

surface water, or cause leachate depth on the liner to exceed 30-cm.

(c) Any permit issued under this section must include such terms and conditions at least as protective as the criteria for municipal solid waste landfills to assure protection of human health and the environment. Such permits shall:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in paragraph (e) of this section;

(2) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and non-hazardous wastes which the State Director deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the State Director with respect to the operation of the facility;

(4) Require the owner or operator of a MSWLF unit permitted under this section to submit an annual report to the State Director showing whether and to what extent the site is progressing in attaining project goals. The report will also include a summary of all monitoring and testing results, as well as any other operating information specified by the State Director in the permit; and

(5) Require compliance with all criteria in this part, except as permitted under this section.

(d) The Director of an approved State may order an immediate termination of all operations at the facility allowed under this section or other corrective measures at any time the State Director determines that the overall goals of the project are not being attained, including protection of human health or the environment.

(e) Any permit issued under this section shall not exceed three years and each renewal of a permit may not exceed three years.

(1) The total term for a permit for a project including renewals may not exceed twelve years; and

(2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and status with respect to problem resolutions, and other any other requirements that the Director determines necessary for permit renewal.

(f) *Small MSWLF units.* (1) An owner or operator of a MSWLF unit operating under an exemption set forth in § 258.1(f)(1) is not eligible for any variance from §§ 258.26(a)(1) and 258.28(a) of the operating criteria in subpart C of this part.

(2) An owner or operator of a MSWLF unit that disposes of 20 tons of municipal solid waste per day or less, based on an annual average, is not eligible for a variance from § 258.60 (b)(1), except in accordance with § 258.60(b)(3).

[FR Doc. 04-6310 Filed 3-19-04; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### 45 CFR Part 34

#### Filing Claims Under the Military Personnel and Civilian Employees Claims Act

**AGENCY:** Department of Health and Human Services.

**ACTION:** Final rule.

**SUMMARY:** The Department of Health and Human Services (HHS) is establishing a new regulation that would prescribe the procedures HHS follows when claims are filed by employees against HHS for personal property damage or loss incident to their service with HHS. This new regulation is in accordance with, and pursuant to, the Military Personnel and Civilian Employees Claims (MPCE) Act of 1964 (31 U.S.C. 3721), authorizing the head of each Federal agency to prescribe its own regulations for handling such claims.

**EFFECTIVE DATE:** March 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Katherine M. Drews, Associate General Counsel, General Law Division, Office of the General Counsel, (202) 619-0150.

#### SUPPLEMENTARY INFORMATION:

##### Background

This final rule implements the MPCE Act codified at section 3721 of title 31 of the United States Code. The MPCE Act establishes 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 MPCE Act, the Secretary may approve claims made against the Government by a federal government employee for damage or loss of personal property that is incident to employment if the loss was not due to a negligent or wrongful act of the claimant. Therefore, HHS adds a new regulation to

implement to the MPCE Act. Prior guidance in the Department's General Administration Manual is hereby superseded.

#### Executive Order 12866

This rulemaking is limited to internal agency management and policy, and therefore is not a regulation or rule as defined by Executive Order 12866. It has also been determined that this rulemaking is not a significant regulatory action for purposes of Executive Order 12866. Accordingly, a regulatory impact analysis is not required.

#### Regulatory Flexibility Act

This rule relates to internal agency management and policy, and therefore, it is not subject to Executive Order 12291. Because no notice of proposed rulemaking is required for this final rule, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

#### Civil Justice Reform

This rule meets the applicable standards set forth in section 3(a) and (b)(2) of the Executive Order 12988.

#### Unfunded Mandates Reform Act

This rule will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

#### Federalism

This rule will not have a substantial direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have

sufficient federalism implications to warrant the preparation of federalism assessment.

#### Paperwork Reduction Act

This final rule would not impose any new reporting or recordkeeping requirements under the Paper Reduction Act, 44 U.S.C. chapter 35.

#### Analysis of and Responses to Public Comments

No public comments were received.

#### List of Subjects in 45 CFR Part 34

Administrative practices and procedures, Claims, Appeals and Settlements.

■ For the reasons set forth in the preamble, HHS adds 45 CFR part 34 to read as follows:

### PART 34—CLAIMS FILED UNDER THE MILITARY PERSONNEL AND CIVILIAN EMPLOYEES ACT

Sec.

