

List of Subjects in 7 CFR Part 319

Bees, Coffee, Cotton, Fruits, Honey, Imports, Logs, Nursery Stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we propose to amend 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 would be revised to read as follows:

Authority: 7 U.S.C. 450, 7711–7714, 7718, 7731, 7732, and 7751–7754; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. In § 319.56–2ee, paragraphs (b) and (c) would be revised to read as follows:

§ 319.56–2ee Administrative instructions: Conditions governing the entry of Ya variety pears from China.

* * * * *

(b) *Treatment.* Pears from Shandong Province must be cold treated for *Bactrocera dorsalis* in accordance with the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference at § 300.1 of this chapter.

(c) Each shipment of pears must be accompanied by a phytosanitary certificate issued by the Chinese Ministry of Agriculture stating that the conditions of this section have been met.

* * * * *

Done in Washington, DC, this 17th day of December, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–32056 Filed 12–19–02; 8:45 am]

BILLING CODE 3410–34–P

SOCIAL SECURITY ADMINISTRATION**20 CFR Part 429**

RIN 0960–AF39

Filing Claims Under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rules.

SUMMARY: We propose to establish new regulation that would prescribe the procedures SSA follows when claims are filed by employees against SSA for personal property damage or loss incident to their service with SSA. This new regulation is necessary both to reflect SSA's status as an independent

agency and to comply with the requirement in the Military Personnel and Civilian Employees Claims Act of 1964 (MPCECA) that the head of each federal agency prescribe its own regulations for handling such claims.

We also propose to make several minor clarifications and corrections to our current procedures and practices on claims against the Government for damage to or loss of property or personal injury or death that is caused by the negligent or wrongful act or omission of an SSA employee. We have also rewritten the current rules on such claims in plain language.

DATES: To be sure that your comments are considered, we must receive them no later than February 18, 2003.

ADDRESSES: You may give us your comments by using: Our Internet site facility (*i.e.*, Social Security Online) at <http://www.ssa.gov/regulations>, e-mail to regulations@ssa.gov; telefax to (410) 966–2830; or by sending a letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, Maryland 21235–7703. You may also deliver them to the Office of Process and Innovation Management, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version

The electronic file of this document is available on the Internet at http://www.access.gpo.gov/su_docs/aces/aces140.html. It is also available on the Internet site for SSA (*i.e.*, “SSA Online”) at <http://www.ssa.gov/regulations>.

FOR FURTHER INFORMATION CONTACT:

Jonathan R. Cantor, Attorney-at-Law, Office of General Law, Office of the General Counsel, Social Security Administration, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (410) 965–3166 or TTY (410) 966–5609.

SUPPLEMENTARY INFORMATION:**Employee Claims for Personal Property Damage or Loss**

The MPCECA, 31 U.S.C. 3721, establishes the guidelines Federal agencies must follow when an agency employee files a claim for personal property damage or loss incurred incident to his or her Federal service. Under the MPCECA, the head of each Federal agency is required to

promulgate its own regulations setting forth the procedures and practices the agency will follow in handling such claims (31 U.S.C. 3721(j)). The Social Security Independence and Improvements Act of 1994 (Pub. L. 103–296) established SSA as an independent agency in the executive branch of the United States Government effective March 31, 1995 and vested general regulatory authority in the Commissioner of Social Security. In order to comply with the requirement in the MPCECA that SSA have its own regulations dealing with employee claims, we propose to establish a new subpart B in part 429 of Title 20 of the Code of Federal Regulations.

The proposed rules in new subpart B of part 429 are modeled after those routinely published by other Federal agencies and would contain the following sections:

- Section 429.201 would explain that the new subpart applies to employee claims under the MPCECA, set a \$40,000 limit on the amount of payment for a claim, and define several terms used throughout the subpart.

- Section 429.202 would explain the procedures an employee should follow to file a claim for personal property loss or damage incident to service.

- Section 429.203 would explain the circumstances under which a claim for personal property loss or damage is allowable.

- Section 429.204 would describe the restrictions that apply to employee claims for personal property damage or loss.

- Section 429.205 would contain a list of the types of losses that are not allowable under subpart B.

- Section 429.206 would explain the procedures that are applicable when a claim involves a commercial carrier or an insurer.

- Section 429.207 would explain how an employee should file a claim for personal property damage or loss.

- Section 429.208 would explain how the SSA Claims Officer determines the amount of an award.

- Section 429.209 would contain the maximum fee an agent or attorney may receive for his/her services in connection with an individual claim under subpart B.

- Section 429.210 would explain the appeal process for claims under subpart B.

- Section 429.211 would contain the penalties for filing false claims.

