: All remaining documents must be postmarked within 365 days of the date of loss.”

Regulations vary outside the United States. Therefore, the employee should check with the car rental company and the Visa Program Administrator before traveling to a foreign country, to determine whether the ARI will apply.

- e. Any other damage to property or personal injury will be addressed in accordance with other authorities, such as the Federal Tort Claims Act (28 U.S.C. § 2671 et seq.) or the Federal Employees Compensation Act (5 U.S.C. § 8101 et seq.).
- f. Visa literature notes that the ARI is primary coverage when the Government Visa Travel Card is used to rent a car for official business and secondary when used for personal reasons. **However, Federal employees are to use their Government Visa Travel Cards for official purposes only.**
- g. **The ARI, like the MTMC Car Rental Agreement, does not provide coverage for employees who suffer personal property damage or loss while renting a vehicle.** Employees who suffer property damage or loss may seek recovery under the MP&CE Claims Act (31 U.S.C. § 3721). If an employee is injured while operating a rental vehicle within the scope of employment, the employee may seek compensation under the FECA.

The Visa Services and Benefits Package Guide may be accessed via the Internet at <http://usa.visa.com/media/cardbenefits/VisaGovernmentBenefits.pdf>

4. MISCELLANEOUS RENTAL VEHICLE INFORMATION

- a. Employees are encouraged to maintain private insurance coverage, such as health and automobile insurance, and seek recovery from these sources when appropriate. Employees should consult their policies to learn what losses and damages are covered when renting a vehicle for official purposes. If an employee intends to use the rental vehicle for mixed business/personal reasons, the employee is free to accept the collision damage waiver (CDW) offered by the rental company and pay for such insurance with the understanding that the Government will not reimburse the cost.

b. Claims arising from one of the exceptions to the MTMC Car Rental Agreement or from rentals outside the MTMC Car Rental Agreement from non-participating companies may be considered under provisions of the Federal Tort Claims Act if there is indication of negligence by a Government employee while operating within the scope of employment.

c. Federal employees are to use their Government Visa Travel Card for official purposes only. Although vehicle rental expenses may be charged to the Government Visa travel card, **payment for any damages to the vehicle shall not be.**

C. USE OF VEHICLES IN A FOREIGN COUNTRY

Authorities Cited:

- 41 C.F.R. 301, Federal Travel Regulation
- 48 C.F.R. 428.370, Federal Acquisition Regulation System
- 28 U.S.C. §§ 1346, 2401, and 2671-2680, Federal Tort Claims Act

Forest Service employees may be required to drive vehicles in foreign countries on official business. The FTCA does not apply to torts arising in foreign countries. In order to protect themselves while driving on official business in a foreign country, Federal employees should be aware of the following:

1. RENTED OR LEASED VEHICLES: In accordance with 41 C.F.R. 301-10.451, Federal Travel Regulation, agencies may reimburse an employee for the cost of collision damage waiver or collision damage insurance when the vehicle is rented or leased for official travel in foreign countries. **The employee must inform the rental company at the time of rental that they are taking the vehicle into a foreign area and should ensure that there is proper insurance coverage.**

2. GOVERNMENT-OWNED VEHICLES: In accordance with 48 C.F.R. 428.370, Federal Acquisition Regulation, the Department is authorized to obtain insurance to cover liability incurred by its employees while acting with the scope of their employment and operating a government-owned vehicle in a foreign country.

D. MISCELLANEOUS

Authorities Cited:

- 31 U.S.C. § 3721, Military Personnel and Civilian Employee's Claims Act
- 28 U.S.C. §§ 1346, 2401 and 2671-2680, Federal Tort Claims Act
- FSH 6509.33, Federal Travel Regulation

1. HOUSE HUNTING TRIPS

The U.S. Court of Appeals has ruled that house-hunting trips in connection with an official change of duty station are not within scope of an employee's employment for claims purposes. Frazier v. United States (1969, CA6 Tenn) 412 F2d 22, 6 ALR Fed

365. Consequently, the Department of Justice shall not defend any action brought against an employee and the Government shall not pay any claim or judgment resulting from incidents occurring during a house-hunting trip. In addition, an employees' personal property loss or damage sustained during house hunting trips is not incident to service and claims for such loss or damage are not allowable under the MP&CE Claims Act. Employees must look to their personal insurance carriers for coverage while on a house hunting trip.

2. TRANSPORTATION OF NON-GOVERNMENT EMPLOYEES (INCLUDING FAMILY MEMBERS)

Transportation of non-government employees (including family members) in government owned or leased vehicles shall be authorized only when:

- The travel is for official purposes.
- The travel is advantageous to and/or in the interest of the Government.
- There is no conflict of interest or appearance of conflict of interest.
- Space is available.
- The travel is approved in advance, in writing, at the next higher level.

Forest Service employees, when requesting the authorization of travel for non-Government persons in Government-furnished vehicles, should provide the appropriate Financial Manager with a written justification stating the purpose of the trip, the reason(s) why the non-Government person's transportation is necessary to conduct Forest Service business, and identification of any known or associated hazards with the trip. A Form AD-202, Travel Authorization, is required if the trip exceeds one calendar day.

AUTHORIZING OFFICIALS (ID 6509.33-97-6):

Washington Office, Director of Financial and Accounting Operations, can authorize on Form AD-202:

- a. Requests from the Washington Office for administrative (non-emergency) travel of non-Government persons for periods of time exceeding one day in any Government-furnished conveyance on a case-by-case basis.
- b. Requests from the Washington Office and the Regional Offices for surface travel of family members in Government-furnished conveyances.*

Region/Station/Area Fiscal Officers can authorize on Form AD-202:

- a. Travel by non-Government persons (excluding family members) in a Government-furnished conveyance.
- b. Requests from the next lower organizational level for surface travel of family members in a Government-furnished conveyance.* Requests for transportation of Regional Office family members needs to be approved by the Washington Office.

Forest Fiscal Officers can authorize on Form AD-202:

- a. Travel by non-Government persons (excluding family member) in a Government-furnished conveyance.
- b. Requests from the next lower organizational level for surface travel of family members in a Government-furnished conveyance.* Requests for transportation of Supervisor's Office family members needs to be approved by the Regional Office.

*All surface travel by family members in a Government-furnished conveyance must be on a space-available basis, and be authorized in advance on Form AD-202 by a Financial Manager at least one level higher in the Forest Service organization than the location where the family is stationed. If the family is stationed in the Washington, DC area, the Washington Office Director of Financial and Accounting Operations must authorize the travel in advance on Form AD-202. An exception to this requirement is transporting family members in personally-owned vehicles while in travel status. However, employees should make themselves aware if, and understand to what extent, their personal automobile insurance policy would cover family members in case of an accident.

The Financial Manager authorizing the transportation of family members or other non-Government persons must consider the possibility of the appearance of misconduct, possible disruption in the conduct of Government business, and the increased liability exposure of the Government under the Federal Tort Claims Act for injuries suffered by passengers who are not Federal employees.

DEFINITIONS (ID 6509.33-97-6):

Non-Government persons: This includes all non-Federal employed persons conducting business with the Forest Service, such as State or local government personnel, contractors, private sector cooperators, grantees, permittees, prospective bidders, media representatives, volunteers, family members, and enrollees, including persons threatened with loss of life or property. Military personnel (including National Guard or Reserve) are considered non-Federal persons when they are not on active duty.

Government-furnished conveyances: Modes of transportation such as automobiles, vans, trucks, vessels, and aircraft that are owned, leased, chartered, or rented by the Government. This includes an employee's personally-owned vehicle when it has been authorized or approved as advantageous to the Government for the performance of official travel. (Approval is not required to transport family members in a personally-owned vehicle or a rented vehicle while in travel status).

Official travel: Travel which is necessary to conduct Forest Service business. Use of government furnished vehicles is limited to official purposes. See FSTR 301-2.6(a)(1) for examples of vehicle use for official purposes.

Advantageous to the Government: Travel must be performed by the most effective means commensurate with the nature and purpose of the Forest Service business to be accomplished, taking into consideration the most beneficial use of employee time as well as the costs involved, such as overtime, lost work time, and actual transportation costs (FSTR 301-2.2). This does not always result in the least cost method of travel.

Administrative use: Use of a Government-furnished conveyance for routine (non-emergency) point-to-point transportation of authorized passengers, as opposed to emergency support or tactical transportation of personnel and equipment in connection with a fire or such other incident.

Conflict of Interest: Decisions made and/or actions taken by a Government employee that could directly or indirectly affect the employee's personal or private economic interest, or which could convey an unfair competitive advantage to a member of the public, or in some manner embarrass the agency. An appearance of conflict carries the same weight as an actual conflict.

Space Available Basis: Space that is available to accommodate the extra passenger(s) without incurring any appreciable additional expense or requiring a larger vehicle in excess of that needed to accomplish the agency business, and without hampering the effectiveness of the official purpose of travel.