- 34.1 Purpose and scope.
- 34.2 Definitions.
- 34.3 Filing procedures and time limits.
- 34.4 Allowable claims.
- 34.5 Unallowable claims.
- 34.6 Reconsideration or appeal.
- 34.7 Payment procedures.
- 34.8 Computation of award and settlement.
- 34.9 Claims involving carriers or insurers.

**Authority:** 31 U.S.C. 3721.

#### § 34.1 Purpose and scope.

(a) *Purpose.* This part prescribes policies and procedures for handling claims not in excess of \$40,000.00 filed by employees against the Department of Health and Human Services under the Military Personnel and Civilian Employees Claims (MPCE) Act of 1964, 31 U.S.C. 3721, for damage to, or loss of, property against the Department. Under the MPCE Act, the Secretary may approve claims made against the Government by a federal government employee for damage to or loss of personal property that is incident to employment when the loss or damage is not due to any negligence on the part of employee.

(b) *Scope.* This part applies to all Departmental Operating Divisions and Regional Offices that process and review claims under the MPCE Act. Nothing in this part shall be construed to bar other types of claims that are payable under other statutory authority such as, but not limited to, the Federal Tort Claims Act (28 U.S.C. 2671–2680).

#### § 34.2 Definitions.

In this part, unless the context otherwise requires:

*Claim* means any claim filed by or on behalf of an employee for damage to, or

loss of, property that is incident to the claimant's employment. This definition includes claims where the claimant is not the legal owner of the property in question, but has obtained authorization from the legal owner to possess or control the property.

*Claimant* means an employee who has filed a claim with the Department under the MPCE Act.

*Damage or loss* means total or partial destruction or loss of the item claimed.

*Department* means the Department of Health and Human Services.

*Employee* means an officer or employee of the Department.

*Quarters* means a house, apartment or other residence assigned by the government to an employee of the Department.

#### § 34.3 Filing procedures and time limits.

(a) *Who may file a claim.* A claim may be filed by the following individuals:

- (1) An employee;
- (2) An authorized agent or representative of an employee or employee's estate, regardless of whether the claim arose before or concurrent with an employee's death; and
- (3) A former employee or his authorized agent or representative if damage or loss occurred prior to the separation from the Department.

(b) *Requirements.* A claim submitted under this part must be presented in writing to the Claims Officer (*See* paragraph (c) of this section). Claims may be submitted on a HHS-481 form, Employee Claim for Loss or Damage to Personal Property. All claims must be signed by the claimant or his authorized agent or representative. The HHS-Form can be obtained from the Claims Officer or downloaded from the Program Support Center's webpage at [www.psc.gov](http://www.psc.gov). All claims must include the following:

- (1) Name and address of the claimant;
- (2) The office in which the claimant was employed at the time of loss, current office, if different, and telephone number;
- (3) Date of loss or damage;
- (4) Amount of claim;
- (5) Description of the property, including but not limited to type, design, model number, date acquired, value when acquired, value when lost, and estimation of repair or replacement cost;
- (6) Description of incident; and
- (7) If property was insured when loss or damage occurred, a statement indicating whether a claim was filed with an insurance carrier.

(c) *Where to file your claim.* (1) Claimants employed with the Regional Offices should submit claims to the

Chief Regional Counsel, Office of the General Counsel, within the claimant's Region.

(2) All other claimants must submit claims to the Office of the General Counsel, General Law Division, Claims and Employment Law Branch, 330 Independence Ave., SW., Room 4760, Cohen Building, Washington, DC 20201.

(d) *Evidence required.* You must submit the following:

(1) Not less than two itemized signed estimates for the cost of repairs, or an itemized bill of repair for the damaged property;

(2) In the event the property is not economically repairable or is totally lost or destroyed, proof of this fact, its market value before or after loss, purchase price, and date of acquisition of the property;

(3) Proof of ownership or right to recover for the damage such as a receipt;

(4) Police/incident report;

(5) If property is insured, insurance information, such as insurance carrier, type of coverage, deductible, and whether claim has been filed and/or paid;

(6) Travel orders, if applicable;

(7) Any citations or traffic tickets, if applicable; and

(8) Any other evidence required by the claims officer not specified above.

(e) *Time limit.*

(1) A claim filed under this section must be filed in writing with the Department within two years from the date of the incident.

(2) If the claim accrues in the time of war or in the time of armed conflict in which any armed forces of the United States are engaged or if such a war or armed conflict occurs within two years after the claim accrues, and if good cause is shown, the claim shall be presented no more than two years after that cause ceases to exist, or two years after the war or armed conflict is terminated, whichever is earlier.