Tort Claims

These proposed rules would also modify our existing rules dealing with the procedures SSA follows when

claims are asserted under the Federal Tort Claims Act (FTCA), 28 U.S.C. 2672, for money damages against the United States for injury or death caused by the negligent or wrongful act or omission of any SSA employee. We propose to revise our regulations on tort claims as follows:

- We would revise § 429.101 to reflect the statutory provision in the FTCA that the FTCA does not apply to those tort claims identified in 28 U.S.C. 2680. Our current rules do not contain this statutory limitation.

- We would revise § 429.103 to correct the mailing address in this section.

- We would revise the time limit in § 429.104 for submitting evidence in a claim for money damages from 3 months to 60 days. Under the FTCA, this time limit is to be determined by the agency and we believe 60 days constitutes a reasonable limit for submitting evidence after being asked to do so.

- We would revise § 429.107 to clarify an ambiguity in current regulations. If a claim is approved that exceeds \$2500, our rules would be revised to specify that the payment will come from the Judgment Fund in the Department of the Treasury, rather than from SSA. This reflects current procedure and the proposed change would only serve to increase the

efficiency of the claims process and to speed delivery of the payment to the claimant.

- We propose to revise the penalties for filing false claims to reflect changes in both the criminal and civil False Claims Act.

We also propose to rewrite the existing regulations on tort claims to comply with Executive Order 12866, as amended by Executive Order 13258, which requires Federal agencies to write all rules in plain language. None of these plain language changes are substantive; they are merely intended to make the existing regulations more readable and easier to understand.

Clarity of This Proposed Rule

As explained above, Executive Order 12866, as amended by Executive Order 13258, require each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make this proposed rule easier to understand.

For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings,

paragraphing) make the rule easier to understand?

- What else could we do to make the rule easier to understand?

Regulatory Procedures

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed these proposed rules in accordance with Executive Order 12866, as amended by Executive Order 13258.

Regulatory Flexibility Act

We certify that the proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities because it only affects individuals. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These proposed rules contain reporting requirements as shown in the table below. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules.

| Section number | Annual number of responses | Frequency of response | Average burden per response (minutes) | Estimated annual burden hours |
|------------------------|----------------------------|-----------------------|---------------------------------------|-------------------------------|
| 429.102; 429.103 | 1 | 1 | 1 | 1 |
| 429.104(a) | 30 | 1 | 5 | 2.5 |
| 429.104(b) | 25 | 1 | 5 | 2 |
| 429.104(c) | 2 | 1 | 5 | .16 |
| 429.106(b) | 10 | 1 | 10 | 1.6 |

An Information Collection Request has been submitted to OMB for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments may be faxed or mailed to the Social Security Administration at the following address: Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235-6401. Fax No. 410-965-6400.

Comments can be received for between 30 and 60 days after publication of this notice and will be

most useful if received by SSA within 30 days of publication.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.003 Social Security-Special Benefits for Persons Aged 72 and Over; 96.004 Social Security-Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006, Supplemental Security Income; 96.007 Social Security-Research and Demonstration)

List of Subjects in 20 CFR Part 429

Administrative practice and procedure, Government employees, Indemnity payments, Tort claims.

Dated: September 23, 2002.

Jo Anne B. Barnhart,
Commissioner of Social Security.

For the reasons set out in the preamble, we propose to revise part 429 of chapter III of title 20 of the Code of Federal Regulations to read as follows:

PART 429—ADMINISTRATIVE CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND RELATED STATUTES

Subpart A—Claims Against the Government Under the Federal Tort Claims Act

- Sec.
- 429.101 What is this subpart about?
 - 429.102 How do I file a claim under this subpart?
 - 429.103 Who may file my claim?
 - 429.104 What evidence do I need to submit with my claim?

- 429.105 What happens when you receive my claim?
- 429.106 What happens if my claim is denied?
- 429.107 If my claim is approved, how do I obtain payment?
- 429.108 What happens if I accept an award, compromise or settlement under this subpart?
- 429.109 Are there any penalties for filing false claims?
- 429.110 Are there any limitations on SSA's authority under this subpart?

Subpart B—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

- 429.201 What is this subpart about?
- 429.202 How do I file a claim under this subpart?
- 429.203 When is a claim allowable?
- 429.204 Are there any restrictions on what is allowable?
- 429.205 What is not allowable under this subpart?
- 429.206 What if my claim involves a commercial carrier or an insurer?
- 429.207 What are the procedures for filing a claim?
- 429.208 How do you determine the award? Is the settlement of my claim final?
- 429.209 Are there any restrictions on attorney's fees?
- 429.210 Do I have any appeal rights under this subpart?
- 429.211 Are there any penalties for filing false claims?

Authority: Sect. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)); 28 U.S.C. 2672; 28 CFR 14.11; 31 U.S.C. 3721.

Subpart A—Claims Against the Government Under the Federal Tort Claims Act

§ 429.101 What is this subpart about?

This subpart applies only to claims filed under the Federal Tort Claims Act, as amended, 28 U.S.C. 2671–2680 (FTCA), for money damages against the United States for damage to or loss of property or personal injury or death that is caused by the negligent or wrongful act or omission of an employee of the Social Security Administration (SSA). The loss, damage, injury or death must be caused by the employee in the performance of his or her official duties, under circumstances in which the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred. This subpart does not apply to any tort claims excluded from the FTCA under 28 U.S.C. 2680.

(b) This subpart is subject to and consistent with the regulations on administrative claims under the FTCA issued by the Attorney General at 28 CFR part 14.

§ 429.102 How do I file a claim under this subpart?

(a) *Filing an initial claim.* You must either file your claim on a properly executed Standard Form 95 or you must submit a written notification of the incident accompanied by a claim for the money damages in a sum certain for damage to or loss of property you believe occurred because of the incident. For purposes of this subpart, we consider your claim to be filed on the date we receive it, at the address specified in paragraph (c) of this section. If you mistakenly send your claim to another Federal agency, we will not consider it to be filed until the date that we receive it. If you mistakenly file a claim meant for another Federal agency with SSA, we will transfer it to the appropriate Federal agency, if possible. If we are unable to determine the appropriate agency, we will return the claim to you.

(b) *Filing an amendment to your claim.* You may file an amendment to your properly filed claim at any time before the SSA Claims Officer (as defined in § 429.201(d)(3)) makes a final decision on your claim or before you bring suit under 28 U.S.C. 2675(a). You must submit an amendment in writing and sign it. If you file a timely amendment, SSA has 6 months in which to finally dispose of the amended claim. Your option to file suit does not begin until 6 months after you file the amendment.

(c) *Where to obtain claims forms and file claims.* You may obtain claims forms and must file your claim with the Social Security Administration, Office of the General Counsel, Administrative Claims Unit, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

§ 429.103 Who may file my claim?

(a) *Claims for damage to or loss of property.* If you are the owner of the property interest that is the subject of the claim, you, your duly authorized agent, or your legal representative may file the claim.

(b) *Claims for personal injury.* If you suffered the injury, you, your duly authorized agent, or your legal representative may file the claim.

(c) *Claims based on death.* The executor or administrator of your estate or any other person legally entitled to do so may file the claim.

(d) *Claims for loss wholly compensated by an insurer with the rights of a subrogee.* The insurer may file the claim. When an insurer presents a claim asserting the rights of a subrogee, the insurer must present with

the claim appropriate evidence that it has the rights of a subrogee.

(e) *Claims for loss partially compensated by an insurer with the rights of a subrogee.* You and the insurer may file, jointly or separately. When an insurer presents a claim asserting the rights of a subrogee, the insurer must present with the claim appropriate evidence that it has the rights of a subrogee.

(f) *Claims by authorized agents or other legal representatives.* Your duly authorized agent or other legal representative may submit your claim, provided satisfactory evidence is submitted establishing that person has express authority to act on your behalf. A claim presented by an agent or legal representative must be presented in your name. If the claim is signed by the agent or legal representative, it must show the person's title or legal capacity and must be accompanied by evidence that the person has the authority to file the claim on your behalf as agent, executor, administrator, parent, guardian or other representative.

§ 429.104 What evidence do I need to submit with my claim?

(a) *Property damage.* To support a claim for property damage, either real or personal, you may be required to submit the following evidence or information:

(1) Proof of ownership.

(2) A detailed statement of the amount claimed with respect to each item of property.

(3) An itemized receipt of payment for necessary repairs or itemized written estimates of the cost of such repairs.

(4) A statement listing date of purchase, purchase price, market value of the property as of date of damage, and salvage value, where repair is not economical.

(5) Any other evidence or information which may have a bearing either on the responsibility of the United States for the injury to or loss of property or the damages claimed.

(b) *Personal injury.* To support a claim for personal injury, including pain and suffering, you may be required to submit the following evidence or information:

(1) A written report from your attending physician or dentist setting forth the nature and extent of your injury, nature and extent of treatment, any degree of temporary or permanent disability, your prognosis, period of hospitalization, and any diminished earning capacity. You may also be required to submit to a physical or mental examination by a physician employed or designated by SSA. If you submit a written request, we will

provide you with a copy of the report of the examining physician provided you agree to make available to SSA any other physician's reports made of the physical or mental condition that is the subject of your claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized receipts of payment for such expenses.

(3) If your prognosis reveals that you will need future treatment, a statement of expected duration of and expenses for such treatment.

(4) If you claim a loss of time from employment, a written statement from your employer showing actual time lost from employment, whether you are a full or part-time employee, and wages or salary you actually lost.

(5) If you claim a loss of income and are self-employed, documentary evidence showing the amount of earnings you actually lost. For example, we may use income tax returns for several years prior to the injury in question and the year in which the injury occurred to indicate or measure lost income; a statement of how much it cost you to hire someone to do the same work you were doing at the time of the injury might also be used in measuring lost income.

(6) Any other evidence or information that may have a bearing on either the responsibility of the United States for the personal injury or the damages claimed.

(c) *Claim Based on Death.* To support the claim, we need the following evidence or information:

(1) An authenticated death certificate or other believable documentation showing cause of death, date of death, and your age at the time of death.

(2) Your employment or occupation at time of death, including your monthly or yearly salary or earnings (if any), and the duration of your last employment or occupation.

(3) Full names, addresses, birth dates, kinship, and marital status of your survivors, including identification of those survivors who were dependent upon you for support at the time of your death.

(4) Degree of support you provided to each survivor dependent on you for support at the time of your death.

(5) Your general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred, or itemized receipts of payments for such expenses.

(7) 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 your physical condition in the interval between injury and death.

(8) Any other evidence or information which may have a bearing on either the responsibility of the United States for the death or the damages claimed.

(d) *Time limit for submitting evidence.* You must furnish all the evidence required by this section within a reasonable time. If you fail to furnish all the evidence necessary to determine your claim within 60 days after being asked to do so, we may find that you have decided to abandon your claim.

§ 429.105 What happens when you receive my claim?

When we receive your claim, we will investigate to determine its validity. After our investigation, we will forward your claim to the SSA Claims Officer with our recommendation as to whether your claim should be fully or partially allowed or denied.

§ 429.106 What happens if my claim is denied?

(a) If your claim is denied, the SSA Claims Officer will send you, your agent, or your legal representative a written notice by certified or registered mail. The notice will include an explanation of why your claim was denied and will advise you of your right to file suit in an appropriate U.S. District Court not later than 6 months after the date of the mailing of the notice if you disagree with the determination.

(b) Before filing suit and before expiration of the 6-month period after the date of the mailing of the denial notice, you, your duly authorized agent, or your legal representative may file a written request with SSA for reconsideration by certified or registered mail. If you file a timely request for reconsideration, SSA has 6 months from the date you file your request in which to finally dispose of your claim. Your right to file suit will not begin until 6 months after you file your request for reconsideration. Final SSA action on your request for reconsideration will occur in accordance with the provisions of paragraph (a) of this section.

§ 429.107 If my claim is approved, how do I obtain payment?

(a) *Claims under \$2,500.* If your claim is approved, you must complete a "Voucher for Payment under the Federal Tort Claims Act," Standard Form 1145. If you are represented by an attorney, the voucher for payment (SF 1145) must designate both you and your attorney as "payees"; we will then mail the check to your attorney.

(b) *Claims in excess of \$2,500.* If your claim is approved, SSA will forward the appropriate Financial Management

Service (FMS) Forms 194, 195, 196, 197, and/or 197-A to the Judgment Fund Section, Financial Management Service, Department of the Treasury, Room 6D37, 3700 East-West Highway, Hyattsville, Maryland 20782. FMS will then mail the payment to you.

§ 429.108 What happens if I accept an award, compromise or settlement under this subpart?

If you, your agent, or your legal representative accept any award, compromise or settlement under this subpart, your acceptance is final and conclusive on you, your agent or representative and any other person on whose behalf or for whose benefit the claim was filed. The acceptance constitutes a complete release of any claim against the United States and against any employee of the Government whose act or omission gave rise to the claim, by reason of the same subject matter.

§ 429.109 Are there any penalties for filing false claims?

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. (18 U.S.C. Secs. 287; 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. (31 U.S.C. Sec. 3729).

§ 429.110 Are there any limitations on SSA's authority under this subpart?

(a) An award, compromise or settlement of a claim under this subpart in excess of \$25,000 needs the prior written approval of the Attorney General or his designee. For the purposes of this paragraph, we treat a principal claim and any derivative or subrogated claim as a single claim.

(b) An administrative claim may be adjusted, determined, compromised or settled under this subpart only after consultation with the Department of Justice when, in the opinion of SSA:

(1) A new precedent or a new point of law is involved; or

(2) A question of policy is or may be involved; or

(3) The United States is or may be entitled to indemnity or contribution from a third party and SSA is unable to adjust the third party claim; or

(4) 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.

(c) An administrative claim may be adjusted, determined, compromised or settled only after consultation with the Department of Justice when it is learned 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.

Subpart B—Claims Under the Military Personnel and Civilian Employees' Claims Act of 1964

§ 429.201 What is this subpart about?

(a) *Scope and Purpose.* This subpart applies to all claims filed by or on behalf of employees of SSA for loss of or damage to personal property incident to their service with SSA under the Military Personnel and Civilian Employees Claims Act of 1964, as amended, 31 U.S.C. 3721, (MPCECA). A claim must be substantiated and the possession of the property determined to be reasonable, useful or proper.

(b) *Maximum payment under this part.* The maximum amount that can be paid for any claim under the Act is \$40,000 or, in extraordinary circumstances, \$100,000, and property may be replaced in kind at the discretion of the Government.

(c) *Policy.* SSA is not an insurer and does not underwrite all personal property losses that an employee may sustain incident to employment. We encourage employees to carry private insurance to the maximum extent practicable to avoid losses which may not be recoverable from SSA. The procedures set forth in this subpart are designed to enable you to obtain the proper amount of compensation from SSA and/or a private insurer for the loss or damage. If you fail to comply with these procedures it could reduce or preclude payment of your claim under this subpart.

(d) *Definitions.*

(1) *Quarters*, unless otherwise indicated, means a house, apartment, or other residence that is an SSA employee's principal residence.

(2) *State*, unless otherwise indicated, is defined by § 404.2(c)(5) of title 20 of the Code of Federal Regulations.

(3) *SSA Claims Officer* means the SSA official designated to determine claims under the Act. The current designee is the Associate General Counsel for General Law.

§ 429.202 How do I file a claim under this subpart?

(a) *Who may file.*

(1) You, your duly authorized agent, your legal representative or your survivor may file the claim. If your

survivor files the claim, the order of precedence for filing is spouse, child, parent, sibling.

(2) You may not file a claim on behalf of a subrogee, assignee, conditional vendor or other third party.

(b) *Where to file.* You must file your claim with the Social Security Administration, Office of the General Counsel, Administrative Claims Unit, 6401 Security Boulevard, Room 617 Altmeyer Building, Baltimore, Maryland 21235.

(c) *Evidence required.* You are responsible for proving ownership or possession, the facts surrounding the loss or damage, and the value of the property. Your claim must include the following:

(1) A written statement, signed by you or your authorized agent, explaining how the damage or loss occurred. This statement must also include:

(i) A description of the type, design, model number or other identification of the property.

(ii) The date you purchased or acquired the property and its original cost.

(iii) The location of the property when the loss or damage occurred.

(iv) The value of the property when lost or damaged.

(v) The actual or estimated cost of the repair of any damaged item.

(vi) The purpose of and authority for travel, if the loss or damage occurred while you were transporting your property or using a motor vehicle.

(vii) All available information as to who was responsible for the loss or damage, if it was not you, and all information as to insurance contracts, whether in your name or in the name of the responsible party.

(viii) Any other evidence about loss or damage that the SSA Claims Officer determines is necessary.

(2) Copies of all available and appropriate documents such as bills of sale, estimates of repairs, or travel orders. In the case of damage to an automobile, you must submit at least two estimates of repair or a certified paid bill showing the damage incurred and the cost of all parts, labor and other items necessary to the repair of the vehicle or a statement from an authorized dealer or repair garage showing that the cost of such repairs exceeds the value of the vehicle.

(3) A copy of the power of attorney or other authorization if someone else files the claim on your behalf.

(4) A statement from your immediate supervisor confirming that possession of the property was reasonable, useful or proper under the circumstances and that

the damage or loss was incident to your service.

(d) *Time limitations.* You must file a written claim within 2 years after accrual of the claim. For purposes of this subpart, your claim accrues at the later of:

(1) The time of the accident or incident causing the loss or damage;

(2) The time the loss or damage should have been discovered by the claimant by the exercise of due diligence; or

(3) Where valid circumstances prevented you from filing your claim earlier, the time that should be construed as the date of accrual because of a circumstance which prevents the filing of a claim. If war or armed conflict prevents you from filing the claim, your claim accrues on the date hostilities terminate and your claim must be filed within two years of that date.

§ 429.203 When is a claim allowable?

(a) A claim is allowable only if you were using the property incident to your service with SSA, with the knowledge and consent of a superior authority, and:

(1) The damage or loss was not caused wholly or partially by the negligent or improper action or inaction of you, your agent, the members of your family, or your private employee (the standard to be applied is that of reasonable care under the circumstances); and

(2) The possession of the property lost or damaged and the quantity and the quality possessed is determined to have been reasonable, useful or proper under the circumstances; and

(3) The claim is substantiated by proper and convincing evidence.

(b) Claims that are otherwise allowable under this subpart will not be disallowed solely because you were not the legal owner of the property for which the claim is made.

(c) Subject to the conditions in paragraph (a) of this section and the other provisions of this subpart, any claim you make for damage to, or loss of, personal property that occurs incident to your service with SSA may be considered and allowed. For the purpose of this subpart, if you were performing your official duties at an alternate work location under an approved flexiplace agreement, the alternate work location will be considered an official duty station even if it is located in your principal residence. The alternate work location is not considered to be quarters. The following are examples of the principal types of claims that are allowable, but these examples are not exclusive and other types of claims are allowable,

unless specifically excluded under this subpart:

(1) *Property damage in quarters or other authorized places.* Claims are allowable for damage to, or loss of, property arising from fire, flood, hurricane, other natural disaster, theft, or other unusual occurrence, while such property is located at:

(i) Quarters within a state that were assigned to you or otherwise provided in kind by the United States; or

(ii) Any warehouse, office, working area or other place (except quarters) authorized or apparently authorized for the reception or storage of property.

(2) *Transportation or travel losses.*

Claims are allowable for damage to, or loss of, property incident to transportation or storage of such property pursuant to order or in connection with travel under orders, including property in your custody or in the custody of a carrier, an agent or agency of the Government.

(3) *Mobile homes.* Claims may be allowed for damage to, or loss of, mobile homes and their contents under the provisions of paragraph (c)(2) of this section. Claims for structural damage to mobile homes, other than that caused by collision, and damage to contents of mobile homes resulting from such structural damage, must contain conclusive evidence that the damage was not caused by structural deficiency of the mobile home and that it was not overloaded. Claims for damage to, or loss of, tires mounted on mobile homes are not allowable, except in cases of collision, theft or vandalism.

(4) *Enemy action or public service.* Claims are allowable for damage to, or loss of, property that directly result from:

(i) Enemy action or threat of enemy action, or combat, guerrilla, brigandage, or other belligerent activity, or unjust confiscation by a foreign power or its nationals.

(ii) Action you take to quiet a civil disturbance or to alleviate a public disaster.

(iii) Efforts you make to save human life or Government property.

(5) *Property used for the benefit of the Government.* Claims are allowable for damage to, or loss of, property when used for the benefit of the Government at the request of, or with the knowledge and consent of, superior authority up to the amount not compensated by private insurance.

(6) *Clothing and accessories.* Claims are allowable for damage to, or loss of, clothing and accessories a person customarily wears and devices such as eyeglasses, hearing aids, dentures, or prosthetics.

(7) *Expenses incident to repair.* You may be reimbursed for the payment of any sales tax and other such fees incurred in connection with repairs to an item. The costs of obtaining estimates of repair (subject to the limitations set forth in § 429.204(c)) are also allowable.

§ 429.204 Are there any restrictions on what is allowable?

Claims of the type described in this section are only allowable subject to the restrictions noted:

(a) *Money or currency, including coin collections.* Allowable only when lost because of fire, flood, hurricane, other natural disaster, theft from quarters (as limited by § 429.203(c)(1)), or under other reasonable circumstances in which it would be in the Government's best interest to make payment. In cases involving theft from quarters, the evidence must conclusively show that your quarters were locked at the time of the theft. Reimbursement for loss of money or currency is limited to the amount it is determined reasonable for you to have had in your possession at the time of the loss.

(b) *Government property.* Allowable only for property owned by the United States for which you are financially responsible to an agency of the Government other than SSA.

(c) *Estimate fees.* Allowable for fees paid to obtain estimates of repairs only when it is clear that you could not have obtained an estimate without paying a fee. In that case, the fee is allowable only in an amount determined to be reasonable in relation to the value of the property or the cost of the repairs.

(d) *Automobiles and motor vehicles.* (1) Claims may only be allowed for damage to, or loss of automobiles and other motor vehicles if:

(i) You were required to use a motor vehicle for official Government business (official Government business, as used here, does not include travel, or parking incident to travel, between quarters and office, quarters and an approved telecommuting center, or use of vehicles for the convenience of the owner. However, it does include travel, and parking incident thereto, between quarters and an assigned place of duty specifically authorized by your supervisor as being more advantageous to the Government); or

(ii) Shipment of such motor vehicles was being furnished or provided by the Government, subject to the provisions of § 429.206 of this chapter; or

(2) When a claim involves damage to or loss of automobile or other motor vehicle, you will be required to present proof of insurance coverage, the deductible amount, and the amount, if

any, you recovered from the insurer. If your claim is for an amount that exceeds the deductible on the insurance policy, the maximum allowable recovery will be for the amount of the deductible. If the vehicle is uninsured, the maximum allowed will be \$500.00.

(e) *Computers and Electronics.* Claims may be allowed for loss of, or damage to, cellular phones, fax machines, computers and related hardware and software only when lost or damaged incident to fire, flood, hurricane, other natural disaster, theft from quarters (as limited by § 429.203(c)(1) of this chapter), other reasonable circumstances in which it would be in the Government's best interest to make payment, or unless being shipped as a part of a change of duty station paid for by the Agency. In incidents of theft from quarters, it must be conclusively shown that your quarters were locked at the time of the theft.

(f) *Alternate Work Locations.* When a claim is filed for property damage or loss at a non-Government alternate work location at which you are working pursuant to an approved flexiplace work agreement, you are required to present proof of insurance coverage, the deductible amount, and the amount, if any, you recovered from the insurer. If your claim is for an amount that exceeds the deductible on the insurance policy, the maximum allowable recovery will be for the amount of the deductible. If the property is uninsured, the maximum allowed will be \$1000.00.

§ 429.205 What is not allowable under this subpart?

Claims are not allowable for the following:

(a) *Unassigned quarters in United States.* Property loss or damage in quarters you occupied within any state that were not assigned to you or otherwise provided in kind by the United States.

(b) *Business property.* Property used for business or profit.

(c) *Unserviceable property.* Wornout or unserviceable property.

(d) *Illegal possession.* Property acquired, possessed or transferred in violation of the law or in violation of applicable regulations or directives.

(e) *Articles of extraordinary value.* Valuable articles, such as cameras, watches, jewelry, furs or other articles of extraordinary value. This prohibition does not apply to articles in your personal custody or articles properly checked or inventoried with a common carrier, if you took reasonable protection or security measures.

(f) *Intangible property.* Loss of property that has no extrinsic and

marketable value but is merely representative or evidence of value, such as non-negotiable stock certificates, promissory notes, bonds, bills of lading, warehouse receipts, insurance policies, baggage checks, and bank books, is not compensable. Loss of a thesis, or other similar item, is compensable only to the extent of the out-of-pocket expenses you incurred in preparing the item such as the cost of the paper or other materials. No compensation is authorized for the time you spent in its preparation or for supposed literary value.

(g) *Incidental expenses and consequential damages.* The Act and this subpart authorize payment for loss of or damage to personal property only. Except as provided in § 429.203(c)(7), consequential damages or other types of loss or incidental expenses (such as loss of use, interest, carrying charges, cost of lodging or food while awaiting arrival of shipment, attorney fees, telephone calls, cost of transporting you or your family members, inconvenience, time spent in preparation of claim, or cost of insurance premiums) are not compensable.

(h) *Real property.* Damage to real property is not compensable. In determining whether an item is considered to be an item of personal property, as opposed to real property, normally, any movable item is considered personal property even if physically joined to the land.

(i) *Commercial property.* Articles acquired or held for sale or disposition by other commercial transactions on more than an occasional basis, or for use in a private profession or business enterprise.

(j) *Commercial storage.* Property stored at a commercial facility for your convenience and at your expense.

(k) *Claims for minimum amount.* Loss or damage amounting to less than \$25.

§ 429.206 What if my claim involves a commercial carrier or an insurer?

In the event the property which is the subject of the claim was lost or damaged while in the possession of a commercial carrier or was insured, the following procedures will apply:

(a) Whenever property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner must file a written claim for reimbursement with the last commercial carrier known or believed to have handled the goods, or the carrier known to be in possession of the property when the damage or loss occurred, according to the terms of its bill of lading or contract, before submitting a claim

against the Government under this subpart.

(b) Whenever property is damaged, lost or destroyed incident to your service and is insured in whole or in part, you must make demand in writing against the insurer for reimbursement under the terms and conditions of the insurance coverage, before filing a claim against the Government.

(c) Failure to make a demand on a carrier or insurer or to make all reasonable efforts to protect and prosecute rights available against a carrier or insurer and to collect the amount recoverable from the carrier or insurer may result in reducing the amount recoverable from the Government by the maximum amount which would have been recoverable from the carrier or insurer had the claim been timely or diligently prosecuted. However, no deduction will be made where the circumstances of your service preclude reasonable filing of a claim or diligent prosecution, or the evidence indicates a demand was impracticable or would have been unavailing.

(d) After you file a claim against the carrier or insurer, you may immediately submit a claim under this subpart, without waiting until the carrier or insurer finally approves or denies your claim.

(1) Upon submitting your claim, you must certify whether you have not gained any recovery from a carrier or insurer, and enclose all pertinent correspondence.

(2) If the carrier or insurer has not taken final action on your claim, you must immediately tell the carrier or insurer to address all correspondence regarding the claim to the SSA Claims Officer, and you must provide a copy of this notice to the SSA Claims Officer.

(3) You must advise the SSA Claims Officer of any action the carrier or insurer takes on the claim and, upon request, must furnish all correspondence, documents, and other evidence pertinent to the matter.

(e) You must assign to the United States, to the extent you accept any payment on the claim, all rights, title and interest in any claim you may have against any carrier, insurer, or other party arising out of the incident on which your claim against the United States is based. After payment of the claim by the United States, you must, upon receipt of any payment from a carrier or insurer, pay the proceeds to the United States to the extent of the payment you received from the United States.

(f) If you recover for the loss from the carrier or insurer before your claim under this subpart is settled, the amount

of recovery will be applied to the claim as follows:

(1) If you recover an amount that is greater than or equal to your total loss as determined under this subpart, no compensation is allowable under this subpart.

(2) If you recover an amount that is less than such total loss, the allowable amount is determined by deducting the recovery from the amount of such total loss.

(3) For this purpose, your total loss is determined without regard to the maximum payment limitations set forth in § 429.201. However, if the resulting amount after making this deduction exceeds the maximum payment limitations, you will only be allowed the maximum amount set forth in § 429.201.

(g) In a claim arising from damage to an automobile or other motor vehicle, in no event may recovery exceed the reasonable deductible on the insurance policy.

§ 429.207 What are the procedures for filing a claim?

(a) *Form of claim.* Your claim must be presented in writing (SSA Form 1481 is available for this purpose). Any writing received by the SSA Claims Officer within the time limits set forth in § 429.202(d) will be accepted and considered a claim under the MPCECA if it constitutes a demand for compensation from SSA. A demand is required to be for a specific sum of money.

(b) *Award.* The SSA Claims Officer is authorized to settle claims filed under this subpart.

(c) *Notification.* The deciding official will provide you with a written determination on your claim.

§ 429.208 How do you determine the award? Is the settlement of my claim final?

(a) The amount allowable for damage to or loss of any item of property may not exceed the lowest of:

(1) The amount you requested for the item as a result of its loss, damage or the cost of its repair;

(2) The actual or estimated cost of its repair; or

(3) the actual value at the time of its loss, damage, or destruction. The actual value is determined by using the current replacement cost or the depreciated value of the item since you acquired it, whichever is lower, less any salvage value of the item in question, if you retain the item.

(b) Depreciation in value is determined by considering the type of article involved, its cost, its condition when damaged or lost, and the time

elapsed between the date you acquired it and the date of damage or loss.

(c) Current replacement cost and depreciated value are determined by use of publicly available adjustment rates or through use of other reasonable methods at the discretion of the SSA Claims Officer.

(d) Replacement of lost or damaged property may be made in kind wherever appropriate at the discretion of the SSA Claims Officer.

(e) At the discretion of the SSA Claims Officer, you may be required to turn over an item alleged to have been damaged beyond economical repair to the United States, in which case no deduction for salvage value will be made in the calculation of actual value.

(f) Settlement of claims under the Act are final and conclusive.

§ 429.209 Are there any restrictions on attorney's fees?

No more than 10 per cent of the amount in settlement of each individual claim submitted and settled under this subpart shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with that claim. A person violating this subsection shall be fined not more than \$1,000.00. (31 U.S.C. 3721(i))

§ 429.210 Do I have any appeal rights under this subpart?

(a) *Deciding Official.* While you may not appeal the decision of the SSA Claims Officer in regard to claims under the MPCECA, the SSA Claims Officer may, at his or her discretion, reconsider his or her determination of a claim.

(b) *Claimant.* You may request reconsideration from the SSA Claims Officer by sending a written request for reconsideration to the SSA Claims Officer within 30 days of the date of the original determination. You must clearly state the factual or legal basis upon which you base your request for a more favorable determination. Reconsideration will be granted only for reasons not available or not considered during the original decision.

(c) *Notification.* The SSA Claims Officer will send you a written determination on your request for reconsideration. If the SSA Claims Officer elects to reconsider your claim, the final determination on reconsideration is final and conclusive.

§ 429.211 Are there any penalties for filing false claims?

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 (18 U.S.C. 287; 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 (31 U.S.C. 3729).

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07-02-151]

RIN 2115-AE47

Drawbridge Operation Regulations; Biscayne Bay, Atlantic Intracoastal Waterway, Miami River, Miami-Dade County, Florida

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations governing the operation of the East and West Spans of the Venetian Causeway bridges across the Miami Beach Channel on the Atlantic Intracoastal Waterway, and the Brickell Avenue and Miami Avenue bridges across the Miami River, Miami-Dade County. This proposed rule would allow these bridges to remain in the closed position during the running of the Miami Tropical Marathon on February 2, 2003.

DATES: Comments and related material must reach the Coast Guard on or before January 21, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave, Room 432, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of [CGD07-02-151] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Ave Miami, FL 33131, telephone number 305-415-6743.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting

comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD07-02-151], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. We anticipate making this proposed rule effective less than 30 days after the date of publication in the **Federal Register** because the event is scheduled for February 2, 2003 and we want to allow enough time for the public to comment on this proposed rule.

Public Meeting

A public meeting has not been scheduled for this proposed rule. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 432, Miami, FL 33131, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Miami Tropical Marathon Director has requested that the Coast Guard temporarily change the existing regulations governing the operation of the East and West Spans of the Venetian Causeway bridges, and the Brickell Avenue and Miami Avenue bridges to allow them to remain in the closed position during the running of the Miami Tropical Marathon on February 2, 2003. The marathon route passes over these four bridges and any bridge opening would disrupt the race. Based on the limited time the bridges would be closed, the Coast Guard believes it can accommodate the request while still providing for the reasonable needs of navigation.

The East and West Spans of the Venetian Causeway bridges are located between Miami and Miami Beach. The current regulation governing the operation of the East Span of the Venetian Causeway bridge is published in 33 CFR 117.269 and requires the bridge to open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and from 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened.