

§ 778.12 [Reserved]

§ 778.13 **May the Postal Service waive any provision of these regulations?**

In an emergency, the Postal Service may waive any provision of these regulations.

SUBCHAPTER M [RESERVED] SUBCHAPTER N—PROCEDURES

Rules of Procedure Before the Office of General Counsel

PART 912—PROCEDURES TO ADJUDICATE CLAIMS FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF THE OPERATION OF THE U.S. POSTAL SERVICE

Sec.

- 912.1 Claims responsibility.
- 912.2 Applicability of Federal Tort Claims Act.
- 912.3 Time limit for filing.
- 912.4 Place of filing.
- 912.5 Administrative claim; when presented.
- 912.6 Administrative claim; who may file.
- 912.7 Evidence and information to be submitted.
- 912.8 Sufficiency of evidence and information submitted.
- 912.9 Final denial of claim.
- 912.10 Action on approved claims.
- 912.11 Exclusiveness of remedy.
- 912.12 Review by legal officers.
- 912.13 Attorneys' fees.
- 912.14 Conclusiveness of remedy.

AUTHORITY: 28 U.S.C. 2671–2680; 28 CFR 14.1 through 14.11; 39 U.S.C. 409.

§912.1 **Claims responsibility.**

The General Counsel is responsible for settlement of claims made against the U.S. Postal Service under the Federal Tort Claims Act and 39 U.S.C. 2603, with authority to redelegate the functions to General Counsel staff members and other Postal Service employees.

[36 FR 12448, June 30, 1971]

§912.2 **Applicability of Federal Tort Claims Act.**

(a) The provisions of chapter 171 and all other provisions of title 28, U.S.C., relating to tort claims shall apply to

tort claims arising out of the activities of the Postal Service. (39 U.S.C. 409(c)).

(b) Where the General Counsel, or his designee, finds a claim for damage to persons or property resulting from operation of the U.S. Postal Service to be a proper charge against the United States and it is not cognizable under 28 U.S.C. 2672, he may adjust and settle it under authority of 39 U.S.C. 2603.

[45 FR 43719, June 30, 1980]

§912.3 **Time limit for filing.**

(a) *Claim.* A claim under the Federal Tort Claims Act must be presented within two years from the date the claim accrues.

(b) *Suit.* Suit must be filed within six months after the date of mailing by certified or registered mail of notice of final denial of the claim by the Postal Service.

[45 FR 43720, June 30, 1980]

§912.4 **Place of filing.**

A claim is usually filed with the postmaster of the office within the delivery limits of where the accident happened, but may be filed at any office of the Postal Service, or sent directly to the Assistant General Counsel, Claims Division, U.S. Postal Service, Washington, DC 20260.

[45 FR 43720, June 30, 1980]

§912.5 **Administrative claim; when presented.**

(a) For purposes of this part, a claim shall be deemed to have been presented when the U.S. Postal Service receives from a claimant, his duly authorized agent or legal representative, an executed Standard Form 95, Claim for

§912.6

39 CFR Ch. I (7–1–02 Edition)

Damage or Injury, or other written notification of an incident, accompanied by a claim for money damages in a sum certain for injury to or loss of property, personal injury, or death alleged to have occurred by reason of the incident. Standard Form 95 may be obtained from postmaster, postal inspectors, or other local Postal Service establishments.

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to final Postal Service action or prior to the exercise of the claimant's option under 28 U.S.C. 2675(a). A claim may not be amended after the Postal Service has issued payment of the full amount of the claim or has issued a written denial of the claim in accordance with §912.9. Amendments shall be submitted in writing and signed by the claimant or his duly authorized agent or legal representative. Upon the timely filing of an amendment to a pending claim, the Postal Service shall have six months in which to make final disposition of the claim as amended, and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until six months after the filing of an amendment.

[36 FR 12448, June 30, 1971, as amended at 45 FR 43720, June 30, 1980]

§912.6 Administrative claim; who may file.

(a) A claim for injury to or loss of property may be presented by the owner of the property, his duly authorized agent, or legal representative.

(b) A claim for personal injury may be presented by the injured person, his duly authorized agent, or legal representative.

(c) 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 in accordance with applicable State law.

(d) 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 parties individually as their respective interests appear, or jointly.

(e) 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 his authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian, or other representative.

[36 FR 12448, June 30, 1971, as amended at 45 FR 43720, June 30, 1980]

§912.7 Evidence and information to be submitted.

(a) *Death.* In support of a claim based on death, the claimant may be required to submit the following evidence or information:

(1) An authenticated death certificate or other competent evidence showing cause of death, date of death, and age of the decedent.

(2) Decedent's employment or occupation at time of death, including monthly or yearly salary or earnings, if any, and the duration of his last employment or occupation.

(3) 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 his death.

(4) Degree of support afforded by the decedent to each survivor dependent upon him for support at the time of his death.

(5) Decedent's general physical and mental condition before death.

(6) Itemized bills for medical and burial expenses incurred by reason of the incident causing death, or itemized receipts of payment 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 the decedent's 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.

(b) *Personal injury.* In support of a claim for personal injury, including pain and suffering, the claimant may

United States Postal Service

§912.9

be required to submit the following evidence or information:

(1) A written report by his attending physician or dentist 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 by the agency or another Federal agency. A copy of the report of the examining physician shall be made available to the claimant upon the claimant's written request, provided that he has, upon request, furnished the report referred to in the first sentence of this paragraph and has made, or agrees to make available to the agency or another Federal agency. A copy previously or thereafter made of the physical or mental condition which is the subject matter of his claim.

(2) Itemized bills for medical, dental, and hospital expenses incurred, or itemized the report referred to in the first expenses.

(3) If the prognosis reveals the necessity for future treatment, a statement of expected expenses for such treatment.

(4) If a claim is made for loss of time for employment, a written statement from his employment, whether he is a full- or part-time employee, and wages or salary actually lost.

(5) If a claim is made for loss of income and the claimant is self-employed, documentary evidence showing the amount of earnings actually lost.

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

(c) *Property damage.* In support of a claim for injury to or loss of property, real or personal, the claimant 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 writ-

ten estimates of the cost of such repairs.

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

[36 FR 12449, June 30, 1971]

§912.8 Sufficiency of evidence and information submitted.

In order to exhaust the administrative remedy provided, a claimant shall submit substantial evidence to prove the extent of any losses incurred and any injury sustained, so as to provide the Postal Service with sufficient evidence for it to properly evaluate the claim.

[45 FR 43720, June 30, 1980]

§912.9 Final denial of claim.

(a) Final denial of an administrative claim shall be in writing and sent to the claimant, his attorney, or legal representative by certified or registered mail. The notification of final denial may include a statement of the reasons for the denial and shall include a statement that, if the claimant is dissatisfied with the agency action, he may file suit in an appropriate U.S. District Court not later than 6 months after the date of mailing of the notation.

(b) Prior to the commencement of suit and prior to the expiration of the 6 month period provided in 28 U.S.C. 2401(b), a claimant, his duly authorized agent, or legal representative, may file a written request with the postal official who issued the final denial or with the Assistant General Counsel, Claims Division, U.S. Postal Service, Washington, DC 20260, for a reconsideration of a final denial of a claim under paragraph (a) of this section. Upon the timely filing of a request for reconsideration, the Postal Service shall have 6 months from the date of filing in which to make a disposition of the claim and the claimant's option under 28 U.S.C. 2675(a) shall not accrue until 6 months after the filing of a request for reconsideration. Final Postal Service action on a request for reconsideration shall be effected in accordance with this part.

§912.10

(c) For purposes of this section, a request for reconsideration of a final denial of a claim shall be deemed to have been filed when received in the office of the official who issued the final denial or in the office of the Assistant General Counsel, Claims Division, U.S. Postal Service, Washington, DC 20260-1111.

(d) Only one request for reconsideration of a final denial may be filed. A claimant shall have no right to file a request for reconsideration of a final denial issued in response to a request for reconsideration.

(28 U.S.C. 2671-2680; 28 CFR 14.1-14.11; 39 U.S.C. 401, 409, 2008)

[36 FR 12448, June 30, 1971, as amended at 38 FR 16868, June 27, 1973; 49 FR 19478, May 8, 1984]

§912.10 Action on approved claims.

In any case where the General Counsel or his designee, upon consideration of all the evidence submitted, finds that compensation is due a claimant, payment will be made by the U.S. Postal Service and in due course a settlement check will be forwarded to the claimant or his representative.

[36 FR 12450, June 30, 1971]

§912.11 Exclusiveness of remedy.

The provisions of 28 U.S.C. 2679(b) provide that the remedy against the United States, as provided by sections 1346(b) and 2672 of title 28, for injury or loss or personal injury or death resulting from the operation by an employee of the Government of any motor vehicle while acting within the scope of his employment is exclusive of any other civil action or proceeding by reason of the same subject matter against the employee or his estate whose act or omission gave rise to the claim.

[45 FR 43720, June 30, 1980]

§912.12 Review by legal officers.

The authority of the Postal Service to adjust, determine, compromise, and settle a claim under the provisions of the Federal Tort Claims Act shall, if the amount of a proposed compromise, settlement, or award exceeds \$2,500, be

39 CFR Ch. I (7-1-02 Edition)

exercised only after review by a legal officer of the Postal Service.

[45 FR 43720, June 30, 1980]

§912.13 Attorneys' fees.

The provisions of 28 U.S.C. 2678 should be consulted in determining the amount of the attorneys' fees.

[36 FR 12448, June 30, 1971. Redesignated at 45 FR 43720, June 30, 1980]

§912.14 Conclusiveness of remedy.

Payment by the Postal Service of the full amount claimed or acceptance by the claimant, his agent, or legal representative, of any award, compromise, or settlement made pursuant to the provisions of the Federal Tort Claims Act, shall be final and conclusive on the claimant, his agent, 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 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.

[45 FR 43720, June 30, 1980]

PART 913—PROCEDURES FOR THE ISSUANCE OF ADMINISTRATIVE SUBPOENAS UNDER 39 U.S.C. 3016

Sec.

913.1 Subpoena authority.

913.2 Service.

913.3 Enforcement.

913.4 Disclosure.

AUTHORITY: 39 U.S.C. 204, 401, 404, 3005, 3016.

SOURCE: 65 FR 31266, May 17, 2000, unless otherwise noted.

§913.1 Subpoena authority.

(a) General. The General Counsel by delegation from the Postmaster General is responsible for the issuance of subpoenas in investigations conducted under 39 U.S.C. 3005(a), with authority to delegate that function to a Deputy General Counsel.