(3) All required evidence in support of a claim submitted under this section must be forwarded to the claims officer within sixty days after request. Failure to do so will be deemed as an abandonment of the claim and the claim will be disallowed.

#### § 34.4 Allowable claims.

(a) *What you can claim.*

(1) Claims for damage or loss may be allowed where possession of the property was lawful and reasonable under circumstances.

(2) Claims for property damage or loss by fire, flood, hurricane, theft, or other serious occurrence may be allowed when the property is located inside:

(i) Quarters that have been assigned or provided by the government; or

(ii) Quarters outside the United States whether assigned by the government or not, except when a civilian employee outside the U.S. is a local inhabitant.

(3) Claims for damage to, or loss of, property may be allowed when caused by:

(i) Marine, air disaster, enemy action or threat thereof, or other extraordinary risks incurred incident to the performance of official duties by the claimant; and

(ii) Efforts by the claimant to save human life or government property.

(4) Property used for the benefit of the government. Claims may be allowed for damage to, or loss of, property used for the benefit of the government at the request, or with the knowledge and consent of, superior authority.

(5) Claims for clothing and accessories may be allowed when loss or damage was caused by faulty or defective equipment or furnishings owned or managed by the Department.

(6) Claims for stolen property, only if it is determined that the claimant exercised due care in protecting his property and there is clear evidence that a burglary or theft occurred.

(7) Claims for automobiles, only when required to perform official business or parked on a government-owned or operated parking lot or garage incident to employment. This subsection does not include claims for damage or loss when traveling between place of residence and duty station, or when the loss or damage was caused by the negligence of a third party. If the automobile is a total loss, the maximum amount allowed is the value of the vehicle at the time of loss as determined by the National Automobile Dealer Association Appraisal Guide or similar publications.

(8) Claims for any other meritorious claims in exceptional cases may be allowed by the Claims Officer.

(9) Transportation or travel losses. Damage or loss of personal property, including baggage and household items, while being transported by a carrier, agent or agency of the government, or private conveyance, may be allowed only if the property is shipped under orders or in connection with travel orders.

#### **§ 34.5 Unallowable claims.**

(a) *What you cannot claim.*

(1) Claims for money or currency, such as intangible property (*i.e.* bankbooks, check, money orders, promissory notes, stock certificates, etc.).

(2) Worn-out or unserviceable property.

(3) Easily pilferable articles, such as jewelry, cameras, watches, and

binoculars when they are shipped with household goods by a moving company or unaccompanied baggage. This does not apply to checked property or property in personal custody of the claimant or his agent provided proper security measures have been taken.

(4) Government property.

(5) Appraisal or estimate fees.

(6) Automobiles, except when required to perform official business or parked on a government-owned or operated parking lot or garage incident to employment.

(7) Loss or damage caused in whole or in part by the negligent or wrongful act of the claimant or his agent or employee.

(8) Claims under \$30.00.

(9) Stolen property when it's determined that claimant failed to exercise due care in protecting his or her property.

(10) Sales Tax. Reimbursements for the payment of sales tax incurred in connection with repairs or replacing an item will not be allowed.

#### **§ 34.6 Reconsideration or appeal.**

(a) Requests for reconsideration or appeal shall be forwarded to the Associate General Counsel, General Law Division, Office of the General Counsel, within sixty days from the date of the Claims Officer's decision along with any new evidence supporting the claim.

(b) A voucher or a supplemental voucher will be prepared by the Claims Officer if it is determined that the claimant's request for reconsideration should be allowed.

#### **§ 34.7 Payment procedures.**

(a) For all claims that are approved in whole or part, the claims officer shall prepare and mail a payment voucher to the claimant.

(b) This voucher shall be mailed to the claimant with appropriate instructions.

(c) Upon receipt of the signed payment voucher, the claims officer shall sign and forward the signed voucher to the office where the claimant is or was employed for processing.

(d) Upon receipt of the signed payment voucher, the office in which the claimant is or was employed will submit the voucher for transmission to the Treasury Department for issuance of a check in the sum allowed.

(e) Funds paid for settlement of allowed claims shall be made from appropriations of the office in which the claimant is or was employed.

#### **§ 34.8 Computation of award and settlement.**

(a) The amount awarded on any item of property shall not exceed the

adjusted cost of the item based on the cost of replacing it with a similar one of the same quality minus the appropriate depreciation rate. The amount normally payable on property damaged beyond economical repair shall not exceed its depreciated value. If the cost of repairs is less than the depreciated value it shall be considered economically repairable and the costs of repairs shall be the amount payable.

(b) Depreciation in value of an item shall be determined by considering the type of article involved, its replacement cost, condition when lost or damaged beyond economical repair, and the time elapsed between the date of acquisition and the date of accrual of the claim.

(c) Notwithstanding any other provision of law, settlements of claims under the MPCE Act are final and conclusive. The acceptance of a settlement constitutes a complete release of any claim against the United States and any employee of the government whose act or omission gave rise to the claim by reason of the same claim.

#### **§ 34.9 Claims involving carriers or insurers.**

(a) *Carriers.*

(1) If property is damaged, lost or destroyed while being shipped pursuant to authorized travel orders, the owner shall file a written claim for reimbursement against the carrier no later than nine months from the date of delivery or should have been made according to the terms of the contract. It shall be filed before or concurrent with submitting a claim against the government under this part.

(2) The demand shall be made against the responsible carrier if more than one contract was issued, a separate demand shall be made against the last carrier on each such document, unless claimant knows which carrier was in possession of the property when the damage or loss occurred.

(b) *Insurers.*

(1) If property which is damaged, lost, or destroyed incident to the claimant's service is insured in whole or in part, the claimant shall inform the Claims Officer whether a claim was made with the insurance carrier.

(2) The claimant shall inform the claims officer if he or she received a reimbursement from the insurance carrier for the item that was damaged or lost. The exact amount of the reimbursement must be reported.

(3) If the claimant receives a reimbursement for the lost or damaged property from an insurance carrier, the maximum amount that can be recovered from the Department is the difference

between an appropriate award under this regulation and the amount recovered from the insurance carrier. The claimant is responsible for submitting to the Department documentation that identifies the exact amount of the reimbursement.

Dated: March 11, 2004.

**Tommy G. Thompson,**

*Secretary.*

[FR Doc. 04-6045 Filed 3-19-04; 8:45 am]

BILLING CODE 4150-24-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 04-500, MB Docket No. 03-213, RM-10794]

#### Television Broadcast Service; Saranac Lake, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Channel 61 Associates, LLC, substitutes channel 40 for channel 61 – at Saranac Lake, New York. *See* 68 FR 62047, October 31, 2003. TV channel 40 can be allotted to Saranac Lake with a plus offset in compliance with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules. Since the community of Saranac Lake is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. The coordinates for channel 40+ are 44-09-35 N. and 74-28-34 W. With this action, this proceeding is terminated.

**DATES:** Effective April 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 03-213, adopted February 25, 2004, and released March 3, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via-e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

### List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under New York, is amended by removing TV channel 61 – and adding TV channel 40+ at Saranac Lake.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 04-6321 Filed 3-19-04; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 04-501, MB Docket No. 03-207, RM-10769]

#### Television Broadcast Service; Osage Beach, MO

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Timothy D. Lischwe, allots channel 49 to Osage Beach, Missouri. *See* 68 FR 61788, October 30, 2003. TV channel 49 can be allotted to Osage Beach with a plus offset in compliance with the Minimum distance separation requirements. The coordinates for channel 49+ are 38-17-33 N. and 92-34-24 W. With this action, this proceeding is terminated.

**DATES:** Effective April 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 03-207, adopted February 25, 2004, and released March 3, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445

12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-863-2893, facsimile 202-863-2898, or via-e-mail [qualexint@aol.com](mailto:qualexint@aol.com).

### List of Subjects in 47 CFR Part 73

Television broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—[AMENDED]

■ 1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

#### § 73.606 [Amended]

■ 2. Section 73.606(b), the Table of Television Allotments under Missouri, is amended by adding Osage Beach and TV channel 49+.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 04-6320 Filed 3-19-04; 8:45 am]

BILLING CODE 6712-01-P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[DA 04-502, MM Docket No. 01-82, RM-10068]

#### Television Broadcast Service; Bend, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of 3-J Broadcasting Company, allots channel 51 to Bend, Oregon, as the community's second local commercial television service. *See* 66 FR 20127, April 19, 2001. TV channel 51 can be allotted to Bend, Oregon, with a zero offset in compliance with the minimum distance separation requirements. The coordinates for channel 51 are 44-03-30 N. and 121-18-30 W. With this action, this proceeding is terminated.

**DATES:** Effective April 19, 2004.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418-1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 01-82, adopted February 25, 2004, and released March 5, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference