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Title 39—Postal Service

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CHAPTER I—UNITED STATES POSTAL SERVICE

SUBCHAPTER A—THE BOARD OF GOVERNORS OF THE U.S. POSTAL SERVICE

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SUBCHAPTER A—THE BOARD OF GOVERNORS OF THE U.S. POSTAL SERVICE

Bylaws of the Board of Governors

PART 1—POSTAL POLICY (ARTICLE I)

Sec.
1.1 Establishment of the U.S. Postal Service.
1.2 Delegation of authority.

AUTHORITY: 39 U.S.C. 101, 202, 205, 401(2), 402, 403, 3621, as enacted by Public Law 91–375.

SOURCE: 59 FR 18447, Apr. 18, 1994, unless otherwise noted.

§ 1.1 Establishment of the U.S. Postal Service.

The U.S. Postal Service is established under the provisions of the Postal Reorganization Act (the Reorganization Act) of August 12, 1970, Public Law 91–375, 84 Stat. 719, as an independent establishment of the executive branch of the Government of the United States, under the direction of a Board of Governors, with the Postmaster General as its chief executive officer. The Board of Governors of the Postal Service (the Board) directs the exercise of its powers through management that is expected to be honest, efficient, economical, and mindful of the competitive business environment in which the Postal Service operates. The Board consists of nine Governors appointed by the President, by and with the advice and consent of the Senate, to represent the public interest generally, together with the Postmaster General and Deputy Postmaster General.

§ 1.2 Delegation of authority.

Except for powers, duties, or obligations specifically vested in the Governors by law, the Board may delegate its authority to the Postmaster General under such terms, conditions, and limitations, including the power of redelegation, as it finds desirable. The bylaws of the Board are the framework of the system through which the Board monitors the exercise of the authority it has delegated, measures progress toward the goals it has set, and shapes the policies to guide the future development of the Postal Service. Delegations of authority do not relieve the Board of full responsibility for carrying out its duties and functions, and are revocable by the Governors in their exclusive judgment.

PART 2—GENERAL AND TECHNICAL PROVISIONS (ARTICLE II)

Sec.
2.1 Office of the Board of Governors.
2.2 Agent for receipt of process.
2.3 Offices.
2.4 Seal.
2.5 Authority.
2.6 Severability, amendment, repeal, and waiver of bylaws.

AUTHORITY: 39 U.S.C. 202, 203, 205(c), 207, 401(2), as enacted by Pub. L. 91–375, and 5 U.S.C. 552b(f), (g), as enacted by Pub. L. 94–409.

SOURCE: 59 FR 18447, Apr. 18, 1994, unless otherwise noted.

§ 2.1 Office of the Board of Governors.

There shall be located in Washington, DC an Office of the Board of Governors of the United States Postal Service. It shall be the function of this Office to provide staff support for the Board, as directed by the Chairman of the Board, to enable the Board to carry out effectively its duties under the Reorganization Act.

§ 2.2 Agent for receipt of process.

The General Counsel of the Postal Service shall act as agent for the receipt of legal process against the Postal Service, and as agent for the receipt of legal process against the Board of Governors or a member of the Board, in his or her official capacity, and all other officers and employees of the Postal Service to the extent that the process arises out of the official functions of those officers and employees. The General Counsel shall also issue public certifications concerning closed meetings of the Board as appropriate under 5 U.S.C. 552b(f).

§ 2.3 Offices.

The principal office of the Postal Service is located in Washington, DC, with such regional and other offices and places of business as the Postmaster General establishes from time to time, or the business of the Postal Service requires.

§ 2.4 Seal.

(a) The Seal of the Postal Service is filed by the Board in the Office of the Secretary of State, and is required by 39 U.S.C. 207 to be judicially noticed. The Seal shall be in the custody of the General Counsel, who shall affix it to all commissions of officers of the Postal Service, and use it to authenticate records of the Postal Service and for other official purposes. The following describes the Seal adopted for the Postal Service:

(1) A stylized bald eagle is poised for flight, facing to the viewer's right, above two horizontal bars between which are the words ''U.S. MAIL'', surrounded by a square border with rounded corners consisting of the words ''UNITED STATES POSTAL SERVICE'' on the left, top, and right, and consisting of nine five-pointed stars on the base.

(2) The color representation of the Seal shows, a white field on which the bald eagle appears in dark blue, the words ''U.S. MAIL'' in black, the bar above the words in red, the bar below in blue, and the entire border consisting of the words ''UNITED STATES POSTAL SERVICE'' and stars in ochre.

(b) The location and description of the Postal Service emblem is described at 39 CFR 221.9.

§ 2.5 Authority.

These bylaws are adopted by the Board under the authority conferred upon the Postal Service by 39 U.S.C. 401(2) and 5 U.S.C. 552b(g).

§ 2.6 Severability, amendment, repeal, and waiver of bylaws.

The invalidity of any provision of these bylaws does not affect the validity of the remaining provisions, and for this purpose these bylaws are severable. The Board may amend or repeal these bylaws at any special or regular meeting, provided that each member of the Board has received a written notice containing a statement of the proposed amendment or repeal at least 5 days before the meeting. The members of the Board may waive the 5 days' notice or the operation of any other provision of these bylaws by unanimous consent, if that action is not prohibited by law. The Secretary shall submit the text of any amendment to these bylaws for publication in the FEDERAL REGISTER as soon as practicable after the amendment is adopted by the Board.

PART 3—BOARD OF GOVERNORS (ARTICLE III)

Sec.
3.1 Responsibilities of Board.
3.2 Compensation of Board.

3.3 Matters reserved for decision by the Board.
3.4 Matters reserved for decision by the Governors.
3.5 Delegation of authority by Board.
3.6 Information furnished to Board—financial and operating reports.
3.7 Information furnished to Board—program review.
3.8 Information furnished to Board—special reports.

AUTHORITY: 39 U.S.C. 202, 203, 205, 401 (2), (10), 402, 414, 416, 1003, 2802–2804, 3013; 5 U.S.C. 552b (g), (j); Inspector General Act, 5 U.S.C. app.; Pub. L. 107–67, 115 Stat. 514 (2001).

SOURCE: 59 FR 18448, Apr. 18, 1994, unless otherwise noted.

§3.1 Responsibilities of Board.

The composition of the Board is described in 39 U.S.C. 202. The Board directs the exercise of the powers of the Postal Service, reviews the practices and policies of the Postal Service, and directs and controls the expenditures of the Postal Service. Consistent with the broad delegation of authority to the Postmaster General in §3.5 of these bylaws, and except for those powers, duties, or obligations which the Reorganization Act specifically vests in the Governors, as distinguished from the Board of Governors, the Board accomplishes its purposes by monitoring the operations and performance of the Postal Service, and by establishing basic objectives, broad policies, and long-range goals for the Postal Service.

§3.2 Compensation of Board.

Section 202(a) of title 39 provides for the compensation of the Governors and for reimbursement for travel and reasonable expenses incurred in attending Board meetings. Compensation is provided for not more than 42 days of meetings per year.

§3.3 Matters reserved for decision by the Board.

The following matters are reserved for decision by the Board of Governors:

(a) [Reserved]

(b) Adoption of, and amendments to, the bylaws of the Board.

(c) (1) Approval of the annual Postal Service budget program in both tentative and final form, including requests for appropriations;

(2) Approval of the annual Postal Service operating budget.

(d) Approval of the annual financial statements of the Postal Service following receipt of the annual report of the Postal Service's independent, certified public accounting firm.

(e) Approval of the Postal Service Five-Year Capital Investment Plans, including specific approval of each capital investment project, each new lease/rental agreement, and each research and development project exceeding such amount specified by resolution at the annual Board meeting in January. In the case of any project or agreement subject to the requirement of Board approval under this provision, the expenditure of any funds in excess of the amount previously authorized by the Board must be specifically approved by the Board. For the purpose of determining the cost of a capital investment project, lease/rental agreement, or research and development project,

(1) All such projects and agreements undertaken as part of a unitary plan (either for contemporaneous or sequential development in one of several locations) shall be considered one project or agreement, and

(2) The cost of a lease/rental agreement shall be the present value of all lease payments over the term of the lease, including all periods covered by renewal options or all periods for which failure to renew imposes a penalty or a hardship such that renewal appears to be reasonably assured, plus the cost of any leasehold improvements planned in connection with the lease/rental agreement. The present value will be determined using the cost of capital of the Postal Service.

(3) The cost of a developmental real estate project shall be the sum of:

(i) The as-is value of the postal assets contributed to the project;

(ii) Cash contributed by the Postal Service; and

(iii) Debt that impacts the Postal Service's investment.

(f) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in postal rates, except that the Postmaster General may authorize

such requests with respect to Negotiated Service Agreements filed for consideration under 39 CFR 3001.196 or 3001.197.

(g) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in the mail classification schedule, except that the Postmaster General may authorize such requests with respect to Negotiated Service Agreements filed for consideration under 39 CFR 3001.196 or 3001.197.

(h) Determination of an effective date for changes in postal rates or mail classification.

(i) Authorization of the Postal Service to request the Postal Rate Commission to submit an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis.

(j) Approval of any use of the authority of the Postal Service to borrow money under 39 U.S.C. 2005, except for short-term borrowings, having maturities of one year or less, assumed in the normal course of business.

(k) Approval of the terms and conditions of each series of obligations issued by the Postal Service under 39 U.S.C. 2005, including the time and manner of sale and the underwriting arrangements, except for short-term borrowings, having maturities of one year or less, assumed in the normal course of business.

(l) Approval of any use of the authority of the Postal Service to require the Secretary of the Treasury to purchase Postal Service obligations under 39 U.S.C. 2006(b), or to request the Secretary of the Treasury to pledge the full faith and credit of the Government of the United States for the payment of principal and interest on Postal Service obligations under 39 U.S.C. 2006(c).

(m) Determination of the number of officers, described in 39 U.S.C. 204 as Assistant Postmasters General, whether so denominated or not, as the Board authorizes by resolution.

(n) Compensation of officers of the Postal Service whose positions are included in Level II of the Postal Career Executive Service.

(o) [Reserved]

(p) Approval of official statements adopting major policy positions or departing from established major policy positions, and of official positions on legislative proposals having a major impact on the Postal Service.

(q) Approval of all major policy positions taken with the Department of Justice on petitioning the Supreme Court of the United States for writs of certiorari.

(r) Approval and transmittal to the President and the Congress of the annual report of the Postmaster General under 39 U.S.C. 2402.

(s) Approval and transmittal to the Congress of the annual report of the Board under 5 U.S.C. 552b(j).

(t) Approval of the annual comprehensive statement of the Postal Service to Congress under 39 U.S.C. 2401(g).

(u) Approval and transmittal to the Congress of the semi-annual report of the Postmaster General under 39 U.S.C. 3013, summarizing the investigative activities of the Postal Service.

(v) Approval and transmittal to the President and the Congress of the Postal Service's strategic plan pursuant to the Government Performance and Results Act of 1993, 39 U.S.C. 2802; approval of the Postal Service annual performance plan under 39 U.S.C. 2803 and the Postal Service program performance report under 39 U.S.C. 2804, which are included in the comprehensive statement under 39 U.S.C. 2401.

(w) All other matters that the Board may consider appropriate to reserve for its decision.

[59 FR 18448, Apr. 18, 1994, as amended at 62 FR 41853, Aug. 4, 1997; 62 FR 43642, Aug. 15, 1997; 69 FR 42340, July 15, 2004; 69 FR 58057, Sept. 29, 2004; 71 FR 64647, Nov. 3, 2006]

§ 3.4 Matters reserved for decision by the Governors.

The following matters are reserved for decision by the Governors:

(a) Appointment, pay, term of service, and removal of the Postmaster General, 39 U.S.C. 202(c).

(b) Appointment, term of service, and removal of the Deputy Postmaster General (by the Governors and the Postmaster General, 39 U.S.C. 202(d)); pay of the Deputy Postmaster General, 39 U.S.C. 202(d).

(c) Election of the Chairman and Vice Chairman of the Board of Governors, 39 U.S.C. 202(a).

(d) Approval of the budget of the Postal Rate Commission, or adjustment of the total amount of the budget (by unanimous written vote of the Governors in office, 39 U.S.C. 3604(d)).

(e) Action upon a recommended decision of the Postal Rate Commission, including action to approve, allow under protest, reject, or modify that decision, 39 U.S.C. 3625.

(f) Concurrence of the Governors with the Postmaster General in the removal or transfer of the Chief Postal Inspector under 5 U.S.C. App. 8E(f).

(g) The Governors shall meet annually in closed session to discuss compensation, term of service, and appointment/removal of the Secretary and other necessary staff.

(h) Transmittal to the Congress of the semi-annual report of the Inspector General under section 5 of the Inspector General Act.

(i) Establishment of the price of the breast cancer research semipostal stamp under 39 U.S.C. 414.

(j) Establishment of the price of semipostal stamps under 39 U.S.C. 416.

(k) Selection of an independent, certified public accounting firm to certify the accuracy of Postal Service financial statements as required by 39 U.S.C. 2008(e).

[59 FR 18448, Apr. 18, 1994, as amended at 62 FR 41853, Aug. 4, 1997; 63 FR 28485, May 26, 1998; 67 FR 2135, Jan. 16, 2002; 69 FR 42340, July 15, 2004; 69 FR 58057, Sept. 29, 2004]

§3.5 Delegation of authority by Board.

As authorized by 39 U.S.C. 402, these bylaws delegate to the Postmaster General the authority to exercise the powers of the Postal Service to the extent that this delegation of authority does not conflict with powers reserved to the Governors or to the Board by law, these bylaws, or resolutions adopted by the Board. Any of the powers delegated to the Postmaster General by these bylaws may be redelegated by the Postmaster General to any officer, employee, or agency of the Postal Service.

§3.6 Information furnished to Board—financial and operating reports.

To enable the Board to monitor the performance of the Postal Service during the most recent accounting periods for which data are available, postal management shall furnish the Board (on a monthly basis) financial and operating statements for the fiscal year to date, addressing the following categories: (a) Mail volume by class; (b) income and expense by principal categories; (c) balance sheet information; (d) service quality measurements; (e) productivity measurements (reflecting workload and resource utilization); and (f) changes in postal costs. These statements shall include, where applicable, comparable figures for the previous year and the current year's plan.

§3.7 Information furnished to Board—program review.

(a) To enable the Board to review the Postal Service operating program, postal management shall furnish the Board information on all aspects of the Postal Service budget plan, including:

(1) The tentative and final annual budgets submitted to the Office of Management and Budget and the Congress, and amendments to the budget;

(2) Five-year plans, annual operating and investment plans, and significant departures from estimates upon which the plans were based;

(3) The need for rate increases or decreases and the progress of any pending rate cases and related litigation; and

(4) Debt financing needs, including a review of all borrowings of the Postal Service from the U.S. Treasury and private sources.

(b) To enable the Board to review the effectiveness of the Postal Service's equal employment opportunity program, performance data relating to this program shall be furnished to the Board at least quarterly. This data shall be categorized in such manner as the Board, from time to time, specifies.

(c) Postal management shall also regularly furnish the Board information regarding major programs for improving postal service or reducing the cost of postal operations.

(d) Management shall furnish to the Board:

(1) Information regarding any significant, new program, policy, major modification or initiative; any plan to offer a significant, new or unique product or system implementation; or any significant, new project not related directly to the core business function of the Postal Service. This information shall be provided to the Board in advance of entering into any agreement in furtherance of such project. For the purposes of this paragraph, ''significant'' means a project anticipated to have a notable or conspicuous impact on (i) corporate visibility or (ii) the operating budget (including increases in expense amounts) or the capital investment budget. The notification requirement of this paragraph governs applicable projects regardless of the level of expenditure involved.

(2) Information regarding any project, in advance of entering into any agreement in furtherance of such project, where the potential liability due to termination, breach, or other reason would equal or exceed the amount specified by resolution for approval of capital investment projects pursuant to section 3.3(e) hereof.

[59 FR 18448, Apr. 18, 1994, as amended 62 FR 18519, Apr. 16, 1997]

§ 3.8 Information furnished to Board—special reports.

To insure that the Board receives significant information of developments meriting its attention, postal management shall bring to the Board's attention the following matters:

(a) Major developments in personnel areas, including but not limited to equal employment opportunity, career development and training, and grade and salary structures.

(b) Major litigation activities. Postal management shall also notify the Board in a timely manner whenever it proposes to seek review by any United States Court of Appeals of an adverse judicial decision.

(c) Any significant changes proposed in the Postal Service's system of accounts or methods of accounting.

(d) Matters of special importance, including but not limited to important research and development initiatives, major changes in Postal Service organization or structure, major law enforcement activities, and other matters having a significant impact upon the relationship of the Postal Service with its employees, with any major branch of Government, or with the general public.

(e) Information concerning any proposed grant of unique or exclusive licenses to use Postal Service intellectual properties (other than patents and technical data rights), or any proposed joint venture involving the use of such property.

(f) Other matters having important policy implications.

PART 4—OFFICERS (ARTICLE IV)

Sec.
4.1 Chairman.
4.2 Vice Chairman.
4.3 Postmaster General.
4.4 Deputy Postmaster General.
4.5 Assistant Postmasters General, General Counsel, Judicial Officer, Chief Postal Inspector.
4.6 Secretary of the Board.

AUTHORITY: 39 U.S.C. 202–205, 401(2), (10), 402, 1003, 3013.

SOURCE: 59 FR 18450, Apr. 18, 1994, unless otherwise noted.

§ 4.1 Chairman.

(a) The Chairman of the Board of Governors is elected by the Governors from among the members of the Board. The Chairman:

(1) Shall preside at all regular and special meetings of the Board, and shall set the agenda for such meetings;

(2) Shall select and appoint the Chairman and members of any committee properly established by the Board;

(3) Serves a term that commences upon election and expires at the end of the first annual meeting following the meeting at which he or she was elected.

(b) If the Postmaster General is elected Chairman of the Board, the Governors shall also elect one of their number to preside during proceedings dealing with matters upon which only the Governors may vote.

§ 4.2 Vice Chairman.

The Vice Chairman is elected by the Governors from among the members of the Board and shall perform the duties

and exercise the powers of the Chairman during the Chairman's absence or disability. The Vice Chairman serves a term that commences upon election and expires at the end of the first annual meeting following the meeting at which he or she was elected.

[59 FR 18450, Apr. 18, 1994, as amended at 69 FR 58058, Sept. 29, 2004]

§4.3 Postmaster General.

The appointment and role of the Postmaster General are described at 39 U.S.C. 202(c), 203. The Governors set the salary of the Postmaster General by resolution, subject to the limitations of 39 U.S.C. 1003(a).

§4.4 Deputy Postmaster General.

The appointment and role of the Deputy Postmaster General are described at 39 U.S.C. 202(d), 203. The Deputy Postmaster General shall act as Postmaster General during the Postmaster General's absence or disability, and when a vacancy exists in the office of Postmaster General. The Governors set the salary of the Deputy Postmaster General by resolution, subject to the limitations of 39 U.S.C. 1003(a).

§4.5 Assistant Postmasters General, General Counsel, Judicial Officer, Chief Postal Inspector.

There are within the Postal Service a General Counsel, a Judicial Officer, a Chief Postal Inspector, and such number of officers, described in 39 U.S.C. 204 as Assistant Postmasters General, whether so denominated or not, as the Board authorizes by resolution. These officers are appointed by, and serve at the pleasure of, the Postmaster General. The Chief Postal Inspector shall report to, and be under the general supervision of, the Postmaster General. The Postmaster General shall promptly notify the Governors and both Houses of Congress in writing if he or she removes the Chief Postal Inspector or transfers the Chief Postal Inspector to another position or location within the Postal Service, and shall include in any such notification the reasons for such removal or transfer.

[62 FR 61914, Nov. 20, 1997]

§4.6 Secretary of the Board.

The Secretary of the Board of Governors is appointed by the Governors and serves at the pleasure of the Governors. The Secretary shall be responsible for carrying out the functions of the Office of the Board of Governors, under the direction of the Chairman of the Board. The Secretary shall also issue notices of meetings of the Board and its committees, keep minutes of these meetings, and take steps necessary for compliance with all statutes and regulations dealing with public observation of meetings. The Secretary shall perform all those duties incident to this office, including those duties assigned by the Board or by the Chairman of the Board. The Chairman may designate such assistant secretaries as may be necessary to perform any of the duties of the Secretary.

[59 FR 18450, Apr. 18, 1994. Redesignated at 62 FR 61914, Nov. 20, 1997]

PART 5—COMMITTEES (ARTICLE V)

Sec.
5.1 Establishment and appointment.
5.2 Committee procedure.

AUTHORITY: 39 U.S.C. 202, 203, 204, 205, 401(2), (10), 1003, 3013.

SOURCE: 59 FR 18450, Apr. 18, 1994, unless otherwise noted.

§5.1 Establishment and appointment.

From time to time the Board may establish by resolution special and standing committees of one or more members of the Board. The Board shall specify, in the resolution establishing any committee, whether the committee is authorized to submit recommendations or preliminary decisions to the Board, to conduct hearings for the Board, or otherwise to take action on behalf of the Board. Each committee may exercise only those duties, functions, and powers prescribed from time to time by the Board, and the Board may affirm, alter, or revoke any action of any committee. Each member of the Board may have access to all of the information and records of any committee at any time. The Chairman of the Board shall appoint the chairman and members of each committee, who serve terms which expire at the

end of each annual meeting. Each committee chairman may assign responsibilities to members of the committee that are considered appropriate. The committee chairman, or the chairman's designee, shall preside at all meetings of the committee.

§ 5.2 Committee procedure.

Each committee establishes its own rules of procedure, consistent with these bylaws, and meets as provided in its rules. A majority of the members of a committee constitute a quorum.

[61 FR 36499, July 11, 1996]

PART 6—MEETINGS (ARTICLE VI)

Sec.
6.1 Regular meetings, annual meeting.
6.2 Special meetings.
6.3 Notice of meetings.
6.4 Attendance by conference telephone call.
6.5 Minutes of meetings.
6.6 Quorum and voting.

AUTHORITY: 39 U.S.C. 202, 205, 401(2), (10), 1003, 3013; 5 U.S.C 552b (e), (g).

SOURCE: 59 FR 18451, Apr. 18, 1994, unless otherwise noted.

§ 6.1 Regular meetings, annual meeting.

The Board shall meet regularly on a schedule established annually by the Board. The first regular meeting of each calendar year is designated as the annual meeting. Consistent with the provisions of §7.5 of these bylaws, the time or place of a regular or annual meeting may be varied by recorded vote, with the earliest practicable notice to the Secretary. The Secretary shall distribute to the members an agenda setting forth the proposed subject matter for any regular or annual meeting in advance of the meeting.

[68 FR 28773, May 27, 2003, as amended at 69 FR 58058, Sept. 29, 2004]

§ 6.2 Special meetings.

Consistent with the provisions of §7.5 of these bylaws, the Chairman may call a special meeting of the Board at any place in the United States, with not less than 8 days' notice to the other members of the Board and to the Secretary, specifying the time, date, place, and subject matter of the meeting. By recorded vote a majority of the members of the Board may call a special meeting of the Board at any place in the United States, with the earliest practicable notice to the other members of the Board and to the Secretary, specifying the time, date, place and subject matter of the meeting.

§ 6.3 Notice of meetings.

The Chairman or the members of the Board may give the notice required under §6.1 or §6.2 of these bylaws in oral or written form. Oral notice to a member may be delivered by telephone and is sufficient if made to the member personally or to a responsible person in the member's home or office. Any oral notice to a member must be subsequently confirmed by written notice. Written notice to a member may be delivered by telegram or by mail sent by the fastest regular delivery method addressed to the member's address of record filed with the Secretary, and except for written notice confirming a previous oral notice, must be sent in sufficient time to reach that address at least 2 days before the meeting date under normal delivery conditions. A member waives notice of any meeting by attending the meeting, and may otherwise waive notice of any meeting at any time. Neither oral nor written notice to the Secretary is sufficient until actually received by the Secretary. The Secretary may not waive notice of any meeting.

§ 6.4 Attendance by conference telephone call.

Unless prohibited by law or by these bylaws, a member of the Board may participate in a meeting of the Board by conference telephone or similar communications equipment which enables all persons participating in the meeting to hear each other and which permits full compliance with the provisions of these bylaws concerning public observation of meetings. Attendance at a meeting by this method constitutes presence at the meeting; and no Governor attending by telephone may receive compensation, except for a special meeting by conference telephone that is more than one hour in duration,

or a special committee meeting between Board meetings called under §6.2 of these bylaws.

[63 FR 57912, Oct. 29, 1998]

§6.5 Minutes of meetings.

The Secretary shall preserve the minutes of Board meetings prepared under §4.7 of these bylaws. After the minutes of any meeting are approved by the Board, the Secretary shall promptly make available to the public, in the Communications Department at Postal Service Headquarters, or in another place easily accessible to the public, copies of the minutes, except for those portions which contain information inappropriate for public disclosure under 5 U.S.C. 552(b) or 39 U.S.C. 410(c).

§6.6 Quorum and voting.

As provided by 39 U.S.C. 205(c), the Board acts by resolution upon a majority vote of those members who are present. No proxies are allowed in any vote of the members of the Board. Any 6 members constitute a quorum for the transaction of business by the Board, except:

(a) In the appointment or removal of the Postmaster General, and in setting the compensation of the Postmaster General and Deputy Postmaster General, 39 U.S.C. 205(c)(1) requires a favorable vote of an absolute majority of the Governors in office;

(b) In the appointment or removal of the Deputy Postmaster General, 39 U.S.C. 205(c)(2) requires a favorable vote of an absolute majority of the Governors in office and the Postmaster General;

(c) In the appointment, removal, or in the setting of the compensation of the Secretary, Assistant Secretary, or other necessary staff, a favorable vote of an absolute majority of the Governors in office is required;

(d) In the adjustment of the total budget of the Postal Rate Commission, 39 U.S.C. 3604(c) requires a unanimous written vote of the Governors in office;

(e) In the modification of a recommended decision of the Postal Rate Commission, 39 U.S.C. 3625 requires a unanimous written vote of the Governors in office; and

(f) In the approval, allowance under protest, or rejection of a recommended decision of the Postal Rate Commission, the Governors act upon a majority vote of the Governors present, and the required quorum of 6 members must include at least 4 Governors;

(g) In the determination to close a portion of a meeting or to withhold information concerning a meeting, 5 U.S.C. 552b(d)(1) requires a vote of a majority of the entire membership of the Board; and

(h) In the decision to call a meeting with less than a week's notice, 5 U.S.C. 552b(e)(1) requires a vote of a majority of the members of the Board. In the decision to change the subject matter of a meeting, or the determination to open or close a meeting, 5 U.S.C. 552b(e)(2) requires a vote of a majority of the entire membership of the Board.

[59 FR 18451, Apr. 18, 1994, as amended at 69 FR 58058, Sept. 29, 2004]

PART 7—PUBLIC OBSERVATION (ARTICLE VII)

Sec.
7.1 Definitions.
7.2 Open meetings.
7.3 Exceptions.
7.4 Procedure for closing a meeting.
7.5 Public notice of meetings, subsequent changes.
7.6 Certification and transcripts of closed meetings.
7.7 Enforcement.
7.8 Open meetings, Freedom of Information, and Privacy of Information.

AUTHORITY: 39 U.S.C. 401(a), as enacted by Pub. L. 91–375, and 5 U.S.C. 552b(a)–(m) as enacted by Pub. L. 94–409.

SOURCE: 59 FR 18451, Apr. 18, 1994, unless otherwise noted.

§7.1 Definitions.

For purposes of §§7.2 through 7.8 of these bylaws:

(a) The term *Board* means the Board of Governors, and any subdivision or committee of the Board authorized to take action on behalf of the Board.

(b) The term *meeting* means the deliberations of at least the number of individual members required to take action on behalf of the Board under §5.2 or §6.5 of these bylaws, where such deliberations determine or result in the

joint conduct or disposition of the official business of the Board. The term ''meeting'' does not include any procedural deliberations required or permitted by §§6.1, 6.2, 7.4, or §7.5 of these bylaws.

[59 FR 18451, Apr. 18, 1994, as amended at 61 FR 36499, July 11, 1996]

§ 7.2 Open meetings.

(a) It is the policy of the United States, established in section 2 of the Government in the Sunshine Act, Public Law 94–409, 90 Stat. 1241, that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. The Postal Service is charged to provide the public with this information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities. Accordingly, except as specifically permitted by statute, every portion of every meeting of the Board of Governors is open to public observation.

(b) Except as provided in §7.3 of these bylaws, every portion of every meeting of the Board is open to public observation. Members of the Board may not jointly conduct or dispose of business of the Board without complying with §§7.2 through 7.8 of these bylaws. Members of the public may obtain access to documents considered at meetings to the extent provided in the regulations of the Postal Service concerning the release of information.

(c) Without the permission of a majority of the Board, no person may participate in, film, televise, or broadcast any portion of any meeting of the Board. Any person may electronically record or photograph a meeting, as long as that action does not tend to impede or disturb the members of the Board in the performance of their duties, or members of the public while attempting to attend or observe a meeting of the Board. The rules and penalties of 39 CFR 232.6, concerning conduct on postal property, apply with regard to meetings of the Board.

§ 7.3 Exceptions.

Section 7.2 of these bylaws does not apply to a portion of a meeting, and §§7.4 and 7.5 do not apply to information concerning the meeting which otherwise would be required to be disclosed to the public, if the Board properly determines that the public interest does not require otherwise, and that such portion of the meeting or the disclosure of such information is likely to:

(a) Disclose matters that are (1) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy, and (2) in fact properly classified under that Executive order;

(b) Relate solely to the internal personnel rules and practices of the Postal Service, including the Postal Service position in negotiations or consultations with employee organizations.

(c) Disclose matters specifically exempted from disclosure by statute (other than the Freedom of Information Act, 5 U.S.C. 552), provided that the statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential, such as market information pertinent to Postal Service borrowing or investments, technical or patent information related to postal mechanization, or commercial information related to purchases of real estate;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature, such as personal or medical data regarding any individual if disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in those records, but only to the extent that the production of those records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right

to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(i) Disclose information the premature disclosure of which would be likely significantly to frustrate implementation of a proposed action of the Board, such as information relating to the negotiation of a labor contract or proposed Postal Service procurement activity, except that this provision does not apply in any instance where (1) the Postal Service has already disclosed to the public the content or nature of the proposed action, or (2) the Postal Service is required by law to make such disclosure on its own initiative before taking final action on the proposal; or

(j) Specifically concern the issuance of a subpoena by the Postal Service, or the participation of the Postal Service in a civil action or proceeding, such as a postal rate or classification proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Postal Service of a particular case of formal adjudication under the procedures of 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§7.4 Procedure for closing a meeting.

(a) A majority of the entire membership of the Board may vote to close a portion of a meeting or to withhold information concerning a meeting under the provisions of §7.3 of these bylaws. The members shall take a separate vote with respect to each meeting a portion of which is proposed to be closed to the public, or with respect to any information which is proposed to be withheld, and shall make every reasonable effort to take any such vote at least 8 days before the date of the meeting involved. The members may take a single vote with respect to a series of meetings, portions of which are proposed to be closed to the public, or with respect to information concerning the series, so long as each portion of a meeting in the series involves the same particular matters, and no portion of any meeting is scheduled to be held more than 30 days after the initial portion of the first meeting in the series.

(b) Whenever any person whose interest may be directly affected by a portion of a meeting requests that the Board close that portion to the public for any of the reasons referred to in §7.3 (e), (f), or (g) of these bylaws, upon request of any one of its members the Board shall vote by recorded vote whether to close that portion of the meeting.

(c) The Secretary shall record the vote of each member participating in a vote under paragraph (a) or (b) of this section. Within 1 day of any vote under paragraph (a) or (b) of this section, the Secretary shall make publicly available a written copy of the vote showing the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within 1 day of the vote, make publicly available a full written explanation of the action closing the portion, together with a list of all persons expected to attend the meeting and their affiliation.

[59 FR 18451, Apr. 18, 1994, as amended at 62 FR 4459, Jan. 30, 1997]

§7.5 Public notice of meetings, subsequent changes.

(a) At least one week before any meeting of the Board, the Secretary shall publicly announce the time, date, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting.

(b) By a recorded vote, a majority of the members of the Board may determine that the business of the Board requires a meeting to be called with less than a week's notice. At the earliest practicable time, the Secretary shall publicly announce the time, date, place, and subject matter of the meeting, and whether it is to be open or closed to the public.

(c) Following the public announcement required by paragraphs (a) or (b) of this section:

(1) As provided in §6.1 of these bylaws, the Board may change the time or place of a meeting. At the earliest practicable time, the Secretary shall publicly announce the change.

(2) A majority of the entire membership of the Board may change the subject matter of a meeting, or the determination to open or close a meeting to the public, if it determines by a recorded vote that the change is required by the business of the Board and that no earlier announcement of the change was possible. At the earliest practicable time, the Secretary shall publicly announce the change, and the vote of each member upon the change.

(d) Immediately following each public announcement required under paragraphs (a), (b), or (c) of this section, the Secretary shall submit for publication in the FEDERAL REGISTER a notice of the time, date, place, and subject matter of the meeting, whether the meeting is open or closed, any change in the preceding, and the name and phone number of the official designated by the Board to respond to requests for information about the meeting. The Secretary shall also submit the announcement and information to the Postal Service Public and Employee Communications Department for dissemination to the public.

§ 7.6 Certification and transcripts of closed meetings.

(a) At the beginning of every meeting or portion of a meeting closed under §7.3 (a) through (j) of these bylaws, the General Counsel shall publicly certify that, in his or her opinion, the meeting or portion of the meeting may be closed to the public, stating each relevant exemptive provision. The Secretary shall retain this certification, together with a statement from the officer presiding at the meeting which sets forth the time and place of the meeting, and the persons present.

(b) The Secretary shall arrange for a complete transcript or electronic recording adequate to record fully the proceedings to be made of each meeting or portion of a meeting of the Board which is closed to the public. The Secretary shall maintain a complete verbatim copy of the transcript, or a complete electronic recording of each meeting or portion of a meeting closed to the public for at least 2 years after the meeting, or for 1 year after the conclusion of any Postal Service proceeding with respect to which the meeting was held, whichever occurs later.

(c) Except for those items of discussion or testimony which the Board, by a majority vote of those members who are present, determines to contain information which may be withheld under §7.3 of these bylaws, the Secretary shall promptly make available to the public, in the Public and Employee Communications Department at Postal Service Headquarters, or in another place easily accessible to the public, the transcript or electronic recording of a closed meeting, including the testimony of any witnesses received at the meeting. The Secretary shall furnish a copy of this transcript, or a transcription of this electronic recording disclosing the identity of each speaker, to any person at the actual cost of duplication or transcription.

§ 7.7 Enforcement.

(a) Under 5 U.S.C. 552b(g), any person may bring a proceeding in the United States Court of Appeals for the District of Columbia to set aside any provisions of these bylaws which are not in accord with the requirements of 5 U.S.C. 552b (a)–(f) and to require the promulgation of provisions that are in accord with those requirements.

(b) Under 5 U.S.C. 552b(h) any person may bring a civil action against the Board in an appropriate U.S. District Court to obtain judicial review of the alleged failure of the Board to comply with 5 U.S.C. 552b (a)–(f). The burden is on the Board to sustain its action. The court may grant appropriate equitable

relief, including enjoining future violations, or ordering the Board to make public information improperly withheld from the public.

(c) Under 5 U.S.C. 552b(i) the court may assess against any party reasonable attorney fees and other litigation costs reasonably incurred by any other party who substantially prevails, except that the court may assess costs against the plaintiff only if the court finds that he initiated the suit primarily for frivolous or dilatory purposes.

§7.8 Open meetings, Freedom of Information, and Privacy of Information.

The provisions of 5 U.S.C. 552b(c) (1)–(10), enacted by Public Law 94–409, the Government in the Sunshine Act, govern in the case of any request under the Freedom of Information Act, 5 U.S.C. 552, to copy or to inspect the transcripts or electronic recordings described in §7.6 of these bylaws. Nothing in 5 U.S.C. 552b authorizes the Board to withhold from any individual any record, including the transcripts or electronic recordings described in §7.6 of these bylaws, to which the individual may otherwise have access under 5 U.S.C. 552a, enacted by the Privacy Act of 1974, Public Law 93–579.

PART 8 [RESERVED]

PART 9—POLICY ON COMMUNICATIONS WITH GOVERNORS OF THE POSTAL SERVICE DURING PENDENCY OF RATE AND CLASSIFICATION PROCEEDINGS [APPENDIX]

Sec.

9.1 General policy.
9.2 Communications with the Governors during the restricted period.
9.3 Public availability of communications.

AUTHORITY: 39 U.S.C. 202, 203, 205, 401 (2), (10), 3621, 3625.

SOURCE: 49 FR 2888, Jan. 24, 1984, unless otherwise noted.

§9.1 General policy.

(a) To represent the public interest generally and to insure that the Postal Service meets the needs of the mailing public, the Governors must be free to hold uninhibited discussions on broad postal issues with mailers and the general public. Nevertheless, the Governors believe that certain restrictions on communications with the public are appropriate when the Governors act in their capacity as final administrative decisionmakers on recommended decisions of the Postal Rate Commission concerning postal rates and classifications. These restrictions should reflect a balance between, on the one hand, the need to safeguard the integrity of the administrative process for setting rates and classifications and insure meaningful judicial review of decisions of the Governors on these subjects, and on the other hand, the need for open access to the Board to permit the members to meet their statutory responsibilities. To strike an appropriate balance, the Board has adopted the following general guidelines: From the time the Postal Rate Commission issues a recommended decision until the Governors have acted on the recommended decision, any communication from an interested person to the Governors that is relevant to the merits of the proceeding should be on the public record and available for public inspection.

(b) In reviewing recommended decisions of the Commission, the Governors act on the record before them. They are under no obligation to take communications from the public into account in reaching their decision.

§9.2 Communications with the Governors during the restricted period.

Once the Commission issues a recommended decision, and until the Governors have acted on that recommended decision by approving, rejecting, allowing under protest or modifying it, the following guidelines apply to communications with the Governors that are relevant to the merits of the proceeding.

(a) *Oral communications.* During the restricted period, it is the policy of the Governors not to receive oral communications relevant to the merits of the proceeding from any interested person. In the event such a conversation does inadvertently take place, the Governor involved shall prepare a memorandum of the conversation and submit it to

the Secretary of the Board for inclusion in the public record, where it shall be available for public inspection.

(b) *Written communications.* (1) During the restricted period any communication relevant to the merits of the proceeding that an interested person may wish to submit to the Governors must be in writing and should not exceed fifteen pages in length. Such comments should be based on the record and addressed to the Governors through the Secretary of the Board. If the commenter has been a party to the Commission proceeding, copies should be sent to all other parties to that proceeding. The Secretary shall make all such communications available for public inspection.

(2) Because the Governors are often required to act promptly on a recommended decision from the Commission, interested persons seeking to communicate with the Governors should submit their comments no later than ten (10) days after the Commission has issued its recommended decision. This period may be extended at the discretion of the Governors.

(c) *Scope of the guidelines.* These guidelines apply to communications from interested persons to the Governors, their staff, personal assistants (if any), the Secretary of the Board and any official of the Office of the Board. Since the Act assigns final decision-making authority on Commission recommended decisions to the Governors and not the Board, these guidelines do not apply to the Postmaster General or the Deputy Postmaster General, nor do they apply to other officers or officials of the Postal Service. Moreover, in order to carry out their statutory responsibility to direct ''the exercise of the power of the Postal Service,'' 39 U.S.C. 202(a), the Governors must be free to discuss all matters of postal policy with officers and employees of the Postal Service. Accordingly, no restrictions apply to communications between the Governors and Postal Service employees.

§ 9.3 Public availability of communications.

All communications placed on the public record pursuant to these guidelines shall be available for public inspection at the Office of the Board of Governors, United States Postal Service, Room 10–300, 475 L'Enfant Plaza West, SW., Washington, DC 20260–1000, between 8:30 a.m. and 4:30 p.m., Monday through Friday except Federal holidays.

PART 10—RULES OF CONDUCT FOR POSTAL SERVICE GOVERNORS [APPENDIX]

Sec.
10.1 Applicability.
10.2 Advisory service.
10.3 Post-employment activities.
10.4 Financial disclosure reports.

AUTHORITY: 39 U.S.C. 401.

SOURCE: 52 FR 29697, Aug. 11, 1987, unless otherwise noted.

§ 10.1 Applicability.

This part contains rules of conduct for the members of the Board of Governors of the United States Postal Service. As special employees within the meaning of 18 U.S.C. 202(a), the members of the Board are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Postal Service regulations supplemental thereto, 5 CFR part 7001.

[61 FR 36499, July 11, 1996]

§ 10.2 Advisory service.

(a) The General Counsel is the Ethical Conduct Officer of the Postal Service and the Designated Agency Ethics Official for purposes of the Ethics in Government Act, as amended, and the implementing regulations of the Office of Government Ethics, including 5 CFR part 2638.

(b) A Governor may obtain advice and guidance on questions of conflicts of interest, and may request any ruling provided for by either the Standards of Ethical Conduct for Employees of the Executive Branch, or the Postal Service regulations supplemental thereto, from the General Counsel or a designated assistant.

(c) If the General Counsel determines that a Governor is engaged in activity which involves a violation of federal statute or regulation, including the ethical conduct regulations contained

in 5 CFR parts 2635 and 7001, or conduct which creates the appearance of such a violation, he or she shall bring this to the attention of the Governor or shall notify the Chairman of the Board of Governors, or the Vice Chairman, as appropriate.

[61 FR 36499, July 11, 1996]

§ 10.3 Post-employment activities.

Governors are subject to the restrictions on the post-employment activities of special Government employees imposed by 18 U.S.C. 207. Guidance concerning post-employment restrictions applicable to Governors may be obtained in accordance with § 10.2(b).

[61 FR 36500, July 11, 1996]

§ 10.4 Financial disclosure reports.

(a) *Requirement of submission of reports.* At the time of their nomination, Governors complete a financial disclosure report which, under the practice of the Senate Governmental Affairs Committee, is kept confidential. Because the Director of the Office of Government Ethics has ruled that Governors who do not perform the duties of their office for more than 60 days in any calendar year are not required to file financial disclosure reports that are open to the public, Governors file non-public reports annually, in accordance with this section. A Governor who performs the duties of his or her office for more than 60 days in a particular calendar year is required to file a public report in accordance with 5 CFR 2634.204(c).

(b) *Person with whom reports should be filed and time for filing.* (1) A Governor shall file a financial disclosure report with the General Counsel on or before May 15 of each year when the Governor has been in office for more than 60 consecutive calendar days during the previous year.

(2) The General Counsel may, for good cause shown, grant to a Governor an extension of up to 45 days. An additional extension of up to 45 days may be granted by the Director of the Office of Government Ethics for good cause shown.

(c) *Information required to be reported.* Each report shall be a full and complete statement, on the form prescribed by the General Counsel and the Office of Government Ethics and in accordance with instructions issued by him or her. The form currently in use is Standard Form 278.

(d) *Reviewing reports.* (1) Financial disclosure reports filed in accordance with the provisions of this section shall, within 60 days after the date of filing, be reviewed by the General Counsel who shall either approve the report, or make an initial determination that a conflict or appearance thereof exists. If the General Counsel determines initially that a conflict or the appearance of a conflict exists, he or she shall inform the Governor of his determination.

(2) If the General Counsel considers that additional information is needed to complete the report or to allow an adequate review to be conducted, he or she shall request the reporting Governor to furnish that information by a specified date.

(3) The General Counsel shall refer to the Chairman of the Board of Governors or the Vice Chairman the name of any Governor he or she has reasonable cause to believe has wrongfully failed to file a report or has falsified or wrongfully failed to report required information.

(e) *Custody of and public access to reports*—(1) *Retention of reports.* Each report filed with the General Counsel shall be retained by him or her for a period of six years. After the six-year period, the report shall be destroyed unless needed in connection with an investigation then pending.

(2) *Confidentiality of reports.* Unless a public report is required by this section, the financial disclosure reports filed by Governors shall not be made public.

[52 FR 29697, Aug. 11, 1987. Redesignated and amended at 61 FR 36500, July 11, 1996]

PART 11—ADVISORY BOARDS [ARTICLE XI]

AUTHORITY: 39 U.S.C. 202, 203, 204, 205, 401(2), (10), 402, 403, 1003, 3013, 5 U.S.C. 552b(a), (b) (g).

§ 11.1 Establishment.

The Board of Governors may create such advisory boards as it may deem appropriate and may appoint persons to serve thereon or may delegate such latter authority to the Postmaster General.

[59 FR 18454, Apr. 18, 1994]

SUBCHAPTER B—INTERNATIONAL MAIL

PART 20—INTERNATIONAL POSTAL SERVICE

Sec.
20.1 International Mail Manual; incorporation by reference.
20.2 Effective date of the International Mail Manual.
20.3 Availability of the International Mail Manual.
20.4 Amendments to the International Mail Manual.
20.5 [Reserved]

AUTHORITY: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

SOURCE: 69 FR 59546, Oct. 5, 2004, unless otherwise noted.

§ 20.1 International Mail Manual; incorporation by reference.

(a) Section 552(a) of Title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that ''* * * matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Federal Register.'' In conformity with that provision, with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference its International Mail Manual (IMM), Issue 31, dated May 31, 2005. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(b) The current Issue of the IMM is incorporated by reference in paragraph (a) of this section. Successive Issues of the IMM are listed in the following table:

International Mail Manual	Date of issuance
Issue 1	November 13, 1981.
Issue 2	March 1, 1983.
Issue 3	July 4, 1985.
Issue 4	September 18, 1986.
Issue 5	April 21, 1988.
Issue 6	October 5, 1988.
Issue 7	July 20, 1989.
Issue 8	June 28, 1990.
Issue 9	February 3, 1991.
Issue 10	June 25, 1992.
Issue 11	December 24, 1992.
Issue 12	July 8, 1993.
Issue 13	February 3, 1994.
Issue 14	August 4, 1994.
Issue 15	July 9, 1995.
Issue 16	January 4, 1996.
Issue 17	September 12, 1996.
Issue 18	June 9, 1997.
Issue 19	October 9, 1997.
Issue 20	July 2, 1998.
Issue 21	May 3, 1999.
Issue 22	January 1, 2000.
Issue 23	July 1, 2000.
Issue 24	January 1, 2001.
Issue 25	July 1, 2001.
Issue 26	January 1, 2002.
Issue 27	June 30, 2002.
Issue 28	January 1, 2003.
Issue 29	July 1, 2003.
Issue 30	August 1, 2004.
Issue 31	May 31, 2005.

[70 FR 70964, Nov. 23, 2005]

§ 20.2 Effective date of the International Mail Manual.

The provisions of the International Mail Manual Issue 31, effective May 31, 2005 are applicable with respect to the international mail services of the Postal Service.

[70 FR 70964, Nov. 23, 2005]

§ 20.3 Availability of the International Mail Manual.

Copies of the International Mail Manual may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9371. The IMM is available for examination on the Internet at *http://pe.usps.gov*. Copies are available for public inspection during regular business hours at area and district offices of the Postal Service and at all post offices, classified stations, and classified branches. You may also inspect a copy at the U.S. Postal Service Library, 475 L'Enfant Plaza West SW., Washington, DC 20260–1641, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

§ 20.4 Amendments to the International Mail Manual.

New issues of the International Mail Manual will be incorporated by reference into this part and will be available at *http://pe.usps.gov*. The text of amendments to the International Mail Manual will be published in the FEDERAL REGISTER and will be available in the Postal Bulletin, copies of which may be accessed at *http://www.usps.com/cpim/ftp/bulletin/pb.htm*.

§ 20.5 [Reserved]

SUBCHAPTER C—POST OFFICE SERVICES [DOMESTIC MAIL]

General Information on Postal Service

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

Sec.

111.1 Mailing Standards of the United States Postal Service, Domestic Mail Manual; incorporation by reference of regulations governing domestic mail services.
111.2 Availability of the Mailing Standards of the United States Postal Service, Domestic Mail Manual.
111.3 Amendments to the Mailing Standards of the United States Postal Service, Domestic Mail Manual.
111.4 Approval of the Director of the Federal Register.
111.5 [Reserved]

AUTHORITY: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

SOURCE: 44 FR 39852, July 6, 1979, unless otherwise noted.

§ 111.1 Mailing Standards of the United States Postal Service, Domestic Mail Manual; incorporated by reference of regulations governing domestic mail services.

Section 552(a) of title 5, U.S.C., relating to the public information requirements of the Administrative Procedure Act, provides in pertinent part that ''* * * matter reasonably available to the class of persons affected thereby is deemed published in the FEDERAL REGISTER when incorporated by reference therein with the approval of the Director of the Federal Register.'' In conformity with that provision, and with 39 U.S.C. section 410(b)(1), and as provided in this part, the U.S. Postal Service hereby incorporates by reference in this part, the Mailing Standards of the United States Postal Service, Domestic Mail Manual, a looseleaf document published and maintained by the Postal Service.

[62 FR 14827, Mar. 28, 1997, as amended at 69 FR 59139, Oct. 4, 2004; 70 FR 14535, Mar. 23, 2005]

§ 111.2 Availability of the Mailing Standards of the United States Postal Service, Domestic Mail Manual.

(a) Copies of the Mailing Standards of the United States Postal Service, Domestic Mail Manual, both current and previous issues, are available during regular business hours for reference and public inspection at the U.S. Postal Service Library, National Headquarters in Washington, DC. Copies of only the current issue are available during regular business hours for public inspection at area and district offices of the Postal Service and at all post offices, classified stations, and classified branches. The Mailing Standards of the United States Postal Service, Domestic Mail Manual is available for examination on the Internet at *http://pe.usps.gov*.

(b) A copy of the current Mailing Standards of the United States Postal Service, Domestic Mail Manual is on file at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(c) Subscriptions to the Mailing Standards of the United States Postal Service, Domestic Mail Manual can be purchased by the public from the Superintendent of Documents, Washington, DC 20402–9375.

[62 FR 14827, Mar. 28, 1997, as amended at 69 FR 18803, Apr. 9, 2004; 69 FR 59139, Oct. 4, 2004; 70 FR 14535, Mar. 23, 2005]

§ 111.3 Amendments to the Mailing Standards of the United States Postal Service, Domestic Mail Manual.

(a) Except for interim or final regulations published as provided in paragraph (b) of this section, only notices rather than complete text of changes made to the Mailing Standards of the United States Postal Service, Domestic Mail Manual are published in the FEDERAL REGISTER. These notices are published in the form of one summary

transmittal letter for each issue of the Mailing Standards of the United States Postal Service, Domestic Mail Manual. A complete issue of the Mailing Standards of the United States Postal Service, Domestic Mail Manual, including the text of all changes published to date, will be filed with the Director, Office of the Federal Register. Subscribers to the Mailing Standards of the United States Postal Service, Domestic Mail Manual receive the latest issue of the Mailing Standards of the United States Postal Service, Domestic Mail Manual from the Government Printing Office.

(b) When the Postal Service invites comments from the public on a proposed change to the Mailing Standards of the United States Postal Service, Domestic Mail Manual, the proposed change and, if adopted, the full text of the interim or the final regulation is published in the FEDERAL REGISTER.

(c) The Postal Bulletin contains the full text of all interim and final regulations published as provided in paragraph (b) of this section, and the full text of all other changes to the Mailing Standards of the United States Postal Service, Domestic Mail Manual that are summarized in the notices published under paragraph (a) of this section, except for nonsubstantive changes and corrections of typographical errors. The Postal Bulletin is a biweekly document issued by the Postal Service to amend and revise policies and procedures. A 1-year subscription to the Postal Bulletin and certain back copies can be purchased by the public from the Superintendent of Documents, Washington, DC 20402–9371.

(d) Interim regulations published in full text or referenced as provided in paragraphs (b) and (c) of this section, are published, as appropriate, in the Mailing Standards of the United States Postal Service, Domestic Mail Manual in full text or referenced at the place where they would appear if they become final regulations.

(e) Announcements of changes to the Mailing Standards of the United States Postal Service, Domestic Mail Manual not published in the FEDERAL REGISTER as provided in paragraphs (a) and (b) of this section and not published in the Postal Bulletin as provided in paragraph (c) are not deemed final under the provisions of this part 111.

(f) For references to amendments to the Mailing Standards of the United States Postal Service, Domestic Mail Manual adopted under paragraph (b) of this section after issuance of the most recent transmittal letter (termed Summary of Changes in the Mailing Standards of the United States Postal Service, Domestic Mail Manual) listed below, see §111.3 in the List of CFR Sections affected at the end of this volume.

Transmittal letter for issue	Dated	Federal Register publication
1	July 30, 1979	44 FR 39742.
2	May 15, 1980	45 FR 42616.
3	July 30, 1980	45 FR 73925.
4	Oct. 1, 1980	46 FR 10154.
5	Mar. 1, 1981	46 FR 25446.
6	July 7, 1981	46 FR 58079.
7	Nov. 1, 1981	47 FR 8179.
8	Jan. 21, 1982	47 FR 8358.
9	May 1, 1982	47 FR 27266.
10	Aug. 1, 1982	47 FR 43952.
11	Jan. 20, 1983	48 FR 10649.
13	Dec. 29, 1983	49 FR 18304.
14	Apr. 12, 1984	49 FR 26228.
15	July 12, 1984	49 FR 33248.
16	Sept. 27, 1984	49 FR 47232.
17	Dec. 20, 1984	50 FR 5580.
18	Feb. 21, 1985	50 FR 12019.
19	June 7, 1985	50 FR 30834.
20	Nov. 14, 1985	51 FR 8495.
21	Sept. 4, 1986	51 FR 43910.
22	Jan.22, 1987	52 FR 10750.
23	May 1, 1987	52 FR 23981.
24	Sept. 20, 1987	52 FR 34778.
25	Dec. 20, 1987	52 FR 48437.
26	April 3, 1988	53 FR 18557.
27	June 19, 1988	53 FR 21821.
28	Sept. 18, 1988	53 FR 35315.
29	Dec.18, 1988	53 FR 49658.
30	Mar. 19, 1989	54 FR 9212.
31	June 18, 1989	54 FR 27880.
32	Sept. 17, 1989	54 FR 37795.
33	Dec. 17, 1989	54 FR 50619.
34	Mar. 18, 1990	55 FR 10061.
35	June 17, 1990	55 FR 24561.
36	Sept. 16, 1990	55 FR 40658.
37	Dec. 16, 1990	56 FR 1112.
38	Feb. 24, 1991	56 FR 11513.
39	June 16, 1991	56 FR 56015
40	September 15, 1991.	56 FR 56013
41	December 15, 1991.	57 FR 21611
42	March 15, 1992	57 FR 21613
43	June 21, 1992	57 FR 37884
44	September 20, 1992.	61 FR 67218
45	December 20, 1992.	61 FR 67218
46	July 1, 1993	61 FR 67218
47	April 10, 1994	61 FR 67218
48	January 1, 1995	61 FR 67218
49	September 1, 1995.	61 FR 67218

Transmittal letter for issue	Dated	Federal Register publication
50	July 1, 1996	61 FR 60190
51	January 1, 1997	61 FR 64618
52	July 1, 1997	62 FR 30457
53	January 1, 1998	62 FR 63851
54	January 10, 1999	64 FR 39
55	January 10, 2000	65 FR 1321
56	January 7, 2001	66 FR 8370
57	June 30, 2002	67 FR 46875
58	August 10, 2003	68 FR 66018
Premier Edition	January 6, 2005	70 FR 14535

[45 FR 40115, June 13, 1980]

EDITORIAL NOTE: For Federal Register citations affecting §111.3, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and on GPO Access.

§ 111.4 Approval of the Director of the Federal Register.

Incorporation by reference of the publication now titled the Mailing Standards of the United States Postal Service, Domestic Mail Manual was approved by the Director of the Federal Register under 5 U.S.C 552(a) and 1 CFR part 51 on March 23, 2005.

(5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408, 3001–3011, 3201–3218, 3403–3405, 3601, 3621; 42 U.S.C. 1973cc–13, 1973cc–14)

[49 FR 47389, Dec. 4, 1984, as amended at 70 FR 14535, Mar. 23, 2005]

§ 111.5 [Reserved]

SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

PART 211—APPLICATION OF REGULATIONS

Sec.
211.1 Disposition of former title 39, U.S.C.
211.2 Regulations of the Postal Service.
211.3 Executive orders and other executive pronouncements; circulars, bulletins, and other issuances of the Office of Management and Budget.
211.4 Interim personnel regulations.

AUTHORITY: 39 U.S.C. 201, 202, 401(2), 402, 403, 404, 410, 1001, 1005, 1209; Pub. L. 91–375, Secs. 3–5, 84 Stat. 773–75.

SOURCE: 38 FR 20402, July 31, 1973, unless otherwise noted.

§ 211.1 Disposition of former title 39, U.S.C.

Except as otherwise continued in effect as postal regulations, all provisions of former title 39, U.S.C., which were continued in effect as regulations of the Postal Service by section 5(f) of the Postal Reorganization Act, are revoked. This revocation does not apply to postal regulations which embody or are derived from provisions of former title 39.

§ 211.2 Regulations of the Postal Service.

(a) The regulations of the Postal Service consist of:

(1) The resolutions of the Governors and the Board of Governors of the U.S. Postal Service and the bylaws of the Board of Governors;

(2) The *Mailing Standards of the United States Postal Service, Domestic Mail Manual;* the *Postal Operations Manual;* the *Administrative Support Manual;* the *Employee and Labor Relations Manual*; the *Financial Management Manual*; the *International Mail Manual*; and those portions of Chapter 2 of the former *Postal Service Manual* and chapter 7 of the former *Postal Manual* retained in force.

(3) Headquarters Circulars, Management Instructions, Regional Instructions, handbooks, delegations of authority, and other regulatory issuances and directives of the Postal Service or the former Post Office Department. Any of the foregoing may be published in the FEDERAL REGISTER and the Code of Federal Regulations.

(b) Except as otherwise provided by law, the resolutions of the Governors and the Board of Governors of the U.S. Postal Service and the bylaws of the Board of Governors take precedence over all regulations issued by other authority.

(c) The adoption, by reference or otherwise, of any rule of law or regulation in this or any other regulation of the Postal Service shall not be interpreted as any expression on the issue of whether such rule of law or regulation would apply to the Postal Service if it were not adopted as a regulation, nor shall it restrict the authority of the Postal Service to amend or revoke the rule so adopted at a subsequent time.

(d) All regulations of the Post Office Department in effect at the time the U.S. Postal Service commenced operations, continue in effect, except as subsequently modified or repealed by the Postal Service. Except as otherwise continued in effect as postal regulations, all regulations of other agencies of the United States continued in effect as postal regulations by section 5(a) of the Postal Reorganization Act are repealed.

[38 FR 20402, July 31, 1973, as amended at 46 FR 34329, July 1, 1981; 69 FR 36022, June 28, 2004; 69 FR 59545, Oct. 5, 2004; 70 FR 20293, Apr. 19, 2005]

§ 211.3 Executive orders and other executive pronouncements; circulars, bulletins, and other issuances of the Office of Management and Budget.

(a) By virtue of the Postal Reorganization Act, certain executive orders, and other executive pronouncements and certain circulars, bulletins, and other issuances of the Office of Management and Budget or particular provisions thereof, or requirements therein, apply to the Postal Service and certain others do not apply.

(b) It is the policy of the Postal Service to continue to comply with issuances of the kind mentioned in paragraph (a) of this section with

which it has previously complied, unless a management decision by an appropriate department head is made to terminate compliance, in whole or in part, following advice from the General Counsel that the issuance is not binding, in whole or in part, on the Postal Service. This policy is not enforceable by any party outside the Postal Service. No party outside the Postal Service is authorized to use the mere noncompliance with this policy against the Postal Service in any way.

§ 211.4 Interim personnel regulations.

(a) *Continuation of Personnel Regulations of the Post Office Department.* All regulations of the former Post Office Department dealing with officers and employees, in effect at the time the U.S. Postal Service commenced operations, continue in effect according to their terms until modified or repealed by the Postal Service or pursuant to a collective bargaining agreement under the Postal Reorganization Act.

(b) *Continuation of Personnel Provisions of Former title 39, U.S.C.* Except as they may be inconsistent with other regulations adopted by the Postal Service or with a collective bargaining agreement under the Postal Reorganization Act, all provisions of former title 39, U.S.C., dealing with and applicable to postal officers and employees immediately prior to the commencement of operations of the Postal Service continue in effect as regulations of the Postal Service.

(c) *Continuation of Other Laws and Regulations as Postal Regulations.* Except as they may be inconsistent with the provisions of the Postal Reorganization Act, with other regulations adopted by the Postal Service, or with a collective bargaining agreement under the Postal Reorganization Act, all regulations of Federal agencies other than the Postal Service or Post Office Department and all laws other than provisions of revised title 39, U.S.C., or provisions of other laws made applicable to the Postal Service by revised title 39, U.S.C., dealing with officers and employees applicable to postal officers and employees immediately prior to the commencement of operations of the Postal Service, continue in effect as regulations of the Postal Service. Any regulation or law the applicability of which is continued by paragraphs (a) through (c) of this section which requires any action by any agency other than the Postal Service or Post Office Department shall be deemed to require such action by the Postal Service, unless by agreement with the Postal Service the other agency involved consents to the continuation of its action.

(d) *Effect of Collective Bargaining on Certain Regulations.* All rules and regulations continued or established by paragraphs (a) through (c) of this section which establish fringe benefits as defined in title 39, U.S.C. 1005(f) of employees for whom there is a collective bargaining representative continue to apply until modified by a collective bargaining agreement concluded pursuant to the Postal Reorganization Act. Those rules and regulations affecting other terms and conditions of employment encompassed by section 8(d) of the National Labor Relations Act, as amended, shall continue to apply to such employees until such collective bargaining agreement has been concluded, and, unless specifically continued by such agreement, shall apply thereafter until modified or repealed by the Postal Service pursuant to its authority under title 39, U.S.C. 1001(e) and other pertinent provisions of the Postal Reorganization Act. In the event a condition occurs which shall excuse the Postal Service from continuing negotiations prior to the parties thereto concluding an agreement in accordance with the Postal Reorganization Act, the Postal Service reserves the right in accordance with the reorganization measures mandated by the Congress and consistent with the provisions of the Act, and any collective bargaining agreements in existence at that time, insofar as they do not unduly impede such reorganization measures, to continue, discontinue, or revise all compensation, benefits, and terms and conditions of employment of such employees of the Postal Service.

PART 221—GENERAL ORGANIZATION

Sec.

221.1 The United States Postal Service.

221.2 Board of Governors.
221.3 Office of Inspector General.
221.4 Corporate officers.
221.5 Headquarters organization.
221.6 Field organization.
221.7 Postal Service emblem.

AUTHORITY: 39 U.S.C. 201, 202, 203, 204, 207, 401(2), 402, 403, 404, 409, 1001; Inspector General Act of 1978 (Pub. L. 95–452), 5 U.S.C. App. 3.

SOURCE: 69 FR 53000, Aug. 31, 2004, unless otherwise noted.

§ 221.1 The United States Postal Service.

The United States Postal Service was established as an independent establishment within the executive branch of the government of the United States under the Postal Reorganization Act of August 12, 1970 (Pub. L. 91–375, 84 Stat. 719).

§ 221.2 Board of Governors.

(a) *Composition.* The Board of Governors consists of 11 members. Nine governors are appointed by the President of the United States, by and with the advice and consent of the Senate. Not more than five governors may be adherents of the same political party. The governors are chosen to represent the public interest generally, and they may not be representatives of specific interests using the Postal Service. The governors may be removed only for cause. The postmaster general and the deputy postmaster general are also voting members of the Board of Governors.

(b) *Responsibilities.* The Board of Governors directs the exercise of the powers of the Postal Service, reviews the practices and policies of the Postal Service, and directs and controls its expenditures.

§ 221.3 Office of Inspector General.

(a) *Establishment.* The Office of Inspector General (OIG) was established as an independent law enforcement and oversight agency for the United States Postal Service under the Inspector General Act of 1978 (5 U.S.C. App. 3), as amended in 1988 (Pub. L. 100–504, 102 Stat. 2515) and 1996 (Pub. L. 104–208, 110 Stat. 3009).

(b) *Responsibilities.* The OIG was established to:

(1) Provide an independent and objective unit to conduct and supervise audits and investigations relating to programs and operations of the Postal Service.

(2) Provide leadership and coordination and recommend policies for activities designed to:

(i) Promote economy, efficiency, and effectiveness in the administration of postal programs and operations.

(ii) Prevent and detect fraud and abuse in postal programs and operations.

(3) Provide a means of keeping the governors and Congress fully and currently informed about:

(i) Problems and deficiencies relating to the administration of postal programs and operations.

(ii) The necessity for corrective action.

(iii) The progress of corrective action.

(4) Provide oversight of all activities of the Postal Inspection Service.

(c) *Inspector General*—(1) *Appointment.* The inspector general is appointed for a 7-year term by the nine governors.

(2) *Responsibilities.* The inspector general is responsible for the operations of the OIG: ensuring independent and objective audits and investigations of postal operations and programs; overseeing the Postal Inspection Service; and apprising the governors and Congress of significant observations. The inspector general has no direct responsibility for designing, installing, and/or operating postal operations or programs.

(3) *Extent of powers.* In addition to the authority otherwise provided by the Inspector General Act of 1978, as amended, the inspector general is authorized to:

(i) Have unrestricted access to all Postal Service operations, programs, records, and documents, whether in custody of the Postal Service or available by law, contract, or regulation.

(ii) Have direct and prompt access to the governors when necessary for any purpose pertaining to the performance of the functions and responsibilities of the OIG.

(iii) Administer oaths when necessary in performance of the functions assigned to the OIG.

(iv) Require by subpoena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions of the OIG.

(v) Select, appoint, and employ such officers and employees as may be necessary for carrying out the functions, powers, and duties of the OIG.

(vi) Obtain the temporary or intermittent services of experts or consultants in accordance with applicable laws and regulations.

§ 221.4 Corporate officers.

The Board of Governors determines the number of corporate officers and appoints the postmaster general. The governors and the postmaster general appoint the deputy postmaster general. The postmaster general appoints the remaining corporate officers. The corporate officers of the Postal Service are the following:

(a) The postmaster general and chief executive officer.

(b) The deputy postmaster general.

(c) The chief operating officer and executive vice president.

(d) The chief financial officer and executive vice president.

(e) The senior vice presidents.

(f) The general counsel and senior vice president.

(g) The vice presidents.

(h) The chief inspector.

(i) The consumer advocate and vice president.

(j) The judicial officer.

(k) Such other officers as the Board may designate from time to time.

§ 221.5 Headquarters organization.

(a) *Postmaster General*—(1) *Appointment.* The postmaster general (PMG), the chief executive officer of the Postal Service, is appointed by and can be removed by a majority of the governors in office.

(2) *Responsibilities.* The postmaster general is responsible for the overall operation of the Postal Service. The postmaster general determines appeals from the actions of staff and corporate officers, except in cases where he or she has delegated authority to make a decision to a subordinate; such subordinate may also determine appeals within the authority delegated.

(3) *Extent of powers.* The postmaster general, as directed by the Board of Governors, exercises the powers of the Postal Service to the extent that such exercise does not conflict with power reserved to the Board by law. The postmaster general is authorized to direct any officer, employee, or agent of the Postal Service to exercise such of the postmaster general's powers as the postmaster general deems appropriate.

(b) *Deputy Postmaster General.* The deputy postmaster general is appointed and can be removed by the postmaster general and the governors in office. The deputy postmaster general reports directly to the postmaster general.

(c) *Chief Operating Officer and Executive Vice President.* The chief operating officer and executive vice president is appointed by the postmaster general and directs all processing, distribution, and customer service functions.

(d) *Officers in charge of Headquarters organizational units.* The officers in charge of Headquarters organizational units are appointed by the postmaster general. They report directly to the postmaster general, the deputy postmaster general, an executive vice president, a senior vice president, or another officer, as the postmaster general may direct.

(e) *Responsibilities.* The corporate officers head the organizational units into which Headquarters and the field are divided. They are responsible for the following:

(1) Program planning, direction, and review.

(2) Establishment of policies, procedures, and standards.

(3) Operational determinations not delegated to district officials.

§ 221.6 Field organization.

(a) *General.* There are 8 areas, each with a vice president.

(b) *Area locations.*

Area name	Location
Eastern	Pittsburgh PA.
Great Lakes	Chicago IL.
New York Metro	New York NY.
Northeast	Windsor CT.
Pacific	San Francisco CA.
Southeast	Memphis TN.
Southwest	Dallas TX.

Area name	Location
Western	Denver CO.

(c) *Area functions.* Functional units and reporting units are as follows:

(1) *Functional units.* Each area is divided into functional units responsible for finance, human resources, marketing, and operations support.

(2) *Reporting units.* Areas are responsible for:

(i) Customer service districts (CSDs).

(ii) Post offices (POs).

(iii) Vehicle maintenance facilities (VMFs).

(iv) Processing and distribution centers (P&DCs).

(v) Processing and distribution facilities (P&DFs).

(vi) Air mail centers (AMCs).

(vii) Air mail facilities (AMFs).

(viii) Bulk mail centers (BMCs).

(ix) Bulk mail facilities (BMFs).

(x) Remote encoding centers (RECs).

(d) *Customer Service District Offices.* Functional units and reporting relationships are as follows:

(1) *Functional units.* The 80 district offices coordinate the day-to-day management of post offices and customer service activities other than processing and distribution within a geographical area. EAS–26 and above postmasters report to their district manager. Each district office is organized into functional units responsible for post office operations, operations programs support, customer service support, finance, human resources, information technology, administrative support, and marketing.

(2) *Reporting relationships.* Independent delivery distribution centers and post offices level EAS–24 and below report to the functional unit responsible for post office operations.

(e) *Support*—(1) *General.* Headquarters field units and service centers provide support for area offices.

(2) *Headquarters field units.* As assigned, Headquarters field units are responsible for legal services, corporate relations, human resources, facility services, finance, information technology, and supply management.

§ 221.7 Postal Service emblem.

The Postal Service emblem, which is identical with the seal, is registered as a trademark and service mark by the U.S. Patent Office. Except for the emblem on official stationery, the emblem must bear one of the following notations: ''Reg. U.S. Pat. Off.'', ''Registered in U.S. Patent Office'', or the letter R enclosed within a circle.

PART 222—DELEGATIONS OF AUTHORITY

Sec.
222.1 Authority to administer postal affairs.
222.2 Authority to administer oaths or function as notaries public.
222.3 Other delegation.

AUTHORITY: 39 U.S.C. 201, 202, 203, 204, 207, 401(2), 402, 403, 404, 409, 1001, 1011; Inspector General Act of 1978 (Pub. L. 95–452), 5 U.S.C. App. 3.

SOURCE: 69 FR 53000, Aug. 31, 2004, unless otherwise noted.

§ 222.1 Authority to administer postal affairs.

(a) *The Postmaster General.* The postmaster general has been authorized by the Board of Governors to exercise the powers of the Postal Service to the full extent that such exercise is lawful. The postmaster general is empowered to authorize any employee or agent of the Service to exercise any function vested in the Postal Service, in the postmaster general, or in any other Postal Service employee.

(b) *Corporate officers.* Corporate officers are authorized to exercise the powers and functions of the Postal Service under the Postal Reorganization Act with respect to matters within their areas of responsibility, except as limited by law or by the specific terms of their assignment.

(c) *General counsel.* The general counsel is authorized to settle federal tort claims under section 2672 of title 28, United States Code, up to $100,000.

§ 222.2 Authority to administer oaths or function as notaries public.

(a) Authority to approve personnel actions and administer oaths of office for employment. The postmaster general, corporate officers, and their delegatees are authorized to effect appointments, administer oaths of office for employment, and take other personnel actions.

(b) Authority to administer oaths other than for employment. The following are authorized to administer oaths concerning matters other than employment:

(1) Postal inspectors, with regard to any matter coming before them in the performance of their official duties;

(2) Any member of a board who is assigned to conduct hearings or investigations in which sworn testimony, affidavits, or depositions are required, and each officer or employee assigned to conduct such hearings or investigations;

(3) Postmasters, where required in the performance of their official duties.

(c) Authority to function as notaries public. (1) Postmasters in Alaska have the authority to administer oaths and affirmations, take acknowledgments and make and execute certificates thereof, and perform all other functions of a notary public within Alaska when a certification is necessary to meet any Act of Congress or the Legislature of Alaska. No fees may be charged for notarial services.

(2) An officer or employee who is a notary public shall not charge or receive compensation for notarial services for another officer or employee regarding Government business; nor for notarial services for any person during the hours of the notary's services to the Government, including the lunch period.

§ 222.3 Other delegation.

(a) *Documentation*. All delegations of authority must be officially documented.

(b) *Position title*. Delegations of authority must ordinarily be made by position title rather than by name of the individual involved. An officer or executive acting for a principal has the principal's full authority.

(c) *Level*. When authority is delegated to an officer, the officers above that officer shall have the same authority. Delegated authority does not extend to aides unless an aide is acting for the supervisor (*see* paragraph (b) of this section) or is specifically authorized by the superior to exercise such authority.

(d) *Agreement with law*. A delegation must agree with the law and regulations under which it is made and contain such specific limiting conditions as may be appropriate.

(e) *Further delegation*. Authority may be further delegated unless prohibited by law, a regulation that expressly prohibits further delegation, or terms of the delegation.

PART 223—RELATIONSHIPS AND COMMUNICATION CHANNELS

Sec.
223.1 Headquarters and areas.
223.2 Channels of communication, headquarters with area offices.

AUTHORITY: 39 U.S.C. 201, 202, 203, 204, 207, 401(2), 402, 403, 404.

SOURCE: 69 FR 53000, Aug. 31, 2004, unless otherwise noted.

§ 223.1 Headquarters and areas.

Headquarters provides policy guidance, procedures, and interpretation to area officials.

§ 223.2 Channels of communication, headquarters with area offices.

(a) *General*. Headquarters organizational units formulate the directives to provide guidance to area officials.

(b) *Policies*. Policies are issued over the signatures of the vice presidents of the functional organizations (unless the postmaster general or deputy postmaster general issues these directives personally). Whether published on paper or online, such policies must be coordinated with other appropriate organizations before issuance, and reviewed, published, and managed by Public Affairs and Communications. If within the authority of the issuer, these policies have the same effect as though sent by the postmaster general or deputy postmaster general.

(c) *Procedures*. Regulations, instructions, and implementation guidelines are issued over the signatures of vice presidents of functional organizations or their accountable functional unit managers and used to implement programs and business activities. Whether published on paper or online, such procedures must be coordinated with other appropriate organizations before issuance and reviewed, published, and managed by Public Affairs and Communications.

Inspection Service Requirements

PART 230—OFFICE OF INSPECTOR GENERAL

Subpart A—General Policy and Authority

Sec.
230.1 Establishment and authority.
230.2 Access to information and other responsibilities.
230.3 Cooperation with the Office of Inspector General.
230.4 Arrest and investigative powers of criminal investigators.
230.5 Release of information.

Subpart B—Rules Governing Compliance with Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

230.10 What do these rules govern?
230.11 What special definitions apply to these rules?
230.12 Can Office of Inspector General employees testify or produce documents that would assist me in my civil proceeding?
230.13 Why are restrictions on Office of Inspector General employees in civil proceedings necessary?
230.14 Who owns the written or recorded notes, memoranda, reports, and transcriptions made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General?
230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?
230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?
230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?
230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?
230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?
230.20 What records will not be released?
230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?
230.22 May another employee be substituted for the employee requested to appear?.
230.23 May an Office of Inspector General employee testify as an expert or opinion witness?
230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?
230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?
230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?
230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

AUTHORITY: 5 U.S.C. App.3; 39 U.S.C. 401(2) and 1001.

SOURCE: 67 FR 16025, Apr. 4, 2002, unless otherwise noted.

Subpart A—General Policy and Authority

§ 230.1 Establishment and authority.

(a) There is established, pursuant to the Inspector General Act of 1978, as amended (5 U.S.C. App.3), and 39 U.S.C. 410, an independent Office of Inspector General.

(b) The Inspector General reports directly to the nine presidentially appointed Governors and shall not be supervised by, nor report to, the Postmaster General and/or any designee appointed by the Postmaster General.

(c) The Office of Inspector General includes an Inspector General, an Assistant Inspector General for Audit, and an Assistant Inspector General for Investigations. The Office of Inspector General maintains its own legal counsel independent of the Postal Service Law Department for matters that are within the jurisdiction of the Office.

(d) The Office of Inspector General is responsible for detecting and preventing fraud, waste, and abuse in the programs and operations of the Postal Service, and for reviewing existing and proposed legislation and regulations relating to the programs and operations of the Postal Service.

(e) The Inspector General has oversight responsibilities for all activities of the Postal Inspection Service. The Chief Postal Inspector must promptly

report to the Inspector General significant activities and other information related to the Inspection Service as required by law.

(f) The Inspector General has sole responsibility for directing the Office of Inspector General, including the authority to select, appoint, and employ such officers and employees that the Inspector General deems necessary and appropriate to fulfill the mission of the Office. In addition, the Inspector General may delegate to such officers and employees of the Inspector General such powers, duties, and responsibilities, as the Inspector General deems necessary and appropriate for the proper functioning of the Office.

(g) All employees in the Office of Inspector General shall take and subscribe to the oath of office required of all Postal Service employees under 39 U.S.C. 1011, and the Inspector General, or designee, is authorized to administer such oath and affirmation.

(h) The Inspector General has the authority to enter into contracts or other arrangements with public agencies and with private entities, and to make such payments as may be necessary to carry out the duties and responsibilities of the Office of Inspector General.

(i) The Inspector General may hire and retain the services of expert consultants and other personnel as necessary to fulfill the duties and responsibilities of the Office.

(j) Except as required by law, the Governors may not transfer to the Inspector General responsibility for performing any of the program activities of the Postal Service.

§ 230.2 Access to information and other responsibilities.

(a) The Inspector General has authority to have access to all postal records, reports, audits, reviews, documents, papers, information, and other material relating to any matter related to the responsibilities of the Inspector General;

(b) The Inspector General shall be the Investigating Official for purposes of the Program Fraud Civil Remedies Act.

§ 230.3 Cooperation with the Office of Inspector General.

(a) All Postal Service employees shall cooperate with all audits, reviews, and investigations conducted by the Office of Inspector General. Deliberately submitting information known to be false or misleading to the Office of Inspector General or failing to cooperate with all audits, reviews, and investigations conducted by the Office of Inspector General may be grounds for disciplinary or other legal action.

(b) Any employee who has authority to take, direct another to take, recommend or approve any personnel action shall not retaliate against any employee as a reprisal for cooperating and assisting with any Office of Inspector General audit, review, or investigation (including reporting facts or information to the Office of Inspector General that leads to any audit, review, or investigation).

§ 230.4 Arrest and investigative powers of criminal investigators.

(a) Under the authority of 18 U.S.C. 3061, criminal investigators employed by the Office of Inspector General are authorized to perform the following functions in connection with their official duties:

(1) Serve warrants and subpoenas issued under the authority of the United States;

(2) Make arrests without warrant for offenses against the United States committed in their presence;

(3) Make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(4) Carry firearms; and

(5) Make seizures of property as provided by law.

(b) Administrative subpoenas may be served by delivering a copy to a person or by mailing a copy to the person's last known address. For the purposes of this provision, delivery of a copy includes handing it to the party or leaving it at the party's office or residence with a person of suitable age and discretion employed or residing therein.

Service by mail is complete upon mailing.

[67 FR 16025, Apr. 4, 2002, as amended at 71 FR 12285, Mar. 10, 2006]

§ 230.5 Release of information.

(a) The Office of Inspector General is responsible for maintaining and storing its own records and for assuring compliance with applicable records management, retention, and disclosure requirements.

(b) The Inspector General or a designee serves as the official custodian of the records and documents of the Office of Inspector General and is responsible for administering the rules and regulations relating to public availability of Postal Service Office of Inspector General records insofar as the information is subject to the provisions of the Freedom of Information Act, contained in Section 552 of Title 5 of the U.S. Code and 39 U.S.C. 410 (c), and/or the Privacy Act, Section 552a of Title 5 of the U.S. Code.

(c) Requests for records and information under the Freedom of Information Act or Privacy Act should be submitted in writing to the Office of Inspector General, Freedom of Information/Privacy Act Officer, located at 1735 N. Lynn Street, Arlington, Virginia, 22209–2020.

(d) The Office of Inspector General shall comply with and adhere to the procedures governing the release of information maintained by the U.S. Postal Service as set forth in Part 265 and related provisions of these regulations to the extent such procedures do not conflict with any provision in this part.

(e) Appeals from the denial of any request for information should be directed to the General Counsel for the Office of Inspector General, who is responsible for deciding any timely appeals authorized under this section.

(f) Postal Service records in the custody of the Office of Inspector General that contain proprietary information will not be released by the Inspector General without consultation with the appropriate Postal Service official responsible for the record.

Subpart B—Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

SOURCE: 68 FR 57372, Oct. 3, 2003, unless otherwise noted.

§ 230.10 What do these rules govern?

(a) Subpart B governs those situations where an employee of the Office of Inspector General has been summoned, subpoenaed, or given a court order in connection with any federal, state, local court, administrative, or legislative proceeding.

(b) The rules in Subpart B do not apply to:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is named as a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Employees serving as expert witnesses in connection with professional and consultative services under Title 5, Code of Federal Regulations, Part 7001, provided they state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(4) Employees making appearances in their private capacities in proceedings that do not relate to their Postal Service employment, such as traffic accidents or domestic relations matters; and do not involve professional or consultative services;

(5) Situations where the Inspector General or an official designated by the Inspector General determines that the best interests of the public or the Office of Inspector General would be served by an exemption from the regulations.

(c) These rules should be read together with the Freedom of Information Act (FOIA), which provides additional information about access to records.

§ 230.11 What special definitions apply to these rules?

The following definitions apply to Subpart B:

(a) Authorizing official means the Inspector General or an official designated by the Inspector General to authorize release of documents or permission to testify.

(b) Case or matter means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(c) Demand includes any request, order, or subpoena for testimony or the production of documents.

(d) Document means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions.

(e) Employee or Office of Inspector General employee, for the purpose of this subpart only, means a Postal Service employee currently or formerly assigned to the Postal Service Office of Inspector General, student interns, contractors, and employees of contractors who have access to Office of Inspector General information and records.

(f) General Counsel to the Inspector General means the General Counsel of the Office of Inspector General, or a person authorized by the Inspector General to give legal advice to Office of Inspector General employees. General Counsel to the Inspector General does not mean the General Counsel of the Postal Service.

(g) Nonpublic includes any material or information not subject to mandatory public disclosure under § 265.6(b) or which must be kept confidential under the Inspector General Act, 5 U.S.C. App. 3.

(h) Office of Inspector General means the organizational unit within the Postal Service as outlined in part 221 of this chapter.

(i) Office of Inspector General Manual is the document containing the standard operating procedures for criminal investigators, evaluators, and other employees of the Office of Inspector General.

(j) Reports include all written reports, letters, recordings, or other memoralizations made in conjunction with the duties of an Office of Inspector General employee.

(k) Testify or testimony includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

§ 230.12 Can Office of Inspector General employees testify or produce documents that would assist me in my civil proceeding?

No current or former employee within the Office of Inspector General may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this subpart applies (see § 230.10), unless authorized to do so by an authorizing official.

§ 230.13 Why are restrictions on Office of Inspector General employees in civil proceedings necessary?

The restrictions are intended to reduce the risk of inappropriate disclosures that might affect the operations of the Office of Inspector General; prevent the expenditure of Office of Inspector General or Postal Service resources for private purposes; and ensure that employee time is serving the best interests of the public.

§ 230.14 Who owns the written or recorded notes, memoranda, reports, and transcriptions made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General?

Notes, memoranda, reports, and transcriptions, whether written or recorded and made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector

General, are the property of the Office of Inspector General.

§ 230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?

If an Office of Inspector General employee is served with a demand requiring the production of documents or an appearance in court, the employee must promptly inform the authorizing official of the nature of the documents or testimony sought and all relevant facts and circumstances. Office of Inspector General employees are directed to appear as the subpoena or summons may require, but may not testify or produce documents unless authorized.

§ 230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?

Yes, Office of Inspector General reports or records will not be presented during an employee's testimony, unless authorized by an authorizing official.

§ 230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?

If an attempt is made to compel production of reports and records during the employee's testimony, the employee is directed to decline to produce the item or information and to state that the material cannot be disclosed or produced without the approval of the authorizing official. All such requests, and any other requests for documents in judicial or administrative proceedings in which the United States is not a party, shall be deemed to be a request for records under the Freedom of Information Act and shall be handled pursuant to 39 CFR 230.5.

§ 230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?

Absent written authorization from the authorizing official, the employee must respectfully decline to produce the requested documents, testify, or otherwise disclose the requested information. If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

§ 230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?

(a) The authorizing official will determine whether testimony or the production of documents will be authorized according to the following criteria:

(1) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(2) Relevant legal standards for disclosure of nonpublic information and documents;

(3) Office of Inspector General rules and regulations;

(4) The public interest;

(5) Minimizing or preventing expenditures of Office of Inspector General and Postal Service time and resources solely for private purposes.

(6) Minimizing the appearance of improperly favoring one litigant over another;

(7) Minimizing the possibility that the public will misconstrue variances between personal opinions of Office of Inspector General employees and agency policy; and

(8) Preserving the integrity of the administrative process.

(b) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in section 230.24 of this part or to such matters as deemed appropriate by the authorizing official. If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the method least disruptive to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(c) Upon issuance of an unfavorable final determination by the authorizing official, the party or the party's counsel seeking testimony or documents may consult or negotiate with the authorizing official to refine and limit the demand.

(d) The Office of Inspector General will offer all possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the authorizing official. If in the opinion of the authorizing official the documents should not be released or testimony should not be furnished, that determination will be final.

§ 230.20 What records will not be released?

Generally, any record demanded by a subpoena duces tecum or appropriate court order can be released by a properly authorized Office of Inspector General employee, except for the following:

(a) Records required to remain confidential by the Freedom of Information Act, the Privacy Act, and parts 230 and 262 of this chapter,

(b) Records containing information relating to an employee's security or loyalty;

(c) Original records;

(d) Office of Inspector General criminal investigative reports, unless there is specific authorization by an authorizing official, after consulting with General Counsel to the Inspector General; and

(e) The Office of Inspector General Manual and other operating instructions issued to Office of Inspector General employees, unless there is specific authorization by an authorizing official, after consultation with the General Counsel to the Inspector General. If the requested information relates to confidential investigative techniques, confidential sources of information, or information that must be kept confidential under the Inspector General Act, 5 U.S.C. app. 3, because release of the information would adversely affect the duties and obligations or law enforcement mission of the Office of Inspector General, the subpoenaed official, through the Inspector General, or an authorizing official, may request an in camera, ex parte conference to determine the necessity for the release of the information.

§ 230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?

At the option of the Attorney General, or an authorizing official, an Office of Inspector General legal counsel may represent and assist the employee. The authorizing official designated by the Inspector General may also request assistance from the U.S. Department of Justice in representing and assisting the employee in any appearance.

§ 230.22 May another employee be substituted for the employee requested to appear?

The Inspector General or designee may, where appropriate, designate another Office of Inspector General employee to respond to a request for an appearance.

§ 230.23 May an Office of Inspector General employee testify as an expert or opinion witness?

No, an Office of Inspector General employee may not testify as an expert or opinion witness with regard to any matter arising out of the employee's duties or functions at the Office of Inspector General for any party other than the United States, except that in extraordinary circumstances, and where the anticipated testimony will not be adverse to the interest of the United States, the authorizing official may approve such testimony in private litigation. A litigant must first obtain the permission of an authorizing official designated by the Inspector General before designating an Office of Inspector General employee as an expert or opinion witness.

§ 230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?

(a) All demands for the production of nonpublic documents or testimony of Office of Inspector General employees concerning matters relating to their official duties and subject to the conditions set forth in § 230.10(b) shall be

made in writing and conform to the requirements outlined in paragraph (b) of this section.

(b) Before or simultaneously with service of a demand, the requesting party shall serve on the General Counsel to the Inspector General at the Office of Inspector General, 1735 North Lynn Street, Arlington, VA 22209–2020, a summons or subpoena issued in accordance with the appropriate rules of civil procedure along with an affidavit or sworn declaration containing the following information:

(1) The title of the case and the forum where it will be heard;

(2) The party's interest in the case;

(3) The reasons for the demand;

(4) A showing that the requested information is available, by law, to a party outside the Postal Service;

(5) If testimony is sought, a detailed summary of the anticipated testimony;

(6) If testimony is sought, a showing that Office of Inspector General records could not be provided and used in place of the requested testimony;

(7) The intended use of the documents or testimony; and

(8) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

[68 FR 57372, Oct. 3, 2003, as amended at 71 FR 11161, Mar. 6, 2006]

§ 230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?

(a) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including the cost of transcripts, shall be borne by the requesting party. Furthermore, unless limited by statute, such costs shall also include reimbursement to the Office of Inspector General for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(1) The Office of Inspector General is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Office of Inspector General for the cost of responding to a demand, may include the costs of time expended by Office of Inspector General employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; and travel costs of the employee and the agency attorney or other representative, including lodging and per diem. Such fees shall be assessed at the rates and in the manner specified in 39 CFR 265.9.

(2) At the discretion of the Office of Inspector General where appropriate, fees and costs may be estimated and collected before testimony is given.

(b) The provisions of Subpart B do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C. 552a.

§ 230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?

No, the rules in subpart B in no way modify the requirements of the Federal Rules of Civil Procedure regarding service of process.

§ 230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

No, subpart B is intended to provide instructions to Office of Inspector General employees and members of the public. It does not create any right or benefit, substantive or procedural, enforceable by any party against the Office of Inspector General or the Postal Service.

PART 231—PROTECTION OF POST OFFICES

Sec.
231.1 Responsibility.
231.2 Security Control Officer.

§ 231.1 Responsibility.

(a) The protection of mail, postal funds, and property is a responsibility of every postal employee.

(b) The Chief Postal Inspector is designated as the Security Officer for the U.S. Postal Service. That official is responsible for the issuance of instructions and regulations pertaining to security requirements within the Postal Service.

(39 U.S.C. 401)

[36 FR 4762, Mar. 12, 1971]

§ 231.2 Security Control Officer.

The postmaster or a supervisor designated by the postmaster shall act as Security Control Officer for each post office. The Security Control Officer shall be responsible for the general security of the post office, its stations and branches, in accordance with rules and regulations issued by the Chief Postal Inspector.

(39 U.S.C. 401)

[36 FR 4762, Mar. 12, 1971]

PART 232—CONDUCT ON POSTAL PROPERTY

AUTHORITY: 18 U.S.C. 13, 3061; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7), 1201(2).

§ 232.1 Conduct on postal property.

(a) *Applicability*. This section applies to all real property under the charge and control of the Postal Service, to all tenant agencies, and to all persons entering in or on such property. This section shall be posted and kept posted at a conspicuous place on all such property. This section shall not apply to—

(i) Any portions of real property, owned or leased by the Postal Service, that are leased or subleased by the Postal Service to private tenants for their exclusive use;

(ii) With respect to sections 232.1(h)(1) and 232.1(o), sidewalks along the street frontage of postal property falling within the property lines of the Postal Service that are not physically distinguishable from adjacent municipal or other public sidewalks, and any paved areas adjacent to such sidewalks that are not physically distinguishable from such sidewalks.

(b) *Inspection, recording presence.* (1) Purses, briefcases, and other containers brought into, while on, or being removed from the property are subject to inspection. However, items brought directly to a postal facility's customer mailing acceptance area and deposited in the mail are not subject to inspection, except as provided by section 274 of the Administrative Support Manual. A person arrested for violation of this section may be searched incident to that arrest.

(2) Vehicles and their contents brought into, while on, or being removed from restricted nonpublic areas are subject to inspection. A prominently displayed sign shall advise in advance that vehicles and their contents are subject to inspection when entering the restricted nonpublic area, while in the confines of the area, or when leaving the area. Persons entering these areas who object and refuse to consent to the inspection of the vehicle, its contents, or both, may be denied entry; after entering the area without objection, consent shall be implied. A full search of a person and any vehicle driven or occupied by the person may accompany an arrest.

(3) Except as otherwise ordered, properties must be closed to the public after normal business hours. Properties also may be closed to the public in emergency situations and at such other times as may be necessary for the orderly conduct of business. Admission to properties during periods when such properties are closed to the public may be limited to authorized individuals who may be required to sign the register and display identification documents when requested by security force personnel or other authorized individuals.

(c) *Preservation of property.* Improperly disposing of rubbish, spitting, creating any hazard to persons or things, throwing articles of any kind from a building, climbing upon the roof or any part of a building, or willfully destroying, damaging, or removing any property or any part thereof, is prohibited.

(d) *Conformity with signs and directions.* All persons in and on property shall comply with official signs of a prohibitory or directory nature, and with the directions of security force personnel or other authorized individuals.

(e) *Disturbances.* Disorderly conduct, or conduct which creates loud and unusual noise, or which impedes ingress to or egress from post offices, or otherwise obstructs the usual use of entrances, foyers, corridors, offices, elevators, stairways, and parking lots, or which otherwise tends to impede or disturb the public employees in the performance of their duties, or which otherwise impedes or disturbs the general public in transacting business or obtaining the services provided on property, is prohibited.

(f) *Gambling.* Participating in games for money or other personal property, the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of lottery tickets, is prohibited on postal premises. This prohibition does not apply to the vending or exchange of State Lottery tickets at vending facilities operated by licensed blind persons where such lotteries are authorized by state law. (See Domestic Mail Manual 123.351 and 123.42; Administrative Support Manual 221.42; Regional Instructions, Part 782, section IV G 2c.)

(g) *Alcoholic beverages, drugs, and smoking.* (1) A person under the influence of an alcoholic beverage or any drug that has been defined as a ''controlled substance'' may not enter postal property or operate a motor vehicle on postal property. The possession, sale, or use of any ''controlled substance'' (except when permitted by law) or the sale or use of any alcoholic beverage (except as authorized by the Postmaster General or designee) on postal premises is prohibited. The term ''controlled substance'' is defined in section 802 of title 21 U.S.C.

(2) Smoking (defined as having a lighted cigar, cigarette, pipe, or other smoking material) is prohibited in all postal buildings and office space, including public lobbies.

(h) *Soliciting, electioneering, collecting debts, vending, and advertising.* (1) Soliciting alms and contributions, campaigning for election to any public office, collecting private debts, soliciting and vending for commercial purposes (including, but not limited to, the vending of newspapers and other publications), displaying or distributing commercial advertising, collecting signatures on petitions, polls, or surveys (except as otherwise authorized by Postal Service regulations), are prohibited. These prohibitions do not apply to:

(i) Commercial or nonprofit activities performed under contract with the Postal Service or pursuant to the provisions of the Randolph-Sheppard Act;

(ii) Posting notices on bulletin boards as authorized in § 243.2(a) of this chapter;

(iii) The solicitation of Postal Service and other Federal military and civilian personnel for contributions by recognized agencies as authorized by the Manual on Fund Raising Within the Federal Service, issued by the Chairman of the U.S. Civil Service Commission under Executive Order 10927 of March 13, 1961.

(2) Solicitations and other actions which are prohibited by paragraph (h)(1) of this section when conducted on Postal Service property should not be directed by mail or telephone to postal employees on Postal Service property. The Postal Service will not accept or distribute mail or accept telephone calls directed to its employees which are believed to be contrary to paragraph (h)(1) of this section.

(3) Leafleting, distributing literature, picketing, and demonstrating by members of the public are prohibited in lobbies and other interior areas of postal buildings open to the public. Public assembly and public address, except when conducted or sponsored by the Postal Service, are also prohibited in lobbies and other interior areas of postal building open to the public.

(4) *Voter registration.* Voter registration may be conducted on postal premises only with the approval of the postmaster or installation head provided that all of the following conditions are met:

(i) The registration must be conducted by government agencies or nonprofit civic leagues or organizations that operate for the promotion of social welfare but do not participate or intervene in any political campaign on behalf of any candidate or political party for any public office.

(ii) Absolutely no partisan or political literature may be available, displayed, or distributed. This includes

photographs, cartoons, and other likenesses of elected officials and candidates for public office.

(iii) The registration is permitted only in those areas of the postal premises regularly open to the public.

(iv) The registration must not interfere with the conduct of postal business, postal customers, or postal operations.

(v) The organization conducting the voter registration must provide and be responsible for any equipment and supplies.

(vi) Contributions may not be solicited.

(vii) Access to the workroom floor is prohibited.

(viii) The registration activities are limited to an appropriate period before an election.

(5) Except as part of postal activities or activities associated with those permitted under paragraph (h)(4) of this section, no tables, chairs, freestanding signs or posters, structures, or furniture of any type may be placed in postal lobbies or on postal walkways, steps, plazas, lawns or landscaped areas, driveways, parking lots, or other exterior spaces.

(i) *Photographs for news, advertising, or commercial purposes.* Except as prohibited by official signs or the directions of security force personnel or other authorized personnel, or a Federal court order or rule, photographs for news purposes may be taken in entrances, lobbies, foyers, corridors, or auditoriums when used for public meetings. Other photographs may be taken only with the permission of the local postmaster or installation head.

(j) *Dogs and other animals.* Dogs and other animals, except those used to assist persons with disabilities, must not be brought upon postal property for other than official purposes.

(k) *Vehicular and pedestrian traffic.* (1) Drivers of all vehicles in or on property shall be in possession of a current and valid state or territory issued driver's license and vehicle registration, and the vehicle shall display all current and valid tags and licenses required by the jurisdiction in which it is registered.

(2) Drivers who have had their privilege or license to drive suspended or revoked by any state or territory shall not drive any vehicle in or on property during such period of suspension or revocation.

(3) Drivers of all vehicles in or on property shall drive in a careful and safe manner at all times and shall comply with the signals and directions of security force personnel, other authorized individuals, and all posted traffic signs.

(4) The blocking of entrances, driveways, walks, loading platforms, or fire hydrants in or on property is prohibited.

(5) Parking without authority, parking in unauthorized locations or in locations reserved for other persons, or continuously in excess of 18 hours without permission, or contrary to the direction of posted signs is prohibited. This section may be supplemented by the postmaster or installation head from time to time by the issuance and posting of specific traffic directives as may be required. When so issued and posted such directives shall have the same force and effect as if made a part hereof.

(l) *Weapons and explosives.* Notwithstanding the provisions of any other law, rule or regulation, no person while on postal property may carry firearms, other dangerous or deadly weapons, or explosives, either openly or concealed, or store the same on postal property, except for official purposes.

(m) *Nondiscrimination.* There must be no discrimination by segregation or otherwise against any person or persons because of race, color, religion, national origin, sex, age (persons 40 years of age or older are protected), reprisal (discrimination against a person for having filed or for having participated in the processing of an EEO complaint—29 CFR 1613.261–262), or physical or mental handicap, in furnishing, or by refusing to furnish to such person or persons the use of any facility of a public nature, including all services, privileges, accommodations, and activities provided on postal property.

(n) *Conduct with regard to meetings of the Board of Governors.* (1) Without the permission of the chairman no person may participate in, film, televise, or broadcast any portion of any meeting

of the Board or any subdivision or committee of the Board. Any person may electronically record or photograph a meeting, as long as that action does not tend to impede or disturb the members of the Board in the performance of their duties, or members of the public while attempting to attend or observe a meeting.

(2) Disorderly conduct, or conduct which creates loud or unusual noise, obstructs the ordinary use of entrances, foyers, corridors, offices, meeting rooms, elevators, stairways, or parking lots, or otherwise tends to impede or disturb the members of the Board in the performance of their duties, or members of the public while attempting to attend or observe a meeting of the Board or of any subdivision, or committee of the Board, is prohibited.

(3) Any person who violates paragraph (n) (1) or (2) of this section may, in addition to being subject to the penalties prescribed in paragraph (p) of this section, be removed from and barred from reentering postal property during the meeting with respect to which the violation occurred.

(4) A copy of the rules of this section governing conduct on postal property, including the rules of this paragraph appropriately highlighted, shall be posted in prominent locations at the public entrances to postal property and outside the meeting room at any meeting of the Board of Governors or of any subdivision or committee of the Board.

(o) *Depositing literature.* Depositing or posting handbills, flyers, pamphlets, signs, poster, placards, or other literature, except official postal and other Governmental notices and announcements, on the grounds, walks, driveways, parking and maneuvering areas, exteriors of buildings and other structures, or on the floors, walls, stairs, racks, counters, desks, writing tables, window-ledges, or furnishings in interior public areas on postal premises, is prohibited. This prohibition does not apply to:

(1) Posting notices on bulletin boards as authorized in § 243.2(a) of this chapter;

(2) Interior space assigned to tenants for their exclusive use;

(3) Posting of notices by U.S. Government-related organizations such as the Inaugural Committee as defined in 36 U.S.C. 721.

(p) *Penalties and other law.* (1) Alleged violations of these rules and regulations are heard, and the penalties prescribed herein are imposed, either in a Federal district court or by a Federal magistrate in accordance with applicable court rules. Questions regarding such rules should be directed to the regional counsel for the region involved.

(2) Whoever shall be found guilty of violating the rules and regulations in this section while on property under the charge and control of the Postal Service is subject to fine of not more than $50 or imprisonment of not more than 30 days, or both. Nothing contained in these rules and regulations shall be construed to abrogate any other Federal laws or regulations of any State and local laws and regulations applicable to any area in which the property is situated.

(q) *Enforcement.* (1) Members of the U.S. Postal Service security force shall exercise the powers provided by 18 U.S.C. 3061(c)(2) and shall be responsible for enforcing the regulations in this section in a manner that will protect Postal Service property and persons thereon.

(2) Local postmasters and installation heads may, pursuant to 40 U.S.C. 1315(d)(3) and with the approval of the chief postal inspector or his designee, enter into agreements with State and local enforcement agencies to insure that these rules and regulations are enforced in a manner that will protect Postal Service property.

(3) Postal Inspectors, Office of Inspector General Criminal Investigators, and other persons designated by the Chief Postal Inspector may likewise enforce regulations in this section.

[37 FR 24346, Nov. 16, 1972, as amended at 38 FR 27824, Oct. 9, 1973; 41 FR 23955, June 14, 1976; 42 FR 17443, Apr. 1, 1977; 43 FR 38825, Aug. 31, 1978; 46 FR 898, Jan. 5, 1981. Redesignated and amended at 46 FR 34330, July 1, 1981; 47 FR 32113, July 26, 1982; 53 FR 29460, Aug. 5, 1988; 54 FR 20527, May 12, 1989; 57 FR 36903, Aug. 17, 1993; 57 FR 38443, Aug. 25, 1992; 63 FR 34600, June 25, 1998; 70 FR 72078, Dec. 1, 2005; 71 FR 11161, Mar. 6, 2006; 72 FR 11288, Mar. 13, 2007; 72 FR 12565, Mar. 16, 2007]

PART 233—INSPECTION SERVICE AUTHORITY

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AUTHORITY: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Omnibus Budget Reconciliation Act of 1996, sec. 662 (Pub. L. No. 104–208).

§ 233.1 Arrest and investigative powers of Postal Inspectors.

(a) *Authorization.* Postal Inspectors are authorized to perform the following functions in connection with their official duties:

(1) Serve warrants and subpoenas issued under the authority of the United States;

(2) Make arrests without warrant for offenses against the United States committed in their presence;

(3) Make arrests without warrant for felonies cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such a felony;

(4) Carry firearms; and

(5) Make seizures of property as provided by law.

(b) *Limitations.* The powers granted by paragraph (a) of this section shall be exercised only—

(1) In the enforcement of laws regarding property in the custody of the Postal Service, property of the Postal Service, the use of the mails, and other postal offenses; and

(2) To the extent authorized by the Attorney General pursuant to agreement between the Attorney General and the Postal Service, in the enforcement of other laws of the United States, if the Attorney General determines that the violation of such laws will have a detrimental effect upon the operations of the Postal Service.

(c) Administrative subpoenas may be served by delivering a copy to a person or by mailing a copy to his or her last known address. For the purposes of this provision, delivery of a copy includes handing it to the party or leaving it at the party's office or residence with a person of suitable age and discretion employed or residing therein. Service by mail is complete upon mailing.

(d) In conducting any investigation, Postal Inspectors are authorized to accept, maintain custody of, and deliver mail.

[36 FR 4762, Mar. 12, 1971, as amended at 38 FR 19124, July 18, 1973. Redesignated at 46 FR 34330, July 1, 1981; 52 FR 12901, Apr. 20, 1987; 56 FR 55823, Oct. 30, 1991; 60 FR 5581, Jan. 30, 1995; 67 FR 16024, Apr. 4, 2002]

§ 233.2 Circulars and rewards.

(a) *Wanted circulars.* The Inspection Service issues wanted circulars to assist in locating and arresting fugitive postal offenders. Post these circulars in the most conspicuous place in the post office lobby and in other prominent places. Post near the Notice of Reward sign. Telephone or telegraph immediately to the postal inspector in charge any information on the possible location of the person wanted. Remove and destroy circulars immediately when notified of their cancellation or when the circular is not listed in the periodic Postal Bulletin notices of current wanted circulars.

(b) *Rewards.* (1) Rewards will be paid up to the amounts and under the conditions stated in Poster 296, Notice of Reward, for the arrest and conviction of persons for the following postal offenses:

(i) Robbery or attempted robbery.

(ii) Mailing or causing to be mailed bombs, explosives, poison, weapons of mass destruction, or controlled substances.

(iii) Post office burglary.

(iv) Stealing or unlawful possession of mail or money or property of the

United States under the custody or control of the Postal Service, including property of the Postal Service.

(v) Destroying, obstructing or retarding the passage of mail.

(vi) Altering, counterfeiting, forging, unlawful uttering or passing of postal money orders; or the unlawful use, counterfeiting or forgery of postage stamps or other postage; or the use, sale or possession with intent to use or sell, any forged or counterfeited postage stamp or other postage.

(vii) Assault on postal employee.

(viii) Murder or manslaughter of a postal employee.

(ix) Mailing or receiving through the mail any visual depiction involving the use of a minor engaging in sexually explicit conduct, or the use of the mail to facilitate any crime relating to the sexual exploitation of children.

(x) Mailing or causing to be mailed any money which has been obtained illegally, or the use of Postal Money Orders to launder illicit proceeds.

(2) The postmaster or a designated employee should personally present reward notices to representatives of firms transporting mail, security or detective units of firms, police officers, sheriffs and their deputies, if practicable, and encourage their cooperation in protecting mail and Postal Service property. (See 273.14 of the Administrative Support Manual).

NOTE: The text of Poster 296, referred to in paragraph (b)(1) of this section, reads as follows:

The United States Postal Service offers a reward up to the amounts shown for information and services leading to the arrest and conviction of any person for the following offenses:

Murder or Manslaughter, $100,000. The unlawful killing of any officer or employee of the Postal Service while engaged in or on account of the performance of their official duties.

Bombs or Explosives, $100,000. Mailing or causing to be mailed any bombs or explosives which may kill or harm another, or injure the mails or other property, or the placing of any bomb or explosive in a postal facility, vehicle, depository or receptacle established, approved or designated by the Postmaster General for the receipt of mail.

Offenses Involving the Mailing of Threatening Communications, Weapons of Mass Destruction, Poisons, or Hazardous Materials, $100,000. Mailing or causing to be mailed any threatening communications, actual or simulated weapons of mass destruction, dangerous chemicals or biological materials, which may kill or injure another, or injure the mails or other property.

Assault on Postal Employees, $50,000. Forcibly assaulting any officer or employee of the Postal Service while engaged in or on account of the performance of their official duties.

Controlled Substances, Illegal Drugs, or Cash Proceeds from Illegal Drugs, $50,000. Mailing or causing to be mailed any controlled substances, illegal drugs, or proceeds from the sale of illegal drugs.

Money Laundering, $50,000. Mailing or causing to be mailed any money which has been obtained illegally, or the use of postal money orders to launder illicit proceeds.

Postage or Meter Tampering, $50,000. The unlawful use, reuse, or forgery of postage stamps, postage meter stamps, permit imprints or other postage; or the use, sale or possession with intent to use or sell, any used, forged or counterfeited postage stamp or other postage.

Robbery, $50,000. Robbery or attempted robbery of any custodian of any mail, or money or other property of the United States under the control and jurisdiction of the United States Postal Service.

Sexual Exploitation of Children, $50,000. The use of the mails to traffic in child pornography, or facilitate any other crime relating to the sexual exploitation of children.

Burglary of Post Office, $10,000. Breaking into, or attempting to break into, a post office, station, branch, or building used wholly or partially as a post office, or any building or area in a building where the business of the Postal Service is conducted, with intent to commit a larceny or other depredation therein.

Offenses Involving Postal Money Orders, $10,000. Theft or possession of stolen postal money orders or any Postal Service equipment used to imprint money orders; or altering, counterfeiting, forging, unlawful uttering, or passing of postal money orders.

Theft, Possession, Destruction, or Obstruction of Mail, $10,000. Theft or attempted theft of any mail, or the contents thereof, or the theft of money or any other property of the United States under the custody and control of the United States Postal Service from any custodian, postal vehicle, railroad depot, airport, or other transfer point, post office or station or receptacle or depository established, approved, or designated by the Postmaster General for the receipt of mail; or destroying, obstructing, or retarding the passage of mail, or any carrier or conveyance carrying the mail.

Workers' Compensation Fraud, $10,000. Defrauding the Workers' Compensation Program by any current or former postal employee.

Related Offenses

The United States Postal Service also offers rewards as stated above for information and services leading to the arrest and conviction of any person: (1) For being an accessory to any of the above crimes; (2) for receiving or having unlawful possession of any mail, money or property secured through the above crimes; and (3) for conspiracy to commit any of the above crimes.

General Provisions

1. The Postal Inspection Service investigates the above described crimes. Information concerning the violations, requests for applications for rewards, and written claims for rewards should be furnished to the nearest Postal Inspector. The written claim for reward payment must be submitted within six months from the date of conviction of the offender, or the date of formally deferred prosecution or the date of the offender's death, if killed in committing a crime or resisting lawful arrest for one of the above offenses.

2. The amount of any reward will be based on the significance of services rendered, character of the offender, risks and hazards involved, time spent, and expenses incurred. Amounts of rewards shown above are the maximum amounts which will be paid.

3. The term ''custodian'' as used herein includes any person having lawful charge, control, or custody of any mail matter, or any money or other property of the United States under the control and jurisdiction of the United States Postal Service.

4. The Postal Service reserves the right to reject a claim for reward where there has been collusion, criminal involvement, or improper methods have been used to effect an arrest or to secure a conviction. It has the right to allow only one reward when several persons were convicted of the same offense, or one person was convicted of several of the above offenses. Postal employees are not eligible to receive a reward for the offenses listed above, other than Workers' Compensation fraud. Employees assigned to the Postal Inspection Service, the General Counsel's office, and those who manage or administer the Injury Compensation Program are not eligible to receive rewards.

5. Other rewards not specifically referred to in this notice may be offered upon the approval of the Chief Postal Inspector (39 U.S.C. 404(a)(8)).

(c) The Chief Postal Inspector or his delegate is authorized to pay a reward to any person who provides information leading to the detection of persons or firms who obtain, or seek to obtain, funds, property, or services from the Postal Service based upon false or fraudulent activities, statements or claims. The decision as to whether a reward shall be paid and the amount thereof shall be solely within the discretion of the Chief Postal Inspector or his delegate and the submission of information or a claim for a reward shall not establish a contractual right to receive any reward. The reward shall not exceed one-half of the amount collected by the Postal Service as a result of civil or criminal proceedings to recover losses or penalties as a result of false or fraudulent claims or statements submitted to the Postal Service. Postal employees assigned to the Postal Inspection Service or the Law Department are not eligible to receive a reward under this section for information obtained while so employed. The Chief Inspector may establish such procedures and forms as may be desirable to give effect to this section including procedures to protect the identity of persons claiming rewards under this section.

[36 FR 4673, Mar. 12, 1971, as amended at 42 FR 43836, Aug. 31, 1977. Redesignated at 46 FR 34330, July 1, 1981, and amended at 47 FR 26832, June 22, 1982; 47 FR 46498, Oct. 19, 1982; 49 FR 15191, Apr. 18, 1984; 54 FR 37795, Sept. 13, 1989; 55 FR 32251, Aug. 8, 1990; 59 FR 5326, Feb. 4, 1994; 60 FR 54305, Oct. 23, 1995; 63 FR 52160, Sept. 30, 1998; 69 FR 16166, Mar. 29, 2004]

§ 233.3 Mail covers.

(a) *Policy*. The U.S. Postal Service maintains rigid control and supervision with respect to the use of mail covers as an investigative technique for law enforcement or the protection of national security.

(b) *Scope*. These regulations constitute the sole authority and procedure for initiating a mail cover, and for processing, using and disclosing information obtained from mail covers.

(c) *Definitions*. For purpose of these regulations, the following terms are hereby defined.

(1) *Mail cover* is the process by which a nonconsensual record is made of any data appearing on the outside cover of any sealed or unsealed class of mail matter, or by which a record is made of the contents of any unsealed class of mail matter as allowed by law, to obtain information in order to:

(i) Protect national security,

(ii) Locate a fugitive,

(iii) Obtain evidence of commission or attempted commission of a crime,

(iv) Obtain evidence of a violation or attempted violation of a postal statute, or

(v) Assist in the identification of property, proceeds or assets forfeitable under law.

(2) For the purposes of § 233.3 *record* is a transcription, photograph, photocopy or any other facsimile of the image of the outside cover, envelope, wrapper, or contents of any class of mail.

(3) *Sealed mail* is mail on which appropriate postage is paid, and which under postal laws and regulations is included within a class of mail maintained by the Postal Service for the transmission of mail sealed against inspection, including First-Class Mail, Express Mail, international letter mail, and mailgram messages.

(4) *Unsealed mail* is mail on which appropriate postage for sealed mail has not been paid and which under postal laws or regulations is not included within a class of mail maintained by the Postal Service for the transmission of mail sealed against inspection. Unsealed mail includes second-, third-, and fourth-class mail, and international parcel post mail.

(5) *Fugitive* is any person who has fled from the United States or any State, the District of Columbia, territory or possession of the United States, to avoid prosecution for a crime, to avoid punishment for a crime, or to avoid giving testimony in a criminal proceeding.

(6) *Crime,* for the purposes of this section, is any commission of an act or the attempted commission of an act that is punishable by law by imprisonment for a term exceeding one year.

(7) *Postal statute* refers to a statute describing criminal activity, regardless of the term of imprisonment, for which the Postal Service has investigative authority, or which is directed against the Postal Service, its operations, programs, or revenues.

(8) *Law enforcement agency* is any authority of the Federal Government or any authority of a State or local government, one of whose functions is to:

(i) Investigate the commission or attempted commission of acts constituting a crime, or

(ii) Protect the national security.

(9) *Protection of the national security* means to protect the United States from any of the following actual or potential threats to its security by a foreign power or its agents:

(i) An attack or other grave, hostile act;

(ii) Sabotage, or international terrorism; or

(iii) Clandestine intelligence activities, including commercial espionage.

(10) *Emergency situation* refers to circumstances which require the immediate release of information to prevent the loss of evidence or in which there is a potential for immediate physical harm to persons or property.

(d) *Authorizations—Chief Postal Inspector.* (1) The Chief Postal Inspector is the principal officer of the Postal Service in the administration of all matters governing mail covers. The Chief Postal Inspector may delegate any or all authority in this regard to not more than two designees at Inspection Service Headquarters.

(2) Except for national security mail covers, the Chief Postal Inspector may also delegate any or all authority to the Manager, Inspector Service Operations Support Group, and, for emergency situations, to Inspectors in Charge. The Manager, Inspection Service Operations Support Group, may delegate this authority to no more than two designees at each Operations Support Group.

(3) All such delegations of authority shall be issued through official, written directives. Except for delegations at Inspection Service Headquarters, such delegations shall only apply to the geographic areas served by the Manager, Inspection Service Operation Support Group, or designee.

(e) The Chief Postal Inspector, or his designee, may order mail covers under the following circumstances:

(1) When a written request is received from a postal inspector that states reason to believe a mail cover will produce evidence relating to the violation of a postal statute.

(2) When a written request is received from any law enforcement agency in which the requesting authority specifies the reasonable grounds to demonstrate the mail cover is necessary to:

(i) Protect the national security,

(ii) Locate a fugitive,

(iii) Obtain information regarding the commission or attempted commission of a crime, or

(iv) Assist in the identification of property, proceeds or assets forfeitable because of a violation of criminal law.

(3) When time is of the essence, the Chief Postal Inspector, or designee, may act upon an oral request to be confirmed by the requesting authority in writing within three calendar days. Information may be released by the Chief Postal Inspector or designee, prior to receipt of the written request, only when the releasing official is satisfied that an emergency situation exists.

(f)(1) *Exceptions.* A postal inspector, or a postal employee acting at the direction of a postal inspector, may record the information appearing on the envelope or outer wrapping, of mail without obtaining a mail cover order, only under the circumstances in paragraph (f)(2) of this section.

(2) The mail must be:

(i) Undelivered mail found abandoned or in the possession of a person reasonably believed to have stolen or embezzled such mail,

(ii) Damaged or rifled, undelivered mail, or

(iii) An immediate threat to persons or property.

(g) *Limitations.* (1) No person in the Postal Service except those employed for that purpose in dead-mail offices, may open, or inspect the contents of, or permit the opening or inspection of sealed mail without a federal search warrant, even though it may contain criminal or otherwise nonmailable matter, or furnish evidence of the commission of a crime, or the violation of a postal statute.

(2) No employee of the Postal Service shall open or inspect the contents of any unsealed mail, except for the purpose of determining:

(i) Payment of proper postage, or

(ii) Mailability.

(3) No mail cover shall include matter mailed between the mail cover subject and the subject's known attorney.

(4) No officer or employee of the Postal Service other than the Chief Postal Inspector, Manager, Inspection Service Operations Support Group, and their designees, are authorized to order mail covers. Under no circumstances may a postmaster or postal employee furnish information as defined in § 233.3(c)(1) to any person, except as authorized by a mail cover order issued by the Chief Postal Inspector or designee, or as directed by a postal inspector under the circumstances described in § 233.3(f).

(5) Except for mail covers ordered upon fugitives or subjects engaged, or suspected to be engaged, in any activity against the national security, no mail cover order shall remain in effect for more than 30 days, unless adequate justification is provided by the requesting authority. At the expiration of the mail cover order period, or prior thereto, the requesting authority may be granted additional 30-day periods under the same conditions and procedures applicable to the original request. The requesting authority must provide a statement of the investigative benefit of the mail cover and anticipated benefits to be derived from its extension.

(6) No mail cover shall remain in force longer than 120 continuous days unless personally approved for further extension by the Chief Postal Inspector or designees at National Headquarters.

(7) Except for fugitive cases, no mail cover shall remain in force when an information has been filed or the subject has been indicted for the matter for which the mail cover is requested. If the subject is under investigation for further criminal violations, or a mail cover is required to assist in the identification of property, proceeds or assets forfeitable because of a violation of criminal law, a new mail cover order must be requested consistent with these regulations.

(8) Any national security mail cover request must be approved personally by the head of the law enforcement agency requesting the cover or one designee at the agency's headquarters level. The head of the agency shall notify the Chief Postal Inspector in writing of such designation.

(h) *Records.* (1) All requests for mail covers, with records of action ordered thereon, and all reports issued pursuant thereto, shall be deemed within the custody of the Chief Postal Inspector. However, the physical storage of this

data shall be at the discretion of the Chief Postal Inspector.

(2) If the Chief Postal Inspector, or his designee, determines a mail cover was improperly ordered, all data acquired while the cover was in force shall be destroyed, and the requesting authority notified of the discontinuance of the mail cover and the reasons therefor.

(3) Any data concerning mail covers shall be made available to any mail cover subject in any legal proceeding through appropriate discovery procedures.

(4) The retention period for files and records pertaining to mail covers shall be 8 years.

(i) *Reporting to requesting authority.* Once a mail cover has been duly ordered, authorization may be delegated to any employee in the Postal Inspection Service to transmit mail cover reports directly to the requesting authority.

(j) *Review.* (1) The Chief Postal Inspector, or his designee at Inspection Service Headquarters shall periodically review mail cover orders issued by the Manager, Inspection Service Operations Support Group or their designees to ensure compliance with these regulations and procedures.

(2) The Chief Postal Inspector shall select and appoint a designee to conduct a periodic review of national security mail cover orders.

(3) The Chief Postal Inspector's determination in all matters concerning mail covers shall be final and conclusive and not subject to further administrative review.

(k) *Military postal system.* Section 233.3 does not apply to the military postal system overseas or to persons performing military postal duties overseas. Information about regulations prescribed by the Department of Defense for the military postal system overseas may be obtained from the Department of Defense.

[58 FR 36599, July 8, 1993, as amended at 61 FR 42557, Aug. 16, 1996]

§ 233.4 Withdrawal of mail privileges.

(a) *False representation and lottery orders*—(1) *Issuance.* Pursuant to 39 U.S.C. 3005, the Judicial Officer of the Postal Service, acting upon a satisfactory evidentiary basis, may issue a mail-stop order against anyone seeking mailed remittance of money or property by means of a false-representation or lottery scheme. Such orders provide for return of mail and refund of postal money orders to remitters.

(2) *Enforcement.* Notice of these orders, including any necessary instructions on enforcement responsibilities and procedures, is published in the Postal Bulletin. Generally, an order against a domestic enterprise is enforced only by the post office designated in the order. All personnel processing mail for dispatch abroad assist in enforcing orders against foreign enterprises by forwarding mail addressed to such enterprises to designated post offices.

(b) *Fictitious name or address and not residents of the place of address orders*—(1) *Issuance.* Pursuant to 39 U.S.C. 3003, 3004, when there is satisfactory evidence that mail is addressed to a fictitious name, title, or address used for any unlawful business, and no one has established a right to have the mail delivered to him, or that mail is addressed to places not the residence or regular business address of the person for whom they are intended to enable the person to escape identification, the Judicial Officer may, pursuant to Part 964, order that the mail be returned to the sender.

(2) *Notice.* (i) The Chief Postal Inspector or his delegate must give notice to the addressee of mail withheld from delivery pursuant to 39 U.S.C. 3003, 3004 that such action has been taken and advise him that he may:

(A) Obtain such mail upon presenting proof of his identity and right to receive such mail, or

(B) Petition the Judicial Officer for the return of such mail. (ii) The notice must be in writing and served by personal service upon the addressee or by Certified Mail (Return Receipt Requested) and by First Class Mail.

(3) *Enforcement.* Notice of any order issued pursuant to 39 U.S.C. 3003, 3004, and any necessary implementing instructions, are published in the Postal Bulletin.

[45 FR 1613, Jan. 8, 1980. Redesignated at 46 FR 34330, July 1, 1981, and amended at 53 FR 1780, Jan. 22, 1988]

§ 233.5 Requesting financial records from a financial institution.

(a) *Definitions.* The terms used in this section have the same meaning as similar terms used in the Right to Financial Privacy Act of 1978, Title XI of Pub. L. 95–630. *Act* means the *Right to Financial Privacy Act of 1978.*

(b) *Purpose.* The purpose of these regulations is: (1) To authorize the Inspection Service Department of the U.S. Postal Service to request financial records from a financial institution pursuant to the formal written request procedure authorized by section 1108 of the Act and (2) to set forth the conditions under which such request may be made.

(c) *Authorization.* The Inspection Service Department is authorized to request financial records of any customer from a financial institution pursuant to a formal written request under the Act only if:

(1) No administrative summons or subpoena authority reasonably appears to be available to the Inspection Service Department to obtain financial records for the purpose for which the records are sought;

(2) There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry and will further that inquiry;

(3) The request is issued by a supervisory official of a rank designated by the Chief Postal Inspector. Officials so designated shall not delegate this authority to others;

(4) The request adheres to the requirements set forth in paragraph (d) of this section; and

(5) The notice requirements set forth in section 1108(4) of the Act, or the requirements pertaining to the delay of notice in section 1109 of the Act, are satisfied, except in situations (*e.g.*, section 1113(g)) where no notice is required.

(d) *Written request.* (1) The formal request must be in the form of a letter or memorandum to an appropriate official of the financial institution and must contain:

(i) The signature of the issuing official and the official's name, title, business address, and business phone number;

(ii) The identity of the customer or customers to whom the records pertain;

(iii) A reasonable description of the records sought; and

(iv) Any additional information which may be appropriate—*e.g.*, the date when the opportunity for the customer to challenge the formal written request expires, the date when the Inspection Service Department expects to present a certificate of compliance with the applicable provisions of the Act, the name and title of the individual (if known) to whom disclosure is to be made.

(2) In cases where customer notice is delayed by court order, a copy of the court order must be attached to the formal written request.

(e) *Certification.* Before obtaining the requested records following a formal written request, a supervisory official authorized to issue a request must certify in writing to the financial institution that the Inspection Service Department has complied with the applicable provisions of the Act.

[44 FR 39161, July 5, 1979. Redesignated at 46 FR 34330, July 1, 1981]

§ 233.6 Test purchases under 39 U.S.C. 3005(e).

(a) *Scope.* This section, which implements 39 U.S.C. 3005(e), supplements any postal regulations or instructions regarding test purchases or test purchase procedures. It is limited to test purchases conducted according to 39 U.S.C. 3005(e).

(b) *Definitions*—(1) *Test purchase.* The acquisition of any article or service, for which money or property are sought through the mails, from the person or representative offering the article or service. The purpose is to investigate possible violations of postal laws.

(2) *Test Purchase Request.* A written document requesting the sale of an article or service pursuant to 39 U.S.C. 3005(e) and containing the following information:

(i) The name and address of the person, firm, or corporation to whom the request is directed;

(ii) The name, title, signature, office mailing address, and office telephone

number of the person making the request;

(iii) A description of the article or service requested which is sufficient to enable the person to whom the request is made to identify the article or service being sought;

(iv) A statement of the nature of the conduct under investigation;

(v) A statement that the article or service must be tendered at the time and place stated in the purchase request, unless the person making the request and the person to whom it is made agree otherwise in writing;

(vi) A verbatim statement of 39 U.S.C. 3005, 3007; and

(vii) A statement that failure to provide the requested article or service may be considered in a proceeding under 39 U.S.C. 3007 to determine whether probable cause exists to believe that 39 U.S.C. 3005 is being violated.

(c) *Service of Test Purchase Request.* (1) The original of the Test Purchase Request must be delivered to the person, firm, or corporation to whom the request is made or to his or its representative. It must be accompanied by a check or money order in the amount for which the article or service is offered for sale, made payable to the person, firm or corporation making the offer.

(2) The person serving the Test Purchase Request must make and sign a record, stating the date and place of service and the name of the person served. The person making the request must retain a copy of the Test Purchase Request, the record of service, and the money order receipt or a photocopy of the issued check or the cancelled check. Alternatively, the request may be made by certified mail.

(d) *Authorizations.* The Chief Postal Inspector is the principal officer of the Postal Service for the administration of all matters governing test purchases under this section. The Chief Inspector may delegate any or all authority in this regard to any or all postal inspectors.

[49 FR 7230, Feb. 28, 1984; 49 FR 8250, Mar. 6, 1984]

§ 233.7 Forfeiture authority and procedures.

(a) *Designation of officials having forfeiture authority.* The Chief Postal Inspector is authorized to perform all duties and responsibilities necessary on behalf of the Postal Service to enforce 18 U.S.C. 981, 2254, and 21 U.S.C. 881, to delegate all or any part of this authority to Deputy Chief Inspectors, Inspectors in Charge, and Inspectors of the Postal Inspection Service, and to issue such instructions as may be necessary to carry out this authority.

(b) *Administrative forfeiture authority.* The Chief Postal Inspector is authorized to conduct administrative forfeitures under the statutes identified in paragraph (a) of this section, following, where applicable, the procedures provided by the customs laws of the United States (19 U.S.C. 1600 *et seq.*), and to pay valid liens and mortgages against property that has been so forfeited.

(c) *Inventory.* An inventory of all property seized for forfeiture under the statutes identified in paragraph (a) of this section shall be prepared and maintained by the Postal Inspection Service. The inventory should occur within seven days of the seizure. The inventory must, at a minimum, identify all property seized, state the exact location of the property at the time of its seizure, and describe in detail the condition of the property. A written receipt containing such information and identifying the Postal Inspector who conducted the seizure must be provided to the party from whom the property was seized, or the party's agent or representative, at the time of the seizure or as soon thereafter as is practicable.

(d) *Custody.* Custody of all property seized for forfeiture under the statutes identified in paragraph (a) of this section is maintained by the U.S. Marshals Service, except property held for evidentiary purposes; retained for official use upon forfeiture; subject to equitable transfer to federal, state or local law enforcement agencies; or subject to civil administrative forfeiture.

(e) *Appraisal.* The Postal Inspection Service must promptly obtain or complete an appraisal of all seized property. The appraisal value is the fair market value of the property, which is

the highest price, in terms of money, which a property will bring in a competitive and open market.

(f) *Quick-release.* Property subject to administrative forfeiture may, prior to forfeiture, be released by the Postal Inspection Service to the owner of the property having an immediate right to possession of the property when the Postal Inspection Service concludes that release of the property is in the best interest of justice. An agreement to hold harmless the United States, the Postal Inspection Service, and all other involved entities should be obtained from the owner. A decision for quick release of the property should be made within five days of the seizure.

(g) *Judicial forfeiture.* If the appraised value of property seized exceeds $500,000, with the exception of: (1) Monetary instruments within the meaning of 31 U.S.C. 5312(a)(3), or (2) any conveyance which was used to import, export, transport, or store any controlled substance or if a claim and satisfactory bond have been received for property appraised at $500,000 or less, or for any monetary instruments within the meaning of 31 U.S.C. 5312(a)(3) or any conveyance which was used to import, export, transport, or store any controlled substance the Postal Inspection Service must transmit the claim and bond to the U.S. Attorney for the judicial district in which the seizure was made and request that the U.S. Attorney promptly institute a judicial forfeiture proceeding against the property. The Postal Inspection Service must provide the U.S. Attorney a complete written description of the property, a statement of the facts and circumstances leading to the seizure of the property, including all facts and documentation leading to the conclusion that the seized property is subject to forfeiture, and such additional information as the U.S. Attorney may require for the purpose of instituting a judicial forfeiture action.

(h) *Notice of seizure for property having a value of $500,000 or less, or for monetary instruments or for conveyances which were used to transport or store any controlled substance; advertisement; declaration of forfeiture.* (1) The Postal Inspection Service must cause written notice of the seizure of all property subject to civil administrative forfeiture to be sent to each known party that may have a possessory or ownership interest in the seized property. The notice must describe the property seized; state the date, place, and cause for seizure; and inform the party of the intent of the Postal Inspection Service to forfeit the property. In addition, the notice must state that any person desiring a judicial determination of forfeiture must file a claim and bond (see paragraph 2 of this subsection) with a designated official of the Postal Inspection Service, within twenty days from the date of the first publication of the notice of seizure (see paragraph (4) of this subsection), or of the date of the letter of personal notice required by this paragraph, whichever is later. Any claim submitted pursuant to this paragraph is invalid unless accompanied by a bond meeting the requirements of paragraph (2), or a completed PS Form 1518, *Petition to Proceed in Forma Pauperis.*

(2) A bond in the amount of $5,000 or ten percent of the value of the claimed property, whichever is lower, but in no event less than $250, must accompany any claim submitted pursuant to paragraph (1). The bond may be in the form of a cashier's check, certified check, or money order made payable to the United States of America, or satisfactory sureties. If a claimant is financially unable to post the bond because of indigency, such a person may request a waiver of the bond by completion of PS Form 1518, *Petition to Proceed in Forma Pauperis.*

(3) Upon receipt of the claim and bond, the Postal Inspection Service must, upon determining that the documents are in proper form and the sureties satisfactory, transmit the documents to the appropriate U.S. Attorney as provided in subsection (g). If the documents are not satisfactory, the Postal Inspection Service must notify the party making the claim and may allow a reasonable time for correction. If correction is not made within the time allowed for that purpose, the administrative forfeiture must proceed as though the claim and bond had not been tendered.

(4) Notice of administrative forfeiture proceedings containing the information required by subsection (h)(1)

must be published once each week for at least three successive weeks in a newspaper of general circulation in the judicial district in which the property was seized. If a claim and satisfactory bond is not filed within the time allowed, the Postal Inspection Service may declare the property forfeited.

(i) *Disposition of forfeited property.* (1) Whenever property is forfeited administratively, the Postal Inspection Service may:

(i) Retain the property for official use;

(ii) Transfer ownership of the property to any federal, state or local law enforcement agency that participated in the investigation leading to the forfeiture;

(iii) Sell any property which is not required to be destroyed by law and which is not harmful to the public;

(iv) Destroy the property; or

(v) Dispose of the property as otherwise permitted by law.

(2) If the laws of a state in which an article of forfeited property is located prohibit the sale or possession of such property or if the Postal Service and the Marshals Service are of the opinion that it would be more advantageous to sell the forfeited property in another district, the property may be moved to and sold in such other district.

(3) If, after an administrative forfeiture of property is completed, it appears that the proceeds of sale will not be sufficient to pay the costs of sale or the proceeds will be insignificant in relation to the expenses involved in the forfeiture, then the Postal Service or the Marshals Service may order destruction or other disposition of the property including alteration of the property into an article that is not prohibited.

(j) *Remission or mitigation of administrative, civil, and criminal forfeitures*—(1) *Authority, purpose, and scope*—(i) *Purpose.* This section sets forth the procedures for Postal Inspection Service officials to follow when considering remission or mitigation of administrative forfeitures under the jurisdiction of the Postal Service. The purpose of these regulations is to provide a basis for ameliorating the effects of forfeiture through the partial or total remission of forfeiture for individuals who have an interest in the forfeited property but who did not participate in, or have knowledge of, the conduct that resulted in the property being subject to forfeiture and, where required, took all reasonable steps under the circumstances to ensure that such property would not be used, acquired, or disposed of contrary to law. Additionally, these regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(ii) *Authority to grant remission and mitigation.* (A) Remission and mitigation functions in administrative forfeitures are performed by the agency seizing the property. Within the Postal Inspection Service, authority to grant remission and mitigation is delegated to the Independent Counsel, Office of the Chief Inspector, Washington, DC.

(B) Remission and mitigation functions in judicial cases are within the jurisdiction of the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation has been delegated to the Chief, Asset Forfeiture and Money Laundering Section.

(C) The powers and responsibilities within these regulations may be redelegated to attorneys or managers working under the supervision of the designated officials.

(D) The time periods and internal requirements established in these regulations are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. These regulations will apply to all decisions on petitions for remission or mitigation made on or after July 1, 1997. These regulations will apply to decisions on requests for reconsideration of a denial of a petition under paragraphs (j)(3)(x) and (3)(xi) of this section only if the initial decision on the petition was made under the provisions of this part effective July 1, 1997.

(E) This section governs any petition for remission or mitigation filed with the Chief Postal Inspector and supersedes any Postal Service regulation governing petitions for remission or

mitigation to the extent such regulation is inconsistent with this section.

(2) *Definitions.* As used in this part:

(i) The term *administrative forfeiture* means the process by which property may be forfeited by an investigative agency rather than through judicial proceedings.

(ii) The term *appraised value* means the estimated market value of an asset at the time and place of seizure if such or similar property was freely offered for sale between a willing seller and a willing buyer.

(iii) The term *Attorney General* means the Attorney General of the United States or his or her designee.

(iv) The term *beneficial owner* means a person with actual use of, as well as an interest in, the property subject to forfeiture.

(v) The term *general creditor* means one whose claim or debt is not secured by a specific right to obtain satisfaction against the particular property subject to forfeiture.

(vi) The term *judgment creditor* means one who has obtained a judgment against the debtor but has not yet received full satisfaction of the judgment.

(vii) The term *judicial forfeiture* means either a civil or criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(viii) The term *lienholder* means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. A lien creditor qualifies as a lienholder if the lien:

(A) Was established by operation of law or contract;

(B) Was created as a result of an exchange of money, goods, or services; and

(C) Is perfected against the specific property forfeited for which remission or mitigation is sought (e.g., a real estate mortgage, a mechanic's lien).

(ix) The term *net equity* means the amount of a lienholder's monetary interest in property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorneys' fees, accelerated or enhanced interest charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

(x) The term *owner* means the person in whom primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A victim of an offense as defined in paragraph (j) (2)(xxi) of this section may also be an owner if he or she has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if he or she is not its beneficial owner.

(xi) The term *person* means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

(xii) The term *petition* means a petition for remission or mitigation of forfeiture under these regulations. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the value of forfeited property placed into official use.

(xiii) The term *petitioner* means the person applying for remission, mitigation, restoration of the proceeds of sale, or for the appraised value of forfeited property under these regulations. A petitioner may be an owner of forfeited property as defined in paragraph (j)(2)(x) of this section; a lienholder as defined in paragraph (j)(2)(viii) of this section; or a victim as defined in paragraph (j)(2)(xxi) of this section subject to the limitations of paragraph (j)(8) of this section.

(xiv) The term *Postal Service Fund* means the United States Postal Fund established under 39 U.S.C. 2003.

(xv) The term *property* means real or personal property of any kind capable of being owned or possessed.

(xvi) The term *record* means a series of arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence; a conviction for a related crime or completion of sentence within ten years of the acquisition of the property subject to forfeiture; or two convictions for a related crime at any time in the past.

(xvii) The term *related crime* as used in paragraphs (j)(2)(xvi) and (6)(v) of this section means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the federal laws dealing with drugs, a related crime would be any offense involving a violation of the federal laws relating to drugs or the laws of any state or political subdivision thereof relating to drugs.

(xviii) The term *related offense* as used in paragraph (j)(8) of this section means:

(A) Any predicate offense charged in a Federal Racketeer Influenced and Corrupt Organizations Act (RICO) count for which forfeiture was ordered; or

(B) An offense committed as part of the same scheme or design, or pursuant to the same conspiracy, as was involved in the offense for which the forfeiture was ordered.

(xix) The term *Ruling Official* means any official to whom decision making authority has been delegated pursuant to paragraph (j)(1)(ii) of this section.

(xx) The term *seizing agency* means the federal agency that seized the property or adopted the seizure of another agency for federal forfeiture.

(xxi) The term *victim* means a person who has incurred a pecuniary loss as a direct result of the commission of the offense underlying a forfeiture. A drug user is not considered a victim of a drug trafficking offense under this definition. A victim does not include one who acquires a right to sue the perpetrator of the criminal offense for any loss by assignment, subrogation, inheritance, or otherwise from the actual victim, unless that person has acquired an actual ownership interest in the forfeited property.

(xxii) The term *violator* means the person whose use or acquisition of the property in violation of the law subjected such property to seizure for forfeiture.

(3) *Petitions in administrative forfeiture cases*—(i) *Notice of seizure.* The notice of seizure and intent to forfeit the property shall advise any persons who may have a present ownership interest in the property to submit their petitions for remission or mitigation within thirty (30) days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until the forfeited property is placed into official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore the proceeds from the sale of forfeited property. A notice of seizure shall include the title of the seizing agency, the Ruling Official, the mailing and street address of the official to whom petitions should be sent, and an asset identifier number.

(ii) *Persons who may file.* A petition for remission or mitigation must be filed by a petitioner as defined in paragraph (j)(2)(xiii) of this section or as prescribed in paragraphs (j)(9) (vii) and (viii) of this section.

(iii) *Contents of petition.* (A) All petitions must include the following information in clear and concise terms:

(*1*) The name, address, and social security or other taxpayer identification number of the person claiming an interest in the seized property who is seeking remission or mitigation;

(*2*) The name of the seizing agency, the asset identifier number, and the date and place of seizure;

(*3*) A complete description of the property including make, model, and serial numbers, if any; and

(*4*) A description of the petitioner's interest in the property as owner, lienholder, or otherwise, supported by original or certified bills of sale, contracts, deeds, mortgages, or other documentary evidence.

(B) Any factual recitation or documentation of any type in a petition must be supported by a sworn affidavit.

(iv) *Releases.* In addition to the contents of the petition for remission or mitigation set forth in paragraph (j)(3)(iii) of this section, upon request,

the petitioner shall also furnish the agency with an instrument executed by the titled or registered owner and any other known claimant of an interest in the property releasing interest in such property.

(v) *Filing petition with agency.* (A) A petition for remission or mitigation of an administrative forfeiture by the Postal Inspection Service shall be sent to the Chief Postal Inspector, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–2100.

(B) The petition shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set out in paragraph (j)(9)(vii) of this section.

(vi) *Agency investigation.* Upon receipt of a petition, the Postal Inspection Service shall investigate the merits of the petition and prepare a written report containing the results of that investigation. This report shall be submitted to the Ruling Official for review and consideration.

(vii) *Ruling.* Upon receipt of the petition and the agency report, the Ruling Official shall review the petition and the report, and shall rule on the merits of the petition. No hearing shall be held.

(viii) *Petitions granted.* If the Ruling Official grants a remission or mitigation of the forfeiture, a copy of the decision shall be sent by certified mail to the petitioner, or, if represented by an attorney, to the petitioner's attorney. A copy of the decision shall also be sent to the U.S. Marshals Service or other property custodian. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein.

(ix) *Petitions denied.* If the Ruling Official denies a petition, a copy of the decision shall be sent by certified mail to the petitioner, or, if represented by an attorney, to the petitioner's attorney of record. A copy of the decision shall also be sent to the U.S. Marshals Service or other property custodian. The written decision shall specify the reason that the petition was denied. The decision shall advise the petitioner that a request for reconsideration of the denial of the petition may be submitted to the Ruling Official in accordance with paragraph (j)(3)(x) of this section.

(x) *Request for reconsideration.* (A) A request for reconsideration of the denial of the petition shall be considered if:

(*1*) It is postmarked or received by the office of the Ruling Official within ten (10) days from the receipt of the notice of the denial of the petition by the petitioner; and

(*2*) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

(B) In no event shall a request for reconsideration be decided by the same Ruling Official who ruled on the original petition.

(C) Only one request for reconsideration of a denial of a petition shall be considered.

(xi) *Restoration of proceeds from sale.* (A) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

(*1*) Did not know of the seizure prior to the entry of a declaration of forfeiture; and

(*2*) Could not reasonably have known of the seizure prior to the entry of a declaration of forfeiture.

(B) Such a petition shall be submitted pursuant to paragraphs (j)(3)(ii) through (v) of this section within ninety (90) days from the date the property is sold or otherwise disposed of.

(4) *Petitions in judicial forfeiture cases*—(i) *Procedure for filing petition.* If the forfeiture proceedings are judicial, a petition for remission or mitigation of a judicial forfeiture shall be addressed to the Attorney General; shall be sworn to by the petitioner or by the petitioner's attorney upon information and belief, supported by the client's

sworn notice of representation pursuant to 28 U.S.C. 1746; and shall be submitted to the United States Attorney for the district in which the judicial forfeiture proceedings are brought. A petitioner also shall submit a copy of the petition to the Chief Postal Inspector if the Postal Inspection Service was the seizing agency.

(ii) *Ruling.* Department of Justice regulations on petitions for remission or mitigation in judicial forfeiture cases are stated in 29 CFR 9.4.

(5) *Criteria governing administrative remission and mitigation*—(i) *Remission.* (A) The Ruling Official shall not grant remission of a forfeiture unless the petitioner establishes that:

(*1*) The petitioner has a valid, good faith and legally cognizable interest in the seized property as owner or lienholder as defined in these regulations; and

(*2*) The petitioner is innocent within the meaning of the innocent owner provisions of the applicable civil forfeiture statute, is a bona fide purchaser for value without cause to believe that the property was subject to forfeiture at the time of the purchase, or is one who held a legally cognizable interest in the seized property at the time of the violation underlying the forfeiture superior to that of the defendant within the meaning of the applicable criminal forfeiture statute, and is thereby entitled to recover his or her interest in the forfeited property by statute. (If the applicable civil forfeiture statute contains no innocent owner defense, the innocent owner provisions applicable to 21 U.S.C. 881(a)(4) shall apply.) Unless otherwise provided by statute, in the case of petitioners who acquired their interest in the property after the time of the violation underlying the forfeiture, the question of whether the petitioner had knowledge of the violation shall be determined as of the point in time when the interest in the property was acquired.

(B) The knowledge and responsibilities of petitioner's representative, agent, or employee in paragraph (j)(5)(i)(A)(*2*) of this section are imputed to the petitioner where the representative, agent, or employee was acting in the course of his or her employment and in furtherance of the petitioner's business.

(C) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds of sale or appraised value of forfeited property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(D) The Ruling Official shall presume a valid forfeiture and shall not consider whether the evidence is sufficient to support the forfeiture.

(E) Willful, materially false statements or information, made or furnished by the petitioner in support of a petition for remission or mitigation of forfeited property, the restoration of proceeds or appraised value of forfeited property, or the reconsideration of a denial of any such petition, shall be grounds for denial of such petition and possible prosecution for the filing of false statements.

(ii) *Mitigation.* (A) The Ruling Official may grant mitigation to a party not involved in the commission of the offense underlying forfeiture:

(*1*) Where the petitioner has not met the minimum conditions for remission, but the Ruling Official finds that some relief should be granted to avoid extreme hardship and that return of the property combined with imposition of monetary and/or other conditions of mitigation in lieu of a complete forfeiture will promote the interest of justice and will not diminish the deterrent effect of the law. Extenuating circumstances justifying such a finding include those circumstances that reduce the responsibility of the petitioner for knowledge of the illegal activity, knowledge of the criminal record of a user of the property, or failure to take reasonable steps to prevent the illegal use or acquisition by another for some reason, such as a reasonable fear of reprisal; or

(*2*) Where the minimum standards for remission have been satisfied but the overall circumstances are such that, in the opinion of the Ruling Official, complete relief is not warranted.

(B) The Ruling Official may in his or her discretion grant mitigation to a

party involved in the commission of the offense underlying the forfeiture where certain mitigating factors exist, including, but not limited to: The lack of a prior record or evidence of similar criminal conduct; if the violation does not include drug distribution, manufacturing, or importation, the fact that the violator has taken steps, such as drug treatment, to prevent further criminal conduct; the fact that the violation was minimal and was not part of a larger criminal scheme; the fact that the violator has cooperated with federal, state, or local investigations relating to the criminal conduct underlying the forfeiture; or the fact that complete forfeiture of an asset is not necessary to achieve the legitimate purposes of forfeiture.

(C) Mitigation may take the form of a monetary condition or the imposition of other conditions relating to the continued use of the property, and the return of the property, in addition to the imposition of any other costs that would be chargeable as a condition to remission. This monetary condition is considered as an item of cost payable by the petitioner, and shall be deposited into the Postal Service Fund as an amount realized from forfeiture in accordance with the applicable statute. If the petitioner fails to accept the Ruling Official's mitigation decision or any of its conditions, or fails to pay the monetary amount within twenty (20) days of the receipt of the decision, the property shall be sold, and the monetary amount imposed and other costs chargeable as a condition to mitigation shall be subtracted from the proceeds of the sale before transmitting the remainder to the petitioner.

(6) *Special rules for specific petitioners*—(i) *General creditors.* A general creditor may not be granted remission or mitigation of forfeiture unless he or she otherwise qualifies as a petitioner under these regulations.

(ii) *Rival claimants.* If the beneficial owner of the forfeited property and the owner of a security interest in the same property each file a petition, and if both petitions are found to be meritorious, the claim of the beneficial owner shall take precedence.

(iii) *Voluntary bailments.* A petitioner who allows another to use his or her property without cost, and who is not in the business of lending money secured by property or of leasing or renting property for profit, shall be granted remission or mitigation of forfeiture in accordance with the provisions of paragraph (j)(5) of this section.

(iv) *Lessors.* A person engaged in the business of leasing or renting real or personal property on a long-term basis with the right to sublease shall not be entitled to remission or mitigation of a forfeiture of such property unless the lessor can demonstrate compliance with all the requirements of paragraph (j)(5) of this section.

(v) *Straw owners.* A petition by any person who has acquired a property interest recognizable under these regulations and who knew or had reason to believe that the interest was conveyed by the previous owner for the purpose of circumventing seizure, forfeiture, or these regulations, shall be denied. A petition by a person who purchases or owns property for another who has a record for related crimes as defined in paragraph (j)(2)(xvii) of this section, or a petition by a lienholder who knows or has reason to believe that the purchaser or owner of record is not the real purchaser or owner, shall be denied unless both the purchaser of record and the real purchaser or owner meet the requirements of paragraph (j)(5) of this section.

(vi) *Judgment creditors.* (A) A judgment creditor will be recognized as a lienholder if:

(*1*) The judgment was duly recorded before the seizure of the property for forfeiture;

(*2*) Under applicable state or other local law, the judgment constitutes a valid lien on the property that attached to it before the seizure of the property for forfeiture; and

(*3*) The petitioner had no knowledge of the commission of any act or acts giving rise to the forfeiture at the time the judgment became a lien on the forfeited property.

(B) A judgment creditor will not be recognized as a lienholder if the property in question is not property of which the judgment debtor is entitled to claim ownership under applicable state or other local law (e.g., stolen

property). A judgment creditor is entitled under these regulations to no more than the amount of the judgment, exclusive of any interest, costs, or other fees including attorney's fees associated with the action that led to the judgment or its collection.

(C) A judgment creditor's lien must be registered in the district where the property is located if the judgment was obtained outside the district.

(7) *Terms and conditions of remission and mitigation*—(i) *Owners.* (A) An owner's interest in property that has been forfeited is represented by the property itself or by a monetary interest equivalent to that interest at the time of seizure. Whether the property or a monetary equivalent will be remitted to an owner shall be determined at the discretion of the Ruling Official.

(B) If a civil judicial forfeiture action against the property is pending, release of the property must await an appropriate court order.

(C) Where the government sells or disposes of the property prior to the grant of the remission, the owner shall receive the proceeds of that sale, less any costs incurred by the government in the sale. The Ruling Official, at his or her discretion, may waive the deduction of costs and expenses incident to the forfeiture.

(D) Where the owner does not comply with the conditions imposed upon release of the property by the Ruling Official, the property shall be sold. Following the sale, the proceeds shall be used to pay all costs of the forfeiture and disposition of the property, in addition to any monetary conditions imposed. The remaining balance shall be paid to the owner.

(ii) *Lienholders.* (A) When the forfeited property is to be retained for official use or transferred to a state or local law enforcement agency or foreign government pursuant to law, and remission or mitigation has been granted to a lienholder, the recipient of the property shall assure that:

(*1*) In the case of remission, the lien is satisfied as determined through the petition process; or

(*2*) In the case of mitigation, an amount equal to the net equity, less any monetary conditions imposed, is paid to the lienholder prior to the release of the property to the recipient agency or foreign government.

(B) When the forfeited property is not retained for official use or transferred to another agency or foreign country pursuant to law, the lienholder shall be notified by the Ruling Official of the right to select either of the following alternatives:

(*1*) *Return of property.* The lienholder may obtain possession of the property after paying the United States, through the Ruling Official, the costs and expenses incident to the forfeiture, the amount, if any, by which the appraised value of the property exceeds the lienholder's net equity in the property, and any amount specified in the Ruling Official's decision as a condition to remit the property. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture. The Ruling Official shall forward a copy of the decision, a memorandum of disposition, and the original releases to the U.S. Marshals Service or other property custodian who shall thereafter release the property to the lienholder; or

(*2*) *Sale of Property and Payment to Lienholder*—Subject to the provisions of paragraph (j)(9)(i) of this section, upon sale of the property, the lienholder may receive the payment of a monetary amount up to the sum of the lienholder's net equity, less the expenses and costs incident to the forfeiture and sale of the property, and any other monetary conditions imposed. The Ruling Official, at his or her discretion, may waive costs and expenses incident to the forfeiture.

(iii) If the lienholder does not notify the Ruling Official of the selection of one of the two options set forth above in paragraph (j)(7)(ii)(B) of this section within twenty (20) days of the receipt of such notification, the Ruling Official shall direct the U.S. Marshal or other property custodian to sell the property and pay the lienholder an amount up to the net equity, less the costs and expenses incurred incident to the forfeiture and sale, and any monetary conditions imposed. In the event a lienholder subsequently receives a payment of any kind on the debt owed for which he or she has already received payment as a result of the granting of

remission or mitigation, the lienholder shall reimburse the Postal Service Fund to the extent of the payment received.

(iv) Where the lienholder does not comply with the conditions imposed upon the release of the property, the property shall be sold after forfeiture. From the proceeds of the sale, all costs incident to the forfeiture and sale shall first be deducted, and the balance up to the net equity, less any monetary conditions, shall be paid to the lienholder.

(8) *Provisions applicable to victims.* The provisions of this section apply to victims of an offense underlying the forfeiture of property, or of a related offense, who do not have a present ownership interest in the forfeited property (or, in the case of multiple victims of an offense, who do not have a present ownership interest in the forfeited property that is clearly superior to that of other petitioner victims). The provisions of this section apply only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of forfeited property to victims. Victims who have a superior present legally cognizable ownership interest in forfeited property may file petitions as other owners, subject to the regulations set forth in paragraph (j)(7)(i) of this section. The claims of such owner victims, like those of any other owners, shall have priority over the claims of any non-owner victims whose claims are recognized pursuant to this section.

(i) *Qualifications to file.* A victim, as defined in paragraph (j)(2)(xxi) of this section, of an offense that was the underlying basis for the criminal, civil, or administrative forfeiture of specific property, or a victim of a related offense, may be granted remission of the forfeiture of that property, if in addition to complying with the other applicable provisions of this section, the victim satisfactorily demonstrates that:

(A) A pecuniary loss of a specific amount has been directly caused by the criminal offense, or related offense, that resulted in the forfeiture, or by a related offense, and that the loss is supported by documentary evidence including invoices and receipts;

(B) The pecuniary loss is the direct result of the illegal acts and is not the result of otherwise lawful acts which were committed in the course of a criminal offense;

(C) The victim did not knowingly contribute to, participate in, benefit from, or act in a willfully blind manner towards the commission of the offense, or related offense, that was the underlying basis of the forfeiture;

(D) The victim has not in fact been compensated for the wrongful loss of the property by the perpetrator or others; and

(E) The victim does not have recourse reasonably available to other assets from which to obtain compensation for the wrongful loss of the property.

(ii) *Pecuniary loss.* The amount of the pecuniary loss suffered by a victim for which remission may be granted is limited to the fair market value of the property of which the petitioner was deprived as of the date of the occurrence of the loss. No allowance shall be made for interest foregone or for collateral expenses incurred to recover lost property or to seek other recompense.

(iii) *Torts.* A tort associated with illegal activity that formed the basis for the forfeiture shall not be a basis for remission, unless it constitutes the illegal activity itself, nor shall remission be granted for physical injuries to a petitioner or for damage to a petitioner's property.

(iv) *Denial of petition.* In the exercise of his or her discretion, the Ruling Official may decline to grant remission where:

(A) There is substantial difficulty in calculating the pecuniary loss incurred by the victim or victims;

(B) The amount of the remission, if granted, would be small compared with the amount of expenses incurred by the government in determining whether to grant remission; or

(C) The total number of victims is large and the monetary amount of the remission so small as to make its granting impractical.

(v) *Pro rata basis.* In granting remission to multiple victims pursuant to this section, the Ruling Official should generally grant remission on a pro rata

basis to recognized victims when petitions cannot be granted in full due to the limited value of the forfeited property. However, the Ruling Official may consider, among others, the following factors in establishing appropriate priorities in individual cases:

(A) The specificity and reliability of the evidence establishing a loss;

(B) The fact that a particular victim is suffering an extreme financial hardship;

(C) The fact that a particular victim has cooperated with the government in the investigation related to the forfeiture or to a related prosecution or civil action; and

(D) In the case of petitions filed by multiple victims of related offenses, the fact that a particular victim is a victim of the offense underlying the forfeiture.

(vi) *Reimbursement.* Any petitioner granted remission pursuant to this section shall reimburse the Postal Service Fund for the amount received to the extent the individual later receives compensation for the loss of the property from any other source. The petitioner shall surrender the reimbursement upon payment from any secondary source.

(vii) *Claims of financial institution regulatory agencies.* In cases involving property forfeitable under 18 U.S.C. 981(a)(1)(C) or (a)(1)(D), the Ruling Official may decline to grant a petition filed by a petitioner in whole or in part due to the lack of sufficient forfeitable funds to satisfy both the petition and claims of the financial institution regulatory agencies pursuant to 18 U.S.C. 981 (e)(3) or (7). Generally, claims of financial regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7) shall take priority over claims of victims.

(9) *Miscellaneous Provisions*—(i) *Priority of payment.* Except where otherwise provided in this section, costs incurred by the Postal Inspection Service and other agencies participating in the forfeiture that were incident to the forfeiture, sale, or other disposition of the property shall be deducted from the amount available for remission or mitigation. Such costs include, but are not limited to, court costs, storage costs, brokerage and other sales-related costs, the amount of any liens and associated costs paid by the government on the property, costs incurred in paying the ordinary and necessary expenses of a business seized for forfeiture, awards for information as authorized by statute, expenses of trustees or other assistants pursuant to paragraph (j)(9)(iii) of this section, investigative or prosecutive costs specially incurred incident to the particular forfeiture, and costs incurred incident to the processing of the petition(s) for remission or mitigation. The remaining balance shall be available for remission or mitigation. The Ruling Official shall direct the distribution of the remaining balance in the following order of priority, except that he or she may exercise discretion in determining the priority between petitioners belonging to classes described in paragraphs (j)(9)(iii) and (9)(iv) of this section in exceptional circumstances:

(A) Owners;

(B) Lienholders;

(C) Federal financial institution regulatory agencies (pursuant to paragraph (j)(9)(vi) of this section, not constituting owners or lienholders); and

(D) Victims not constituting owners or lienholders (pursuant to paragraph (j)(8) of this section).

(ii) *Sale or disposition of property prior to ruling.* If forfeited property has been sold or otherwise disposed of prior to a ruling, the Ruling Official may grant relief in the form of a monetary amount. The amount realized by the sale of the property is presumed to be the value of the property. Monetary relief shall not be greater than the appraised value of the property at the time of seizure and shall not exceed the amount realized from the sale or other disposition. The proceeds of the sale shall be distributed as follows:

(A) Payment of the government's expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;

(B) Payment to the petitioner of an amount up to his or her interest in the property;

(C) Payment to the Postal Service Fund of all other costs and expenses incident to the forfeiture;

(D) In the case of victims, payment of any amount up to the amount of his or her loss; and

(E) Payment of the balance remaining, if any, to the Postal Service Fund.

(iii) *Trustees and other assistants.* In the exercise of his or her discretion, the Ruling Official may use the services of a trustee, other government official, or appointed contractors to notify potential petitioners, process petitions, and make recommendations to the Ruling Official on the distribution of property to petitioners. The expense for such assistance shall be paid out of the forfeited funds.

(iv) *Other agencies of the United States.* Where another agency of the United States is entitled to remission or mitigation of forfeited assets because of an interest that is recognizable under these regulations, or is eligible for such transfer pursuant to 18 U.S.C. 981(e)(6), such agency shall request the transfer in writing, in addition to complying with the provisions of paragraphs (j)(3) through (5) of this section. The decision to make such transfer shall be made in writing by the Ruling Official.

(v) *Financial institution regulatory agencies.* A Ruling Official may direct the transfer of property under 18 U.S.C. 981(e) to certain federal financial institution regulatory agencies or an entity acting in their behalf, upon receipt of a written request, in lieu of ruling on a petition for remission or mitigation.

(vi) *Transfers to foreign governments.* A Ruling Official may decline to grant remission to any petitioner other than an owner or lienholder so that forfeited assets may be transferred to a foreign government pursuant to 18 U.S.C. 981(i)(1), 19 U.S.C. 1616a(c)(2), or 21 U.S.C. 881(e)(1)(E).

(vii) *Filing by attorneys.* (A) A petition for remission or mitigation may be filed by a petitioner or by his or her attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(*1*) The attorney has the authority to represent the petitioner in this proceeding;

(*2*) The petitioner has fully reviewed the petition; and

(*3*) The petition is truthful and accurate in every respect.

(B) Verbal notification of representation is not acceptable. Responses and notification of rulings shall not be sent to an attorney claiming to represent a petitioner unless a written notice of representation is filed. No extensions of time shall be granted due to delays in submission of the notice of representation.

(viii) *Consolidated petitions.* At the discretion of the Ruling Official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of the other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these other petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a ''victim'' within the meaning of paragraph (j)(2)(xxi) of this section, may also file a petition on behalf of all its insured or plan beneficiaries for any claims they may have based on co-payments made to the perpetrator of the offense underlying the forfeiture or the perpetrator of a ''related offense'' within the meaning of paragraph (j)(2)(xviii) of this section, if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as a remission must be transferred to the other petitioners, not the party filing the petition; although, in his or her discretion, the Ruling Official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

[52 FR 4497, Feb. 12, 1987; 52 FR 5765, Feb. 26, 1987, as amended at 54 FR 47520, Nov. 15, 1989; 56 FR 20361, May 3, 1991; 57 FR 32726, July 23, 1992; 59 FR 31154, June 17, 1994; 59 FR 35852, July 14, 1994; 60 FR 5581, Jan. 30, 1995; 60 FR 8306, Feb. 14, 1995; 62 FR 31726, June 11, 1997]

§ 233.8 Expedited forfeiture proceedings for property seized for administrative forfeiture involving controlled substances in personal use quantities.

(a) *Definitions.* As used in this section, the following terms have the meanings specified:

(1) *Appraised Value* means the estimated domestic price at the time of seizure at which such or similar property is freely offered for sale.

(2) *Controlled Substance* has the meaning given in 21 U.S.C. 802.

(3) *Legal and Factual Basis of the Seizure* means a statement of the applicable law under which the property is seized, and a written statement of the circumstances of the seizure sufficiently precise to enable an owner or other interested party to identify the date, place, and use or acquisition which makes the property subject to forfeiture.

(4) *Owner* means one having a legal and possessory interest in the property seized for forfeiture. Even though one may hold primary and direct title to the property seized, such person may not have sufficient actual beneficial interest in the property to support a petition as owner if the facts indicate that another person had dominion and control over the property.

(5) *Personal Use Quantities* means possession of a controlled substance in circumstances where there is not other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance. Evidence of personal use quantities does not include sweepings or other evidence of possession of quantities of a controlled substance for other than personal use.

(i) Such other evidence includes:

(A) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug ''cutting'' agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest and/or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, State or local law that indicates an intent to distribute a controlled substance;

(D) Relationship of the controlled substance to large amounts of cash or any amount of prerecorded government funds;

(E) Possession of the controlled substance under circumstances that indicate the substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery; or

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute.

(ii) Possession of a controlled substance is presumed to be for personal use when there are no indicia of illicit drug trafficking or distribution such as, but not limited to, the factors listed in § 233.8(a)(5)(i), and the amounts do not exceed the following quantities:

(A) One gram of a mixture of substance containing a detectable amount of heroin;

(B) One gram of a mixture or substance containing a detectable amount of:

(*1*) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivations of ecgonine or their salts have been removed;

(*2*) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(*3*) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(*4*) Any compound, mixture or preparation which contains any quantity of any of the substances referred to in § 233.8(a)(5) (ii)(B)(*1*)–(*3*);

(*5*) 1/10th gram of a mixture or substance described in § 233.8(a)(5)(ii) which contains cocaine base;

(*6*) 1/10 gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(*7*) 500 micrograms of a mixture or substance containing a detectable amount of lysergic acid diethylamide (LSD);

(*8*) One ounce of a mixture of substance containing a detectable amount of marihuana;

(9) One gram of methamphetamine, its salts, isomers, and salts of its isomers, or one gram of a mixture or substance containing a detectable amount of methamphetamine, its salts, isomers, or salts of its isomer.

(iii) The possession of a narcotic, a depressant, a stimulant, a hallucinogen or cannabis-controlled substance will be considered in excess of personal use quantities if the dosage unit amount possessed provides the same or greater equivalent efficacy as described in § 233.8(a)(5)(ii).

(6) *Property* means property subject to forfeiture under title 21, U.S.C., Sections 881(a)(4), (6), and (7).

(7) *Statutory Rights or Defenses to the Forfeiture* means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

(8) *Sworn to* as used in § 233.8(b)(4)(ii) refers to the oath as provided by 28 U.S.C. 1746.

(b) *Petition for expedited release in an administrative forfeiture action.* (1) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may petition the Postal Inspection Service for expedited release of the property.

(2) The owner filing the petition for expedited release must establish the following:

(i) The owner has a valid, good faith interest in the seized property as owner or otherwise;

(ii) The owner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The owner did not know or consent to the illegal use of the property, or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

(3) In addition to those factors listed in § 233.8(b)(2), if an owner can demonstrate that he has other statutory rights or defenses that would cause him to prevail on the issue of forfeiture, such factors must also be considered in ruling on the petition for expedited release.

(4) A petition for expedited release must be:

(i) Filed in a timely manner to be considered; in order to be filed in a timely manner, the petition must be received by the Postal Inspection Service within 20 days from the date of the first publication of the notice of seizure.

(ii) Executed and sworn to by the owner and both the envelope and the request must be clearly marked ''PETITION FOR EXPEDITED RELEASE'';

(iii) Filed in accordance with the notice of seizure; and

(iv) Addressed to the Chief Postal Inspector, Postal Inspection Service.

(5) The petition must include the following:

(i) A complete description of the property, including identification numbers, if any, and the date and place of seizure;

(ii) The petitioner's interest in the property, which must be supported by title documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(iii) A statement of the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized property.

(c) *Ruling on petition for expedited release in an administrative forfeiture action involving personal use quantities of a controlled substance.* (1) Upon receipt of a petition for expedited release filed pursuant to § 233.8(b), the Postal Inspection Service must determine first whether a final administrative determination of the case, without regard to the provisions of this section, can be made within 21 days of the seizure. If such a final administrative determination is made within 21 days, no further action need be taken under this section.

(2) If no such final administrative determination is made within 21 days of the seizure, the following procedure applies:

(i) The Postal Inspection Service, within 20 days after the receipt of the petition for expedited release, determines whether the petition filed by the owner has established the factors listed in § 233.8(b)(2); and

(ii) If the Postal Inspection Service determines that those factors have

been established, it terminates the administrative proceedings and returns the property to the owner except where it is evidence of a violation of law; or

(iii) If the Postal Inspection Service determines that those factors have not been established, it proceeds with the administrative forfeiture.

(d) *Posting of substitute res.* (1) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute res with the Postal Service. The property will be released to the owner upon the payment of an amount equal to the appraised value of the property if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the Postal Service. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(2) If a substitute res is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute res in lieu of the property.

[54 FR 47520, Nov. 15, 1989]

§ 233.9 Expedited release of conveyances being forfeited in a judicial forfeiture proceeding for a drug-related offense.

(a) *Petition for expedited release of conveyance.* Where a conveyance has been seized and is being forfeited in a judicial proceeding for a drug-related offense, the owner may petition the United States Attorney for an expedited release of the conveyance in accordance with the regulations of the Department of Justice (21 CFR part 1316).

(b) *Petition filed in timely manner.* A petition for expedited release must be filed in a timely manner in order to be considered by the United States Attorney. To be considered as filed in a timely manner, in accordance with 21 CFR part 1316, the petition must be received by the appropriate United States Attorney within 20 days from the date of the first publication of the notice of the action and arrest of the property, or within 30 days after filing of the claim, whichever occurs later.

(c) *Obtaining release of the property by filing a substitute res bond.* Where a conveyance is being forfeited in a judicial proceeding for a drug-related offense, the owner may obtain release of the property by filing a substitute res bond with the Postal Inspection Service. The conveyance will be released to the owner upon the payment of a bond in the amount of the appraised value of the conveyance if it is not evidence of a violation of law or has design or other characteristics that particularly suit it for use in illegal activities. This bond must be in the form of a traveler's check, a money order, a cashier's check or an irrevocable letter of credit made payable to the United States Postal Service. A bond in the form of a cashier's check will be considered as paid once the check has been accepted for payment by the financial institution which issued the check.

(d) *Forfeiture of the bond.* If a substitute res bond is filed and the conveyance is judicially forfeited, the court will forfeit the bond in lieu of the property.

[54 FR 47522, Nov. 15, 1989]

§ 233.10 Notice provisions.

(a) *Special notice provision.* At the time of seizure of property defined in § 233.8(b) for violations involving the possession of personal use quantities of a controlled substance, written notice will be provided to the possessor of the property regarding applicable statutes and Federal regulations including the procedures established for the filing of a petition for expedited release and for the posting of a substitute res bond.

(b) *Standard notice provision.* The standard notice to the owner as required by 19 U.S.C. 1607 will be made at the earliest practicable opportunity after determining ownership of the seized property and must include the legal and factual basis of the seizure.

[54 FR 47522, Nov. 15, 1989]

§ 233.11 Mail reasonably suspected of being dangerous to persons or property.

(a) *Screening of mail.* When the Chief Postal Inspector determines that there is a credible threat that certain mail may contain a bomb, explosives, or other material that would endanger life or property, including firearms which are not mailable under Section C024 of the Domestic Mail Manual, the Chief Postal Inspector may, without a search warrant or the sender's or addressee's consent, authorize the screening of such mail by any means capable of identifying explosives, nonmailable firearms, or other dangerous contents in the mails. The screening must be within the limits of this section and without opening mail that is sealed against inspection or revealing the contents of correspondence within mail that is sealed against inspection. The screening is conducted according to these requirements.

(1) Screening of mail authorized by paragraph (a) of this section must be limited to the least quantity of mail necessary to respond to the threat.

(2) Such screening must be done in a manner that does not avoidably delay the screened mail.

(3) The Chief Postal Inspector may authorize screening of mail by postal employees and by persons not employed by the Postal Service under such instruction that require compliance with this part and protect the security of the mail. No information obtained from such screening may be disclosed unless authorized by this part.

(4) Mail of insufficient weight to pose a hazard to air or surface transportation, or to contain firearms which are not mailable under Section C024 of the Domestic Mail Manual, and international transit mail must be excluded from such screening.

(5) After screening conducted under paragraph (a) of this section, mail that is reasonably suspected of posing an immediate and substantial danger to life or limb, or an immediate and substantial danger to property, may be treated by postal employees as provided in paragraph (b) of this section.

(6) After screening, mail sealed against inspection that presents doubts about whether its contents are hazardous, that cannot be resolved without opening, must be reported to the Postal Inspection Service. Such mail must be disposed of under instructions promptly furnished by the Inspection Service.

(b) *Threatening pieces of mail.* Mail, sealed or unsealed, reasonably suspected of posing an immediate danger to life or limb or an immediate and substantial danger to property may, without a search warrant, be detained, opened, removed from postal custody, and processed or treated, but only to the extent necessary to determine and eliminate the danger and only if a complete written and sworn statement of the detention, opening, removal, or treatment, and the circumstances that prompted it, signed by the person purporting to act under this section, is promptly forwarded to the Chief Postal Inspector.

(c) *Reports.* Any person purporting to act under this section who does not report his or her action to the Chief Postal Inspector under the requirements of this section, or whose action is determined after investigation not to have been authorized, is subject to disciplinary action or criminal prosecution or both.

[61 FR 28060, June 4, 1996]

§ 233.12 Civil penalties.

False representation and lottery orders—

(a) *Issuance.* Pursuant to 39 U.S.C. 3005, the Judicial Officer of the Postal Service, acting upon a satisfactory evidentiary basis, may issue a mail return and/or a cease and desist order against anyone engaged in conducting a scheme or device for obtaining money or property through the mail by means of a false representation, including the mailing of matter which is nonmailable, or engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind.

(b) *Enforcement.* Pursuant to 39 U.S.C. 3012, any person:

(1) Who, through the use of the mail, evades or attempts to evade the effect of an order issued under 39 U.S.C. 3005(a)(1) or 3005(a)(2);

(2) Who fails to comply with an order issued under 39 U.S.C. 3005(a)(3); or

(3) Who (other than a publisher described by 39 U.S.C. 3007(b)) has actual knowledge of any such order, is in privity with any person described by paragraph (b) (1) or (2) of this section, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with such order, as the case may be, through the use of the mail;

Shall be liable to the United States for a civil penalty in an amount not to exceed $11,000 for each day that such person engages in conduct described by this paragraph (b). A separate penalty may be assessed under this paragraph (b) with respect to the conduct described by paragraphs (b) (1), (2), or (3) of this section.

[61 FR 56450, Nov. 1, 1996]

PART 235—DEFENSE DEPARTMENT LIAISON

Sec.
235.1 Postal Service to the Armed Forces.
235.2 Civil preparedness.

§ 235.1 Postal Service to the Armed Forces.

(a) Publication 38, Postal Agreement with the Department of Defense, defines the Postal Service's responsibilities for providing postal service to the Armed Forces.

(b) The Chief Inspector is responsible for military liaison.

(c) Postal inspectors provide liaison between postmasters and military commanders, visit military installations as required, and make any necessary recommendations.

(39 U.S.C. 401(2), 402, 403, 404, as enacted by Pub. L. 91–375, 84 Stat. 719)

[38 FR 26193, Sept. 9, 1973]

§ 235.2 Civil preparedness.

(a) *Mission*. The prime objective of postal emergency preparedness planning is to maintain or restore essential postal service in a national emergency, natural disaster, or disruptive domestic crisis.

(b) *Emergency Coordinator*. The Chief Inspector is designated Emergency Coordinator for the Postal Service. As Emergency Coordinator, he provides general direction and coordination of the following programs:

(1) National Civil Preparedness and Defense Mobilization;

(2) Natural Disaster Preparedness;

(3) Emergency Response to Disruptive Domestic Crisis.

(c) *Regional Emergency Coordinator*. The Chief Inspector may delegate authority to Regional Chief Postal Inspectors, or others, for the function of Regional Emergency Coordinator and the general direction and coordination of all such programs within the Postal Regions, as are conducted by him at the National level.

(d) *Postmaster General emergency line of succession*. (1) Deputy Postmaster General; (2) Senior Assistant Postmaster General, Administration; (3) Senior Assistant Postmaster General, Operations.

(e) *Headquarters and field lines of succession*. Each Headquarters organizational unit shall establish its own internal line of succession to provide for continuity under emergency conditions. Each Regional Postmaster General, Regional Chief Inspector, Postal Data Center Director, Inspector in Charge, and postmaster at first-class post offices shall prepare a succession list of officials who will act in his stead in the event he is incapacitated or absent in an emergency. Orders of succession shall be shown by position titles, except those of the Inspection Service may be shown by names.

(f) *Field responsibilities*. Postmasters and heads of other installations shall:

(1) Carry out civil preparedness assignments, programs, etc., as directed by regional officials.

(2) Comply with, and cooperate in community civil preparedness plans (including exercise) for evacuation, take cover and other survival measures prescribed for local populations.

(3) Designate representatives for continuing liaison with local civil preparedness organizations where such activity will not interfere with normal duties.

(4) Endeavor to serve (at their own option) as members on the staff of the local civil preparedness director, provided such service will not interfere

with their primary postal responsibility in an emergency.

(5) Authorize and encourage their employees to participate voluntarily in nonpostal pre-emergency training programs and exercises in cooperation with States and localities.

(39 U.S.C. 401(2), 402, 403, 404, as enacted by Pub. L. 91–375, 84 Stat. 719)

[38 FR 26193, Sept. 9, 1973]

Post Office Organization and Administration

PART 241—ESTABLISHMENT CLASSIFICATION, AND DISCONTINUANCE

Sec.
241.1 Post offices.
241.2 Stations and branches.
241.3 Discontinuance of post offices.
241.4 Expansion, relocation, and construction of post offices.

§ 241.1 Post offices.

(a) *Establishment.* See § 113.1 of this chapter.

(b) *Classification.* As of July 1 each year, post offices are classified by the Postmaster General based on the allowable postal revenue units for the second preceding fiscal year as follows:

(1) *First Class.* Post offices having 950 or more revenue units.

(2) *Second Class.* Post offices having 190 but less than 950 revenue units.

(3) *Third Class.* Post offices having 36 but less 190 revenue units.

(4) *Fourth Class.* Post offices having less than 36 revenue units.

(39 U.S.C. 401)

[36 FR 4764, Mar. 12, 1971, as amended at 42 FR 59082, Nov. 15, 1977]

§ 241.2 Stations and branches.

(a) *Description.* (1) Stations are established within the corporate limits or boundary, and branches are established outside the corporate limits or boundary of the city, town, or village in which the main post office is located. Stations and branches may be designated by number, letter or name. As a general rule, branches are named.

(2) Stations and branches transact registry and money order business, sell postage supplies, and accept matter for mailing. Delivery service, post office boxes, and other services may be provided when directed by the postmaster.

(3) Stations and branches, except nonpersonnel rural stations and branches, are designated as independent when registered and other mail is received or dispatched without passing through the main office.

(b) *Classification*—(1) *Classified.* Operated by postal employees in quarters provided by the Federal Government.

(2) *Contract.* Operated under contract by persons who are not Federal Government employees. Persons operating contract stations and branches are independent contractors and neither the contractors nor any person employed by them to assist in the conduct of contract stations or branches shall be employees of the Federal Government for any purpose whatsoever.

(39 U.S.C. 401)

[36 FR 4764, Mar. 12, 1971]

§ 241.3 Discontinuance of post offices.

(a) *Introduction*—(1) *Coverage.* This section establishes the rules governing the Postal Service's consideration of whether an existing post office should be discontinued. The rules cover any proposal to replace a post office with a community post office, station or branch, consolidation with another post office, and any proposal to discontinue a post office without providing a replacement facility.

(2) *Legal requirements.* Under 39 U.S.C. 404(b), any decision to close or consolidate a post office must be based on certain criteria. These include the effect on the community served; the effect on employees of the post office; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a post office to

evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a post office must be made in writing and must include findings covering all the required considerations.

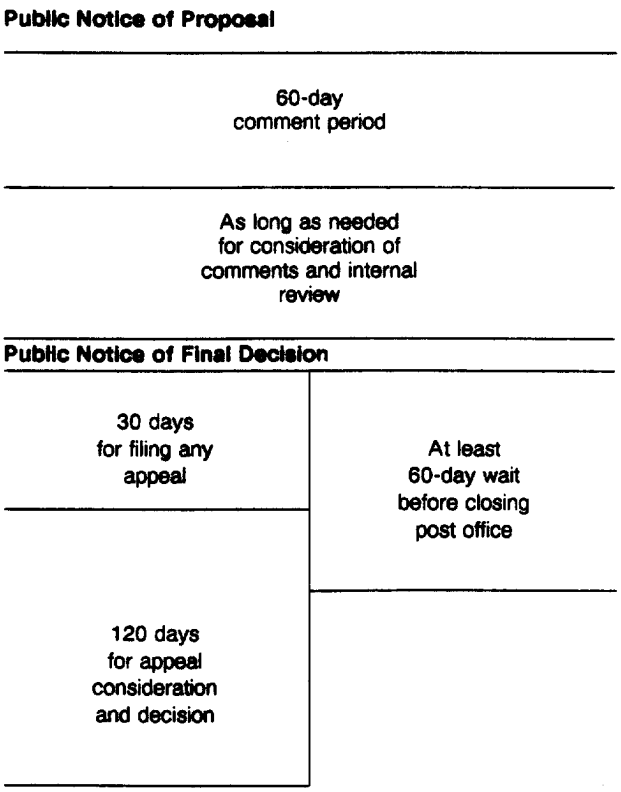
(iii) The written determination must be made available to persons served by the post office at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by the affected post office may appeal the decision to the Postal Rate Commission.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required by 39 U.S.C. 404(b)(5) to make a determination on the appeal no later than 120 days after receiving the appeal.

(vii) The following is a summary table of the notice and appeal periods under the statute for these regulations.



(3) *Additional requirements.* This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading a district manager, Customer

Service and Sales, to propose the discontinuance of a particular post office are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(b) *Preservation of community address*—(1) *Policy*. The Postal Service permits the use of a community's separate address to the extent practicable.

(2) *ZIP Code assignment*. The ZIP Code for each address formerly served from the discontinued post office should be kept, wherever practical. In some cases, the ZIP Code originally assigned to the discontinued post office may be changed if the responsible district manager, Customer Service and Sales, submits a request with justification to his or her vice president, Area Operations, before the proposal to discontinue the post office is posted.

(i) In a consolidation, the ZIP Code for the replacement community post office, station, or branch is the ZIP Code originally assigned to the discontinued post office.

(ii) If the ZIP Code is changed and the parent post office covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) *Post office name in address*. If all the delivery addresses using the name of the post office to be discontinued are assigned the same ZIP Code, customers may continue to use the discontinued post office name in their addresses, instead of the new delivering post office name.

(4) *Name of facility established by consolidation*. If a post office to be discontinued is consolidated with one or more other post offices by establishing in its place a community post office, classified or contract station, or branch affiliated with another post office involved in the consolidation, the replacement unit is given the same name of the discontinued post office.

(5) *List of discontinued post offices*. Publication 65, National Five-Digit ZIP Code and Post Office Directory, lists all post offices discontinued after March 14, 1977, for mailing address purposes only if they are used in addresses. The ZIP Codes listed for discontinued offices are those assigned under this subsection.

(c) *Initial proposal*—(1) *In general*. If a district manager, Customer Service and Sales, believes that the discontinuance of a post office within his or her responsibility may be warranted, the manager:

(i) Must use the standards and procedures in §241.3 (c) and (d).

(ii) Must investigate the situation.

(iii) May propose the post office be discontinued.

(2) *Consolidation*. The proposed action may include a consolidation of post offices to substitute a community post office or a classified or contract station or branch for the discontinued post office if:

(i) The communities served by two or more post offices are being merged into a single incorporated village, town, or city; or

(ii) A replacement facility is necessary for regular and effective service to the area served by the post office considered for discontinuance.

(3) *Views of postmasters*. Whether the discontinuance under consideration involves a consolidation or not, the district manager, Customer Service and Sales, must discuss the matter with the postmaster (or the officer in charge) of the post office considered for discontinuance, and with the postmaster of any other post office affected by the change. The manager should make sure that these officials submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) *Preparation of written proposal*. The district manager, Customer Service and Sales, must gather and preserve for the record all documentation used to assess the proposed change. If the manager thinks the proposed action is warranted, he or she must prepare a document titled ''Proposal to (Close) (Consolidate) the (Name) Post Office.'' This document must describe, analyze, and justify in sufficient detail to Postal Service management and affected customers the proposed service change. The written proposal must address each of the following matters in separate sections:

(i) *Responsiveness to community postal needs*. It is the policy of the Government, as established by law, that the Postal Service will provide a maximum

degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. The proposal should (A) contrast the services available before and after the proposed change; (B) describe how the changes respond to the postal needs of the affected customers; and (C) highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

(ii) *Effect on community*. The proposal must include an analysis of the effect the proposed discontinuance might have on the community served, and discuss the application of the requirements in § 241.3(b).

(iii) *Effect on employees.* The written proposal must summarize the possible effects of the change on the postmaster, supervisors, and other employees of the post office considered for discontinuance. (The district manager, Customer Service and Sales, must suggest measures to comply with personnel regulations related to post office discontinuance and consolidation.)

(iv) *Savings.* The proposal must include an analysis of the economic savings to the Postal Service from the proposed action, including the cost or savings expected from each major factor contributing to the overall estimate.

(v) *Other factors.* The proposal should include an analysis of other factors that the district manager, Customer Service and Sales, determines are necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(vi) *Summary*. The proposal must include a summary that explains why the proposed action is necessary, and assesses how the factors supporting the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service is paramount.

(vii) *Notice.* The proposal must include the following notice: ''This Is A Proposal. It Is Not A Final Determination To (Close) (Consolidate) This Post Office.''

(A) If a final determination is made to close or consolidate this post office, after public comments on this proposal are received and taken into account, a notice of that final determination must be posted in this post office.

(B) The final determination must contain instructions on how affected customers may appeal that decision to the Postal Rate Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final determination.

(d) *Notice, public comment, and record*—(1) *Posting proposal and comment notice.* A copy of the written proposal and a signed invitation for comments must be posted prominently in each affected post office. The invitation for comments must:

(i) Ask interested persons to provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, on the potential effect of the proposed change on postal services and the community.

(ii) State that copies of the proposal with attached optional comment forms are available in the affected post offices.

(iii) Provide a name and telephone number to call for information.

(2) *Proposal and comment notice.* The following is a sample format that may be used for the proposal and comment notice.

UNITED STATES POSTAL SERVICE
Proposal to (Close)(Consolidate) the (Name) Post Office and Optional Comment Form

Attached is a proposal that we are considering to attempt to provide your community's postal service more economically and efficiently, while also providing regular and effective service. Please read the proposal carefully and then let us have your comments and suggestions. If you choose, you may use the form provided below. Your comments will be carefully considered and will be made part of a public record. If you use the form provided below and need additional room, please attach additional sheets of paper.
Return the completed form to _____ by _____.

In considering this proposal, if you have any questions you want to ask a postal official, you may call _____ whose telephone number is _____.

I. Effect on Your Postal Services
Please describe any favorable or unfavorable effects that you believe the proposal would have on the regularity or effectiveness of your postal service.

_____
_____
_____
_____

II. Effect on Your Community
Please describe any favorable or unfavorable effects that you believe the proposal would have on your community.

_____
_____
_____
_____

III. Other Comments
Please provide any other view or information that you believe the USPS should consider in deciding whether to adopt the proposal.

_____
_____
_____
_____
_____
_____

(Signature of Postal Customer) (Date)

(Mailing Address)

(City) (State) (ZIP Code)

(3) *Other steps.* In addition to providing notice and inviting comment, the district manager, Customer Service and Sales, must take any other steps necessary to ensure that the persons served by the affected post office understand the nature and implications of the proposed action (e.g., meeting with community groups and following up on comments received that seem to be based on incorrect assumptions or information).

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the district manager, Customer Service and Sales, should encourage persons offering the views or information to provide written comments to preserve them for the record.

(ii) As a factor in making his or her decision, the district manager, Customer Service and Sales, may not rely

on communications received from anyone unless submitted in writing for the record.

(4) *Record.* The district manager, Customer Service and Sales, must keep as part of the record for his or her consideration and for review by the vice president, Delivery and Retail, all the documentation gathered about the proposed change.

(i) The record must include all information that the district manager, Customer Service and Sales, considered, and the decision must stand on the record. No information or views submitted by customers may be excluded.

(ii) The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

(iii) The record must include a chronological index in which each document contained is identified and numbered as filed.

(iv) As written communications are received in response to the public notice and invitation for comments, they are included in the record.

(v) A complete copy of the record must be available for public inspection during normal office hours at the post office proposed for discontinuance or at the post office providing alternative service, if the office to be discontinued was temporarily suspended, beginning no later than the date on which notice is posted and extending through the comment period.

(vi) Copies of documents in the record (except the proposal and comment form) are provided on request and on payment of fees as noted in the Administrative Support Manual (ASM) § 352.6.

(e) *Consideration of public comments and final local recommendation*—(1) *Analysis of comments.* After waiting not less than 60 days after notice is posted under § 241.3(d)(1) the district manager, Customer Service and Sales, must prepare an analysis of the public comments received for consideration and inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each point favorable to the proposal and each point unfavorable to the proposal. The analysis should identify to the extent possible how many comments support each point listed.

(2) *Re-evaluation of proposal.* After completing the analysis, the district manager, Customer Service and Sales, must review the proposal and re-evaluate all the tentative conclusions previously made in light of additional customer information and views in the record.

(i) *Discontinuance not warranted.* If the district manager, Customer Service and Sales, decides against the proposed discontinuance, he or she must post, in the post office considered for discontinuance, a notice stating that the proposed closing or consolidation is not warranted.

(ii) *Discontinuance warranted.* If the district manager, Customer Service and Sales, decides that the proposed discontinuance is justified, the appropriate sections of the proposal must be revised, taking into account the comments received from the public. After making necessary revisions, the manager must:

(A) Forward the revised proposal and the entire record to the vice president, Delivery and Retail.

(B) Attach a certificate that all documents in the record are originals or true and correct copies.

(f) *Postal Service decision*—(1) *In general.* The vice president, Delivery and Retail, or a designee must review the proposal of the district manager, Customer Service and Sales. This review and the decision on the proposal must be based on and supported by the record developed by the district manager, Customer Service and Sales. The vice president, Delivery and Retail, can instruct the district manager to provide more information to supplement the record. Each instruction and the response must be added to the record. The decision on the proposal of the district manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth in this paragraph (f).

(2) *Approval.* The vice president, Delivery and Retail or a designee may approve the proposal of the district manager, Customer Service and Sales, with

or without further revisions. If approved, the term ''Final Determination'' is substituted for ''Proposal'' in the title. A copy of the Final Determination must be provided to the district manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(b). The Final Determination must include the following notices:

(i) *Supporting materials.* ''Copies of all materials on which this Final Determination is based are available for public inspection at the (Name) Post Office during normal office hours.''

(ii) *Appeal rights.* ''This Final Determination to (close) (consolidate) the (name) Post Office may be appealed by any person served by that office to the Postal Rate Commission. Any appeal must be received by the Commission within 30 days of the date this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Rate Commission, or the parties to the appeal, must be made available for public inspection at the (name) Post Office during normal office hours.''

(3) *Disapproval.* The vice president, Delivery and Retail, or a designee may disapprove the proposal of the district manager, Customer Service and Sales, and return it and the record to the manager with written reasons for disapproval. The manager must post a notice in each affected post office that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The vice president, Delivery and Retail, or a designee may return the proposal of the district manager, Customer Service and Sales, with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the vice president, Delivery and Retail, must be placed on file in the Postal Service Headquarters library.

(g) *Implementation of final determination*—(1) *Notice of final determination to discontinue post office.* The district manager, Customer Service and Sales, must:

(i) Provide notice of the Final Determination by posting a copy prominently in the affected post office or offices. The date of posting must be noted on the first page of the posted copy as follows: ''Date of posting:'' The district manager, Customer Service and Sales, must notify the vice president, Delivery and Retail, of the date of posting.

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each post office where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in the ASM 352.6.

(2) *Implementation of determinations not appealed.* If no appeal is filed pursuant to 39 U.S.C. 404(b)(5), the official closing date of the office must be published in the *Postal Bulletin,* effective the first Saturday 90 days after the Final Determination was posted. A district manager, Customer Service and Sales, may request a different date for official discontinuance in the Post Office Change Announcement document submitted to the vice president, Delivery and Retail. However, the post office may not be discontinued sooner than 60 days after the posting of the notice required by paragraph (g)(1) of this section.

(3) *Actions during appeal*—(i) *Implementation of discontinuance.* If an appeal is filed, only the vice president, Delivery and Retail, may direct a discontinuance before disposition of the appeal. However, the post office may not be discontinued sooner than 60 days after the posting of notice required by paragraph (g)(1) of this section.

(ii) *Display of appeal documents.* Legal Policy and Ratemaking Law, Postal Service General Counsel, must provide the district manager, Customer Service and Sales, with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The district manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the post office to be discontinued. If the operation of

that post office has been suspended, the manager must display copies in the affected post offices.

(B) All documents except the Postal Rate Commission's final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed for 30 days.

(4) *Actions following appeal decision*—(i) *Determination affirmed.* If the Commission dismisses the appeal or affirms the Postal Service's determination, the official closing date of the office must be published in the Postal Bulletin, effective the first Saturday 90 days after the Commission renders its opinion, if not previously implemented under § 241.3(g)(3)(i). However, the post office may not be discontinued sooner than 60 days after the posting of the notice required under § 241.3(g)(1).

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the vice president, Delivery and Retail, must direct that either:

(A) Notice be provided under paragraph (f)(3) of this section that the proposed discontinuance is determined not to be warranted or

(B) The matter be returned to an appropriate stage under this section for further consideration following such instructions as the vice president, Delivery and Retail, may provide.

[59 FR 29725, June 9, 1994, as amended at 60 FR 32273, June 21, 1995; 69 FR 11536, Mar. 11, 2004]

§ 241.4 Expansion, relocation, and construction of post offices.

(a) *Application.* (1) This section applies when the USPS contemplates any one of the following projects with respect to a customer service facility: expansion, relocation to another existing building, or new construction, except when the project is to meet an emergency requirement or for temporary use. Emergency situations include, but are not limited to, earthquakes, floods, fire, lease terminations, safety factors, environmental causes, or any other actions that would force an immediate relocation from an existing facility. Temporary relocation of space is used for, but not limited to, holidays, special events, or for overflow business. Use of emergency and temporary space will be limited to 180 days in duration. Any additional incremental time periods of up to 180 days each must be approved by the Vice President, Facilities.

(2) This section does not apply when the project under consideration is limited to repair and alterations, such as—

(i) Painting;

(ii) Repairs;

(iii) Replacement or upgrade of structural or functional elements of a postal building or of its equipment;

(iv) Paving, striping, or other repair of parking areas;

(v) Landscaping.

(b) *Purpose.* The purpose of the procedures required by this section is to assure increased opportunities for members of the communities who may be affected by certain USPS facility projects, along with local officials, to convey their views concerning the contemplated project and have them considered prior to any final decision to expand, relocate to another existing building, or construct a new building that is owned or leased.

(c) *Expansion, relocation, new construction.* When a need is identified that will require the expansion, relocation, or new construction of a customer service facility, postal representatives responsible for the project will take the following steps in accordance with the time schedule shown:

(1) Personally visit one or more of the highest ranking local public officials (generally individuals holding elective office). During the visit, the postal representatives will—

(i) Identify the need and fully describe the project that is under consideration to meet it, explain the process by which the Postal Service will solicit and consider input from the affected community, and solicit a working partnership with the community officials for the success of the project.

(ii) Emphasize that in meeting a need for increased space, the first priority is to expand the existing facility; the second priority is to find an existing building in the same area as the current facility; and the third option is to build on a new site; all within the downtown area, if possible.

(iii) Ask that a Postal Service presentation of the project be placed on the regular agenda of a public meeting or hearing. If no such meeting is planned within the next 60 days or the agenda of a planned meeting cannot accommodate the project, the USPS will schedule its own public hearing concerning the project, and will advertise the meeting or hearing in a local general circulation newspaper.

(iv) Give the local officials a letter describing the intended project.

(2) Notify the lessor of the affected facility of the project, in writing.

(3) Send an initial news release to local communications media.

(4)(i) Post in the public lobby of the affected post offices a copy of the letter given to local officials, or the news release, or, space permitting, both. If such information is available at the time, include in the posting a public notice of the date, time, and location of a public meeting or hearing at least 7 days prior to the meeting or hearing.

(ii) Except as provided in this paragraph, attend, or conduct, one or more public hearings to describe the project to the community, invite questions, solicit written comment, and describe the process by which community input will be considered. If it is believed at the time that the existing facility is not able to be expanded or that expansion is impracticable, disclose that fact and the reasons supporting that belief. If, during the public meeting or hearing process, a new development should occur to allow for an expansion of the existing facility, the Postal Service will make a good faith effort in pursuing this alternative. Under exceptional circumstances that would prevent postal representatives from attending a public meeting or conducting a postal hearing on the planned project within a reasonable time, and subject to approval of the Vice President, Facilities, the Postal Service may distribute a notification card to all affected customers, seeking their comments or other feedback. An example of exceptional circumstances would be a project in a sparsely populated area remote from the seat of local government or any forum where a postal conducted meeting could be held.

(iii) At any public meeting or hearing, advise local officials and the community of their appeal rights and the process by which an appeal can be made. Information provided must include time limitations and an address for the appeal.

(5) Review comments and notify local officials of decision. Not less than 15 days after the date of the most recent public meeting, or after receipt of notification cards, make a decision that takes into account community input and is consistent with postal objectives (e.g., expansion, relocation to another building, or construction of a new owned or leased facility), and notify local officials in writing. This notification must include information on the availability and terms of review under paragraph (c)(6) of this section. At the same time, post a copy of the notification letter in the local post office for the community. Take no action on the decision for at least 30 days following notification of local officials and the community.

(6) Within the time period identified in paragraph (c)(5) of this section, any person may request in writing that the decision be reviewed by the Vice President, Facilities, at Postal Service Headquarters. No particular format is required for requesting review, but the request must be in writing and identify the post office or location affected; and should identify the decision objected to, and state the reasons for the objection. The Vice President, Facilities, will obtain the views of the decision maker, review relevant parts of the project file, and if necessary request more information from the appellant. Upon review of the facts, the Vice President, or a representative, will issue a written determination, if possible, within 15 days. In no event will the Postal Service take action on the decision being reviewed until 15 days following issuance of the final review determination. If the determination on review is to set aside the decision, the project process will return to the public hearing stage of paragraph (c)(4) of this section.

(7) Advertise for sites and existing buildings, in accordance with existing postal procedures.

(d) *Discontinuance of post offices; historic preservation.* (1) It is the policy of the Postal Service, by virtue of Board of Governors Resolution No. 82–7, to comply with Section 106 of the general provisions of the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, Executive Order 12072, and Executive Order 13006. Therefore, any facility project that will have an effect on cultural resources will be undertaken in accordance with that policy.

(2) Any action involving the closing or other discontinuance of a post office shall be undertaken only in accordance with 39 U.S.C. 404(b) and 39 CFR 243.1. In the event a facility action is subject to both this section, and either the NHPA or the post office discontinuance requirements, all comment periods and other public participation matters shall be governed by those statutes.

(e) *Site selection.* (1) When the decision is to advertise for sites and existing buildings, and after such sites have been identified, advise local officials in writing of all contending sites, and with respect to all sites not selected, provide an explanation. This notice will advise local officials, and the community, that no decision to select a site will be made for a minimum of 30 days, and that comments or discussions of all sites are solicited. Post a copy of this letter in the lobby of the affected post office for public notice.

(2) Once a specific site is then selected, notify local officials in writing of the selection decision.

(3) Take no final action to acquire or lease the selected site for 30 days following the notification in paragraph (e)(2) of this section.

(f) *Planning, zoning, building codes.* In carrying out customer service facilities projects, it is the policy of the Postal Service to comply with local planning and zoning requirements and building codes consistent with prudent business practices and unique postal requirements. In order to promote a partnership with local officials and assure conformance with local building codes, plans and drawings will be sent to the appropriate building department or other officials for review. Where payment of fees is normally required of private entities, the Postal Service will pay a reasonable fee for the review. The Postal Service will give local public officials written notice of any timely, written objections or recommendations that it does not plan to adopt or implement.

(g) *Continuing communication.* During construction, whether renovation or new construction, the postmaster should keep local officials and the community informed via letters and news releases. The postmaster and other postal officials should plan, conduct and invite the community and local officials to any ''grand opening'', as appropriate.

[63 FR 46656, Sept. 2, 1998]

PART 242—CHANGE OF SITE

§ 242.2 Change of site—fourth-class offices.

Report by memorandum to chief, organization and management branch, when change in site is necessary. Complete Form 1021 when furnished. Retain one copy in files. If new location is one-fourth of a mile or more from existing location, furnish a statement signed by majority of customers approving change. When a change involves moving a post office from one county to another, notify the Deputy Postmaster General, of the circumstances (including a sketch showing present and proposed sites), and await approval of that Division.

(39 U.S.C. 401)

[36 FR 4765, Mar. 12, 1971]

PART 243—CONDUCT OF OFFICES

§ 243.2 Quarters.

(a) *Employee bulletin boards.* Bulletin boards may be placed in workrooms and employees' lunchrooms for displaying notices as prescribed in this manual and Management Labor Organization Agreements.

(b) *Location of offices.* Postal units may not be located in, or directly connected to, a room in which intoxicating liquor is sold to be consumed on the premises.

(c) *Lost articles.* When articles are turned in to employees, the name and address of the finder shall be recorded so the article may be returned to him

if not claimed by the loser. If the name of the finder cannot be obtained, and the article is not claimed within 30 days, it must be disposed of in the same manner as unidentified material found loose in the mail. Do not return postal money orders to the finder. Mail to Money Order Branch, Accounting Division, U.S. Postal Service, General Accounting Office Building, Washington, DC 20260, with a memorandum of explanation.

(d) *Public use of restrooms.* Restrooms off public corridors shall normally be kept open during regular hours of business for the benefit of the public. Where vandalism or loitering cannot be controlled, postmasters may lock restrooms, furnishing those agencies served by the restrooms, keys for employee use. This shall not be construed to permit access by nonpostal personnel to restrooms in restricted postal areas.

(e) *Letter drops.* At all except fourth-class post offices, provide a regulation letterbox for depositing mail in front of or next to the post office. Show collection time schedules on letterboxes. At fourth-class offices, if a letterbox is not supplied, provide a slot in the outer post office door. When messengers or star route carriers have access to lobbies, door slot deposits must lead to a locked box.

(f) *Hour signs.* Display hours of window service prominently at all first-, second-, and third-class post offices, classified stations and branches, and annexes. Use Sign 41, Hours decal set, available in supply centers.

(g) *Service of process on postal premises.* Postmasters or other installation heads shall permit service on postal premises of civil and criminal process affecting employees in personal matters, when such service of process will not interfere with postal operations. Process servers should be directed to the postmaster's or installation head's office, where the employee will be called in and service made. Section 265.10 of this chapter contains rules regarding compliance with subpoena duces tecum, court orders, and summonses where official business or official records are involved.

(h) *Public service areas—prohibited items.* Photographs of an incumbent or former President or Postmaster General are not to be displayed in post office lobbies or in common use public service areas such as elevator lobbies and corridors in facilities owned by or leased to the Postal Service. Further, such photographs are not to be requisitioned or purchased by postal installations at Postal Service expense.

(39 U.S.C. 501)

[36 FR 4765, Mar. 12, 1971, as amended at 39 FR 38376, Oct. 31, 1974; 40 FR 8820, Mar. 3, 1975; 42 FR 33722, July 1, 1977; 44 FR 39854, July 6, 1979]

General Postal Administration

PART 254—POSTAL SERVICE STANDARDS FOR FACILITY ACCESSIBILITY PURSUANT TO THE ARCHITECTURAL BARRIERS ACT

Sec.

254.1 Adoption of U.S. Access Board Standards as Postal Service Standards of Facility Accessibility.

254.2 Definition of primary function area and criteria used to determine whether an alteration has an effect on an area containing a primary function that is disproportionate to the overall alterations.

AUTHORITY: 39 U.S.C 101, 401, 403; 29 U.S.C. 792(b)(3) and 42 U.S.C. 12204.

SOURCE: 70 FR 28214, May 17, 2005, unless otherwise noted.

§ 254.1 Adoption of U.S. Access Board Standards as Postal Service Standards of Facility Accessibility.

(a) The United States Postal Service adopts as its Architectural Barriers Act (ABA) ''Standards for Facility Accessibility,'' the following sections of 36 CFR part 1191:

Appendix A to Part 1191, Table of Contents for apps. C, D, and E.

Appendix C to Part 1191, Architectural Barriers Act, Scoping (which contains ABA Chapter 1, Application and Administration, and ABA Chapter 2, Scoping requirements); pertinent parts of Appendix D to Part 1191, Technical (which includes Chapters 3 through 10).

Appendix E to Part 1191, List of Figures and Index.

(b) These sections listed in paragraph (a) of this section are adopted verbatim, with the exception of the Advisory Notes, which are expressly excluded.

§ 254.2 Definition of primary function area and criteria used to determine whether an alteration has an effect on an area containing a primary function that is disproportionate to the overall alterations.

(a) *Terminology*. The new accessibility guidelines require that certain terms be defined by the participating federal agencies. In the U.S. Access Board's 36 CFR part 1191, Appendix C, ABA chapter 2, section F202.6.2 requires that ''primary function areas'' be defined and Section F202.4 contains requirements for alterations affecting ''primary function areas'' stating, ''* * *an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, including the rest rooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Administrator of * * * the United States Postal Service.''

(b) *Primary function areas.* For purposes of this part, the primary function of the Postal Service is to provide mail service for its customers, that is to accept, distribute, transport and deliver the mail. Two essential facilities for fulfilling these functions are customer lobby areas where customers conduct their retail transactions, access mail depositories and post office boxes and work room areas where postal employees distribute the mail and perform other core postal operations. Therefore, for purposes of the accessibility guidelines applicable to the Postal Service under the Architectural Barriers Act, two primary function areas are identified: Customer Lobbies and Workroom Areas.

(c) *Disproportionality*. (1) According to Section F202.6.2, ''alteration'' of elements in a primary function area can trigger a requirement to make accessibility improvements along the path of travel to the area and improvements to rest rooms, telephones, and drinking fountains that serve the altered area if the alteration ''affects or could affect the usability of or access to an area containing a primary function.'' It is conceivable that almost any repair or alteration project in a ''primary function area'' could affect the usability of the area. Therefore a literal interpretation of this provision could require an expansion of the scope of virtually any alteration in a primary function area, regardless of the size and scope of the original project. According to Section F202.6.2, accessibility improvements must be made to the path of travel to the altered area and to rest rooms, telephones, and drinking fountains that serve the altered area ''unless such alterations are disproportionate to the overall alterations in terms of cost and scope''.

(2) For purposes of the accessibility guidelines applicable to the Postal Service under the Architectural Barriers Act, two criteria must be considered in making a determination whether accessibility improvements are disproportionate to the cost and scope of the original alteration: a magnitude threshold for the original alteration and a maximum ''percentage threshold'' for the accessibility alteration.

(d) *Magnitude threshold.* It is anticipated that, in most cases, a significant additional effort would be required to assess physical conditions along the path of travel and for rest rooms, telephones, and drinking fountains that serve the altered area, and to determine the scope, budget and appropriate design requirements for any corrective alterations. Unless the original alteration is of substantial magnitude, a disproportionate effort would be devoted to such investigation, design, and administration leaving few, if any funds to accomplish corrective work. Accordingly, a ''magnitude threshold'' is established such that no accessibility improvements to the path of travel, nor to any associated facilities, shall be required under F202.6.2 for alterations that have an estimated total cost less than 20 percent of the fair market value of the facility.

(e) *Percentage threshold.* For alterations subject to F202.6.2 that meet or exceed the ''magnitude threshold,'' the maximum cost for accessibility improvements to the path of travel, including all costs for accessibility improvements to rest rooms, telephones, and drinking fountains that serve the altered area, shall not exceed 20 percent of the total cost of the original alteration. Costs for accessibility improvements in excess of the 20 percent threshold shall be deemed ''disproportionate.''

PART 255—ACCESS OF PERSONS WITH DISABILITIES TO POSTAL SERVICE PROGRAMS, ACTIVITIES, FACILITIES, AND ELECTRONIC AND INFORMATION TECHNOLOGY

Sec.

255.1 Purpose.
255.2 Definitions.
255.3 Nondiscrimination under any program or activity conducted by the Postal Service.
255.4 Accessibility to electronic and information technology.
255.5 Employment.
255.6 Processing of complaints.
255.7 Special arrangements for postal services.
255.8 Access to postal facilities.
255.9 Other postal regulations; authority of postal managers and employees.

AUTHORITY: 39 U.S.C. 101, 401, 403, 1001, 1003, 3403, 3404; 29 U.S.C. 791, 794, 794d.

SOURCE: 69 FR 44962, July 28, 2004, unless otherwise noted.

§ 255.1 Purpose.

(a) This part implements section 504 of the Rehabilitation Act of 1973, as amended. Section 504 prohibits discrimination on the basis of disability in programs or activities conducted by executive agencies or by the Postal Service. This part also implements section 508 of the Rehabilitation Act of 1973, as amended. Section 508 requires that executive agencies and the Postal Service ensure, absent an undue burden, that individuals with disabilities have access to electronic and information technology that is comparable to the access of individuals who are not disabled.

(b) The standards relating to electronic and information technology expressed in this part are intended to be consistent with the standards announced by the Architectural and Transportation Barriers Compliance Board on December 21, 2000. Those standards are codified at 36 CFR part 1194.

§ 255.2 Definitions.

(a) *Agency* as used in this part means the Postal Service.

(b) *Area/functional vice president* also includes his or her designee.

(c) *Electronic and information technology (EIT)* includes ''information technology'' and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(d) *Formal complaint* means a written statement that contains the complainant's name, address, and telephone number, sets forth the nature of the complainant's disability, and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature of the alleged violation of section 504 or of section 508. It shall be signed by the complainant or by someone authorized to do so on the complainant's behalf.

(e) *Individual with a disability.* For purposes of this part, ''individual with a disability'' means any person who—

(1) Has a physical or mental impairment that substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment.

(f) *Information technology* means any equipment, or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management,

movement, control, display, switching, interchange, transmission, or reception of data or information.

(g) *Postal manager.* As used in this part, ''postal manager'' means the manager or official responsible for a service, facility, program, or activity.

(h) *Qualified individual with a disability.* For purposes of this part, ''qualified individual with a disability'' means—

(1) With respect to any Postal Service program or activity, except for employment, under which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, except for employment, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; or

(3) With respect to employment, an individual with a disability who can perform the essential functions of the job in question with or without reasonable accommodation.

(i) *Section 501* means section 501 of the Rehabilitation Act of 1973, as amended. Section 501 is codified at 29 U.S.C. 791.

(j) *Section 504* means section 504 of the Rehabilitation Act of 1973, as amended. Section 504 is codified at 29 U.S.C. 794.

(k) *Section 508* means section 508 of the Rehabilitation Act of 1973, as amended. Section 508 is codified at 29 U.S.C. 794d.

(l) *Undue burden* means significant difficulty or expense.

(m) *Vice President and Consumer Advocate* also includes his or her designee.

§ 255.3 Nondiscrimination under any program or activity conducted by the Postal Service.

In accordance with section 504 of the Rehabilitation Act, no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity conducted by the Postal Service.

§ 255.4 Accessibility to electronic and information technology.

(a) In accordance with section 508 of the Rehabilitation Act, the Postal Service shall ensure, absent an undue burden, that the electronic and information technology the agency procures allows—

(1) Individuals with disabilities who are Postal Service employees or applicants to have access to and use of information and data that is comparable to the access to and use of information and data by Postal Service employees or applicants who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the Postal Service to have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

(b) When procurement of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board would pose an undue burden, the Postal Service shall provide individuals with disabilities covered by paragraph (a) of this section with the information and data by an alternative means of access that allows the individuals to use the information and data.

§ 255.5 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment with the Postal Service. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973, as established by the Equal Employment Opportunity Commission in 29 CFR part 1614 shall apply to employment within the Postal Service.

§ 255.6 Processing of complaints.

(a) *Section 504 complaints, employment.* The Postal Service shall process complaints of employees and applicants alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791. In accordance with 29 CFR part 1614, the Postal Service has established procedures for processing complaints of alleged employment discrimination, based upon disability, in the agency's handbook, *Equal Employment Opportunity Complaint Processing.*

(b) *Section 504 complaints, members of the public.* The procedures of this part shall apply to section 504 complaints alleging disability discrimination in any program or activity of the Postal Service and brought by members of the public.

(c) *Section 508 complaints, members of the public, employees, and applicants.* The procedures of this part shall apply to section 508 complaints alleging failure to provide access to electronic and information technology and brought by members of the public or by employees or applicants. Section 508 complaints shall be processed to provide the remedies required by section 508 of the Rehabilitation Act.

(d) *Complaint Procedures.* Any individual with a disability who believes that he or she has been subjected to discrimination prohibited by this part or by the alleged failure of the agency to provide access to electronic and information technology may file a complaint by following the procedures described herein. A complainant shall first exhaust informal administrative procedures before filing a formal complaint.

(1) *Informal complaints relating to Postal Service programs or activities and to EIT.* (i) A complainant initiates the informal process by informing the responsible postal manager orally or in writing of the alleged discrimination or inaccessibility of Postal Service programs, activities, or EIT. Postal managers or employees who receive informal complaints that they lack the authority to resolve must promptly refer any such informal complaint to the appropriate postal manager, and at the same time must notify the complainant of the name, address, and telephone number of the person handling the complaint.

(ii) *Resolution of the informal complaint and time limits.* Within 15 days of receipt of the informal complaint, the responsible postal manager must send the complainant a written acknowledgement of the informal complaint. The written acknowledgment will include the date the complaint was filed and a description of the issue(s). If the matter cannot be resolved within 30 days of its receipt, the complainant must be sent a written interim report which explains the status of the informal complaint and the proposed resolution of the matter. On or before the 60th day from the agency's receipt of the informal complaint, the appropriate area/functional vice president within the Postal Service shall send a written decision to the complainant detailing the final disposition of the informal complaint and the reasons for that disposition. The decision shall contain the notice that the complainant may challenge an informal decision which denies relief either by proceeding in any other appropriate forum or by filing a formal complaint with the Vice President and Consumer Advocate. The notice will give the address of the Vice President and Consumer Advocate. The notice shall also state that if the complainant chooses to file a formal complaint, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(iii) *Automatic review.* The responsible postal manager's proposed disposition of the informal complaint shall be submitted to the appropriate district/program manager for review. The district/program manager shall forward the proposed disposition to the area/functional vice president for review and issuance of the written decision. This automatic review process shall be completed such that the written decision of the area/functional vice president shall be sent to the complainant no later than the 60th day from the agency's receipt of the informal complaint.

(2) *Formal complaints.* If an informal complaint filed under paragraph (d)(1) of this section denies relief, the complainant may seek relief in any other appropriate forum, including the right to file a formal complaint with the Vice President and Consumer Advocate in accordance with the following procedures. If the complainant files a formal complaint with the Vice President and Consumer Advocate, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(i) *Where to file.* Formal complaints relating to programs or activities conducted by the Postal Service or to access of Postal Service EIT may be filed with the Vice President and Consumer Advocate, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

(ii) *When to file.* A formal complaint shall be filed within 30 days of the date the complainant receives the decision of the area/functional vice president to deny relief. For purposes of determining when a formal complaint is timely filed under paragraph (d)(2)(ii) of this section, a formal complaint mailed to the agency shall be deemed filed on the date it is postmarked. Any other formal complaint shall be deemed filed on the date it is received by the Vice President and Consumer Advocate.

(iii) *Acceptance of the formal complaint.* The Vice President and Consumer Advocate shall accept a timely filed formal complaint that meets the requirements of § 255.2(d), that is filed after fulfilling the informal exhaustion procedures of § 255.6(d)(1), and over which the agency has jurisdiction. The Vice President and Consumer Advocate shall notify the complainant of receipt and acceptance of the formal complaint within 15 days of the date the Vice President and Consumer Advocate received the formal complaint.

(iv) *Resolution of the formal complaint.* Within 180 days of receipt and acceptance of a formal complaint over which the agency has jurisdiction, the Vice President and Consumer Advocate shall notify the complainant of the results of the investigation of the formal complaint. The notice shall be a written decision stating whether or not relief is being granted and the reasons for granting or denying relief. The notice shall state that it is the final decision of the Postal Service on the formal complaint.

(e) *No retaliation.* No person shall be subject to retaliation for opposing any practice made unlawful by the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791, or for participating in any stage of administrative or judicial proceedings under the statute.

§ 255.7 Special arrangements for postal services.

Members of the public who are unable to use or who have difficulty using certain postal services may be eligible under postal regulations for special arrangements. Some of the special arrangements that the Postal Service has authorized are listed below. No one is required to use any special arrangement offered by the Postal Service, but an individual's refusal to make use of a particular special arrangement does not require the Postal Service to offer other special arrangements to that individual.

(a) The *Postal Operations Manual* offers information on special arrangements for the following postal services:

(1) Carrier delivery services and programs.

(2) Postal retail services and programs.

(i) Stamps by mail or phone.

(ii) Retail service from rural carriers.

(iii) Self-service postal centers. Self-service postal centers contain vending equipment for the sale of stamps and stamp items, and deposit boxes for parcels and letter mail. Many centers are accessible to individuals in wheelchairs. Information regarding the location of the nearest center may be obtained from a local post office.

(b) The *Domestic Mail Manual*, the *Administrative Support Manual*, and the *International Mail Manual* contain information regarding postage-free mailing for mailings that qualify.

(c) *Inquiries and requests.* Members of the public wishing further information about special arrangements for particular postal services may contact their local postal manager.

(d) *Response to a request or complaint regarding a special arrangement for postal*

services. A local postal manager receiving a request or complaint about a special arrangement for postal services must provide any arrangement as required by postal regulations. If no special arrangements are required by postal regulations, the local postal manager, in consultation with the district manager or area manager, as needed, may provide a special arrangement or take any action that will accommodate an individual with a disability as required by section 504 or by this part.

§ 255.8 Access to postal facilities.

(a) *Legal requirements and policy*—(1) *ABA Standards.* Where the design standards of the Architectural Barriers Act (ABA) of 1968, 42 U.S.C. 4151 *et seq.*, do not apply, the Postal Service may perform a discretionary retrofit to a facility in accordance with this part to accommodate individuals with disabilities.

(2) *Discretionary modifications.* The Postal Service may modify facilities not legally required to conform to ABA standards when it determines that doing so would be consistent with efficient postal operations. In determining whether modifications not legally required should be made, due regard is to be given to:

(i) The cost of the discretionary modification;

(ii) The number of individuals to be benefited by the modification;

(iii) The inconvenience, if any, to the general public;

(iv) The anticipated useful life of the modification to the Postal Service;

(v) Any requirement to restore a leased premises to its original condition at the expiration of the lease, and the cost of such restoration;

(vi) The historic or architectural significance of the property in accordance with the National Historic Preservation Act of 1966, 16 U.S.C. 470 *et seq.*;

(vii) The availability of other options to foster service accessibility; and

(viii) Any other factor that is relevant and appropriate to the decision.

(b) *Inquiries and requests.* (1) Inquiries concerning access to postal facilities, and requests for discretionary alterations of postal facilities not covered by the design standards of the ABA, may be made to the local postal manager of the facility involved.

(2) The local postal manager's response to a request or complaint regarding an alteration to a facility will be made after consultation with the district manager or the area manager. If the determination is made that modification to meet ABA design standards is not required, a discretionary alteration may be made on a case-by-case basis in accordance with the criteria listed in paragraph (a)(2) of this section. If a discretionary alteration is not made, the local postal manager should determine if a special arrangement for postal services under § 255.7 can be provided.

§ 255.9 Other postal regulations; authority of postal managers and employees.

This part supplements all other postal regulations. Nothing in this part is intended either to repeal, modify, or amend any other postal regulation, to authorize any postal manager or employee to violate or exceed any regulatory limit, or to confer any budgetary authority on any postal official or employee outside normal budgetary procedures.

PART 259—SERVICES PERFORMED FOR OTHER AGENCIES

Sec.
259.1 Government.
259.2 Red Cross.

§ 259.1 Government.

(a) *Policy.* The Postal Service cooperates with Federal Agencies whenever the overall costs to Government will be reduced. Assistance in a number of special projects and programs is provided when the knowledge and abilities of postal employees are helpful.

(b) *Reimbursement.* The Postal Service establishes reasonable fees and charges for nonpostal services performed for agencies of the Federal as well as State governments. In establishing such fees and charges, the Postal Service considers the value of time of the personnel directly involved in the performance of the service, including direct supervision and supporting functions, plus the cost of materials and

supplies specifically sold, used or consumed. Also included is an element representing a reasonable share of Postal Service general overhead costs which are not attributable or assignable specifically to any product or service. The establishment of such fees and charges shall be reasonably consistent with the methods employed in establishing rates and fees for postal services then in effect.

(c) Except as provided in paragraph (d) of this section, arrangements for Postal Service participation in special surveys, censuses, and other activities must be made between the national headquarters of the requesting agencies and the Customer Services Department, U.S. Postal Service, Washington, DC 20260. Refer all requests to the Regional Postmaster General for forwarding to Headquarters. Authority to perform services for Government agencies is announced in the Postal Bulletin or by individual letters to the offices involved.

(d) *Housing Vacancy Surveys*—(1) *General.* An interagency agreement between the U.S. Postal Service (USPS) and the Federal Home Loan Bank Board (FHLBB) establishes the terms and conditions and reimbursement rates under which USPS will conduct Housing Vacancy Surveys in City Delivery offices when requested by FHLBB.

(2) *Restrictions.* The Agreement only authorizes the disclosure of aggregate statistical data. Postal managers must not permit the name or address of any past or present postal patron, or any other person to be disclosed unless such disclosure is authorized in writing by USPS Regions or Headquarters and is not in violation of 39 U.S.C. 412.

(3) *Postmaster's Responsibility.* (i) A postmaster will receive notification from FHLBB when his office has been selected to conduct a Housing Vacancy Survey. Normally, written notification will be mailed to the postmaster 30 days in advance of the date FHLBB would like USPS to conduct the survey, since USPS is under no obligation to use overtime or auxiliary assistance to conduct these surveys. The postmaster or his designee will schedule the survey on or near the date requested and will promptly reply to FHLBB so that the necessary forms will be provided on time.

(ii) All necessary forms and instructions will be supplied directly to each post office to be surveyed. Postmasters will designate a manager in each delivery unit to coordinate the survey within the unit and to review completed survey forms for accuracy.

(iii) FHLBB may request USPS to perform special or emergency surveys with less than 30 days advance notice. Since FHLBB has agreed to reimburse USPS at twice the normal rates for promptly performing such surveys, every reasonable effort should be made to accommodate such requests in a timely manner.

(iv) Housing Vacancy Surveys will not be conducted during the month of December of any year.

(v) Postmasters will notify the Office of Delivery and Collection, Washington, DC 20260, of the number of each type survey form completed for FHLBB. FHLBB will then remit payment directly to Headquarters, USPS.

(vi) USPS will not release or publish any survey results except in response to a court order, subpoena, or as required by the Freedom of Information Act.

(e) *Unauthorized projects prohibited.* Do not conduct special surveys or otherwise participate in any cooperative projects without the authorization in paragraph (c) of this section.

(39 U.S.C. 401, 411)

[36 FR 4773, Mar. 12, 1971, as amended at 40 FR 26511, June 24, 1975; 41 FR 56196, Dec. 27, 1976; 42 FR 58170, Nov. 8, 1977; 42 FR 63170, Dec. 15, 1977]

§ 259.2 Red Cross.

(a) *General.* The Postal Service and the Red Cross cooperate to maintain communication between the individual and the community during times of disaster. This applies only to natural disasters such as those caused by floods, tornados, hurricanes, earthquakes, fires, explosions, etc., and not to those caused by enemy action.

(b) *Role of Postal Service.* The Postal Service and the Red Cross will share information on the whereabouts of persons displaced by disasters, and otherwise cooperate with each other, as follows:

(1) The Red Cross will use Form 3575, Change of Address Order, as a standard item in Red Cross disaster relief. It will urge disaster victims displaced from their homes to obtain and complete the forms, it will distribute the forms to disaster victims who need them, and it will collect from the victims and turn over to the Postal Service any completed forms received.

(2) The Postal Service will provide the Red Cross the blank forms needed.

(3) During each disaster and subsequent disaster relief efforts, the Postal Service will establish a separate file of change of address forms completed by disaster victims, and will make available to the Red Cross information in the file. This information will be used by the Red Cross only to locate individuals and families, to answer inquiries from relatives and friends concerning the whereabouts and welfare of the disaster victims, or to make contact with disaster victims who have applied for assistance from the Red Cross but who cannot be located because of a change of address.

(4) The Postal Service and the Red Cross will encourage appropriate local postal officials and Red Cross chapters to maintain contact with each other and to participate in local and community planning for disasters.

(5) When appropriate, the Postal Service and the Red Cross will meet and exchange information at the national headquarters level concerning the effectiveness of their joint efforts for disaster relief.

(6) Regional Postmasters General and Postal Inspectors in Charge are responsible for seeing that post offices implement these cooperative arrangements in disaster situations.

(7) The instructions in §259.2 serve as a broad framework within which field officials of both agencies may coordinate their facilities and resources. However, postal officials shall cooperate with Red Cross officials to the maximum feasible degree during times of natural disasters.

(39 U.S.C. 401, 411)

[36 FR 4773, Mar. 12, 1971, as amended at 40 FR 26511, June 24, 1975]

Records and Information

PART 261—RECORDS AND INFORMATION MANAGEMENT

Sec.
261.1 Purpose and scope.
261.2 Authority.
261.3 Policy.
261.4 Responsibility.

AUTHORITY: 39 U.S.C. 401.

§261.1 Purpose and scope.

As a result of the Postal Reorganization Act, 39 U.S.C. 410, the U.S. Postal Service is no longer subject to the provisions of the Federal Records Act of 1950, or any of its supporting regulations which provide for the conduct of records management in Federal agencies. The objective of Parts 261 through 268 is to provide the basis for a Postal Service-wide records and information management program affecting all organizational components having the custody of any form of information and records.

[40 FR 45721, Oct. 2, 1975; 40 FR 48511, Oct. 16, 1975]

§261.2 Authority.

(a) 39 U.S.C. 401(5) states that the Postal Service has the power to acquire property it deems necessary or convenient in the transaction of its business and to hold, maintain, sell, lease or otherwise dispose of such property.

(b) 39 CFR 262.2 assigns to the Postal Service Records Office, located under the Privacy Office responsibility for the retention, security, and privacy of Postal Service records and the power to authorize the disclosure of such records and to order their disposal by destruction or transfer. Included is the authority to issue records management policy and to delegate or take appropriate action if that policy is not adhered to or if questions of interpretation of procedure arise.

[40 FR 45721, Oct. 2, 1975, as amended at 44 FR 51223, Aug. 31, 1979; 60 FR 57344, Nov. 15, 1995; 68 FR 56558, Oct. 1, 2003]

§261.3 Policy.

It is the policy of the Postal Service:

(a) To, as appropriate, create, preserve, protect and disclose records

which contain adequate and proper documentation of the organization, functions, policies, decisions, operations, procedures, activities and transactions of the Postal Service,

(b) To reduce to an absolute minimum the records holdings of the Postal Service by strict adherence to established records retention schedules.

[40 FR 45721, Oct. 2, 1975, as amended at 44 FR 51223, Aug. 31, 1979]

§ 261.4 Responsibility.

(a) The Manager, Records Office, under the Privacy Office, administers the Postal Service release of information and privacy of information programs with the assistance of FOIA coordinators in the Consumer Affairs function of area and district offices.

(b) The Chief Privacy Officer, under the Vice President and Consumer Advocate, is responsible for administering records and information management policies and for the compliance of all handbooks, directives, and instructions in support of this policy.

(c) Postal Service managers are responsible for administering records and information management policies and for complying with all handbooks, directives, and instructions in support of this policy.

[64 FR 41290, July 30, 1999, as amended at 68 FR 56558, Oct 1, 2003]

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

Sec.
262.1 Purpose and scope.
262.2 Officials.
262.3 Information.
262.4 Records.
262.5 Systems (Privacy).
262.6 Retention and disposal.
262.7 Non-records.

AUTHORITY: 5 U.S.C. 552, 552a; 39 U.S.C. 401.

SOURCE: 49 FR 30693, Aug. 1, 1984, unless otherwise noted.

§ 262.1 Purpose and scope.

This part contains the official definition of those basic records and information management terms that are frequently used throughout Postal Service regulations and directives.

§ 262.2 Officials.

(a) *Chief Privacy Officer.* The Chief Privacy Officer (CPO) is responsible for the issuance of policy on the protection of privacy and the release of Postal Service records with the power to authorize the disclosure of such records and to delegate or take appropriate action if that policy is not adhered to or if questions of interpretation or procedure arise. The CPO directs the activities of the Privacy Office and the Records Office.

(b) *Manager, Records Office.* The Manager, Records Office, manages the Records Office, and is responsible for establishing procedures and guidelines to ensure that record management practices are in compliance with the Privacy Act and FOIA. The Manager, Records Office, may also delegate or take appropriate action if policies are not adhered to or if questions of interpretation or procedures arise.

(c) *Records Custodian.* The postmaster or other head of a facility such as an area vice president, district manager, or head of a postal installation or department who maintains Postal Service records. Vice presidents are the custodians of records maintained at Headquarters. Senior medical personnel are the custodians of restricted medical records maintained within postal facilities.

(d) *Information System Executive.* The Postal Service official who prescribes the existence of and the policies for an information system; usually this is a Vice President.

(e) *Records Office.* The Records Office is responsible for the issuance of policy on the maintenance and disposition of Postal Service records and information, and to delegate or take appropriate action if such policy is not adhered to or if questions of interpretation or procedure arise.

[49 FR 30693, Aug. 1, 1984, as amended at 51 FR 26385, July 23, 1986; 60 FR 57344, Nov. 15, 1995; 63 FR 6481, Feb. 9, 1998; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 262.3 Information.

Data combined with the knowledge of its context and having the potential to serve a Postal Service use.

(a) *Sensitive information.* Information which has been identified by the USPS as *restricted* or *critical.*

(1) *Critical information.* Information that must be available in order that the Postal Service effectively perform its mission and meet legally assigned responsibilities; and for which special precautions are taken to ensure its accuracy, relevance, timeliness and completeness. This information, if lost, would cause significant financial loss, inconvenience or delay in performance of the USPS mission.

(2) *Restricted information.* Information that has limitations placed upon both its access within the Postal Service and disclosure outside the Postal Service consistent with the Privacy and Freedom of Information Acts.

(i) *Restricted mandatory.* Information that has limitations upon its internal access and that may be disclosed *only* in accordance with an Executive Order, public law, or other Federal statute and their supporting postal regulations.

(ii) *Restricted discretionary.* Information that has limitations upon its internal access and that *may* be withheld from external disclosure solely in accordance with postal regulations, consistent with the Freedom of Information Act.

(b) *Classified information (National Security).* Information about the national defense and foreign relations of the United States that has been determined under Executive Order 12356 to require protection against unauthorized disclosure and has been so designated.

§ 262.4 Records.

Recorded information, regardless of media, format, or physical characteristics, including electronic data, developed or received by the Postal Service in connection with the transaction of its business and retained in its custody; for machine-readable records, a collection of logically related data treated as a unit.

(a) *Permanent record.* A record determined by the Records Office or the National Archives and Records Administration as having sufficient historical or other value to warrant continued preservation. (All other records are considered temporary and must be scheduled for disposal.)

(b) *Corporate records.* Those records series that are designated by the Records Office as containing information of legal, audit, obligatory or archival value about events and transactions of interest to the entire corporate body of the Postal Service. Corporate records are distinguished from operational records, which have value only in their day-to-day use, and from precedential files, which have value only as examples.

(c) *Active record.* A record that contains information used for conducting current business.

(d) *Inactive record.* A record that contains information which is not used for conducting current business, but for which the retention period has not yet expired.

(e) *Vital records.* Certain records which must be available in the event of a national emergency in order to ensure the continuity of Postal Service operations and the preservation of the rights and interests of the Postal Service, its employees, contractors and customers. There are two types of vital records: Emergency Operating Records and Rights and Interests Records.

(1) *Emergency operating records.* Certain vital records necessary to support essential functions of the Postal Service during and immediately following a national emergency.

(2) *Rights and interest records.* Certain vital records maintained to ensure the preservation of the rights and interests of the Postal Service, its employees, contractors and customers.

[49 FR 30693, Aug. 1, 1984, as amended at 51 FR 26385, July 23, 1986; 60 FR 57344, Nov. 15, 1995; 63 FR 6481, Feb. 9, 1998; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 262.5 Systems (Privacy).

(a) *Privacy Act system of records.* A Postal Service system containing information about individuals, including mailing lists, from which information is retrieved by the name of an individual or by some identifying number or symbol assigned to the individual, such as a Social Security Account Number.

(b) *Individual (record subject).* A living person. Does not include sole proprietorships, partnerships or corporations. A business firm identified by the name of one or more persons is not an individual.

(c) *Computer matching program.* A ''matching program,'' as defined in the Privacy Act, 5 U.S.C. 552a(a)(8), is subject to the matching provisions of the Act, published guidance of the Office of Management and Budget, and these regulations. The term ''matching program'' includes any computerized comparison of:

(1) A Postal Service automated system of records with an automated system of records of another Federal agency, or with non-Federal records, for the purpose of:

(i) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(ii) Recouping payments or delinquent debts under such Federal benefit programs;

(2) A Postal Service automated personnel or payroll system of records with another automated personnel or payroll system of records of the Postal Service or other Federal Agency or with non-Federal records.

(d) *Other computer matching activities.* (1) The following kinds of computer matches are specifically excluded from the term ''matching program'':

(i) Statistical matches whose purpose is solely to produce aggregate data stripped of personal identifiers.

(ii) Statistical matches whose purpose is in support of any research or statistical project.

(iii) Law enforcement investigative matches whose purpose is to gather evidence against a named person or persons in an existing investigation.

(iv) Tax administration matches.

(v) Routine administrative matches using Federal personnel records, provided that the purpose is not to take any adverse action against an individual.

(vi) Internal matches using only records from Postal Service systems of records, provided that the purpose is not to take any adverse action against any individual.

(vii) Matches performed for security clearance background checks or for foreign counterintelligence.

(2) Although these and other matching activities that fall outside the definition of ''matching program'' are not subject to the matching provisions of the Privacy Act or OMB guidance, other provisions of the Act and of these regulations may be applicable. No matching program or other matching activity may be conducted without the prior approval of the Records Office.

[49 FR 30693, Aug. 1, 1984, as amended at 59 FR 37160, July 21, 1994; 60 FR 57344, Nov. 15, 1995; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 262.6 Retention and disposal.

(a) *Records control schedule.* A directive describing records series that are maintained by components of the Postal Service; it provides maintenance, retention, transfer, and disposal instructions for each series listed, and serves as the authority for Postal officials to implement such instructions.

(b) *Disposal (records).* The permanent removal of records or information from Postal Service custody; included are:

(1) Transfer to the National Archives.

(2) Donation to the Smithsonian Institution, local museums or historical societies.

(3) Sale as waste material.

(4) Discarding.

(5) Physical destruction.

(c) *Retention period.* The authorized length of time that a records series must be kept before its disposal, usually stated in terms of months or years, but sometimes expressed as contingent upon the occurrence of an event; usually the retention period refers to the period of time between the creation of a series and its authorized disposal date; however, in some cases it refers to the length of time between the cutoff point and the disposal date.

§ 262.7 Non-records.

(a) *Non-record material.* Includes blank forms and surplus publications, handbooks, circulars, bulletins, announcements, and other directives as

well as any material not directly associated with the transaction of Postal Service business.

(b) *Personal papers.* Those materials created or received during an individual's period of employment with the Postal Service which are of a purely private or nonofficial character, or which were neither created nor received in connection with Postal Service business.

PART 263—RECORDS RETENTION AND DISPOSITION

Sec.
263.1 Purpose and scope.
263.2 Policy.
263.3 Responsibility.
263.4 Records disposal.
263.5 Inquiries.

AUTHORITY: 39 U.S.C. 401.

SOURCE: 40 FR 45722, Oct. 2, 1975, unless otherwise noted.

§ 263.1 Purpose and scope.

This part contains the policy and general regulations pertaining to the retention and disposition of records and information throughout all organizational levels and components.

§ 263.2 Policy.

It is the policy of the U.S. Postal Service to establish and maintain schedules specifying the retention periods required for all official and duplicate record copies. Furthermore, it is the policy that all duplicate record copies and non-record material will be disposed of as soon as they have served their purpose.

§ 263.3 Responsibility.

(a) *Records Office.* Records Office has the responsibility for providing for the establishment of retention schedules and has the authority to approve them. Furthermore, that office has the authority to dispose of Postal Service records by transfer or destruction.

(b) *Custodians.* Custodians are responsible for the retention and prompt disposal of records in their custody and for delegating in writing, persons to perform these duties.

[40 FR 45722, Oct. 2, 1975, as amended at 60 FR 57344, Nov. 15, 1995; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 263.4 Records disposal.

All disposals of records containing sensitive information, i.e. transfers to records storage centers, destruction, transfers external to the USPS, and maintenance of accounting records regarding such disposal, must be accomplished in accordance with procedures issued by the Records Office.

[40 FR 45722, Oct. 2, 1975, as amended at 60 FR 57344, Nov. 15, 1995. Redesignated and amended at 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 263.5 Inquiries.

Inquiries regarding records maintenance and disposition should be directed to the Manager, Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260, or, by telephone, (202) 268–2608.

[64 FR 41290, July 30, 1999, as amended at 68 FR 56558, Oct. 1, 2003]

PART 264—VITAL RECORDS

Sec.
264.1 Purpose and scope.
264.2 Policy.
264.3 Responsibility.
264.4 Vital Records Program.

AUTHORITY: 39 U.S.C. 401.

SOURCE: 44 FR 51224, Aug. 31, 1979, unless otherwise noted.

§ 264.1 Purpose and scope.

Certain records are critical to the continuity of Postal Service operations or to the preservation of the rights and interests of the Postal Service, its employees, contractors or customers. To ensure that these records are available when needed, specific controls are required which affect all organizational components having the custody of records defined as being ''vital.''

§ 264.2 Policy.

It is the policy of the U.S. Postal Service to ensure the availability of all

records considered critical to the continuity of its operations and the preservation of the rights and interests of the Postal Service, its employees, contractors, and customers. Vital records shall be routinely maintained at predesignated off-site locations to ensure their availability when needed by management and operating personnel.

§ 264.3 Responsibility.

(a) *Manager, Records Office.* The Manager, Records Office, is responsible for categorizing records as vital, and in conjunction with the Chief Postal Inspector/Emergency Coordinator shall establish and maintain the vital records program, and ensure compliance with supportive procedures.

(b) Chief Postal Inspector. As the Postal Service's Emergency Coordinator, the Chief Postal Inspector shall establish and maintain a program to ensure that vital records are available at predesignated off-site locations for use during a national emergency.

(c) *Custodians.* Custodians are responsible for following vital records program procedures including the forwarding of vital records to predesignated off-site locations.

[44 FR 51224, Aug. 31, 1979, as amended at 60 FR 57344, Nov. 15, 1995; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 264.4 Vital Records Program.

Complete procedures concerning the identification, categorization, processing, protection, and transfer of vital records are provided by the office of Corporate Accounting or the USPS Emergency Coordinator, as appropriate.

[44 FR 51224, Aug. 31, 1979, as amended at 60 FR 57344, Nov. 15, 1995; 64 FR 41290, July 30, 1999]

PART 265—RELEASE OF INFORMATION

Sec.

265.1 Purpose and scope.
265.2 Policy.
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265.4 Inquiries.
265.5 Public reading rooms.
265.6 Availability of records.
265.7 Procedure for inspection and copying of records.
265.8 Business information; procedures for predisclosure notification to submitters.
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265.12 Demands for testimony or records in certain legal proceedings.
265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.
APPENDIX A TO PART 265—FEES FOR COMPUTER SERVICES

AUTHORITY: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

§ 265.1 Purpose and scope.

(a) This part contains the regulations of the Postal Service relating to the availability to the public of Postal Service records. Included in this part are the regulations which implement section 552 of title 5, U.S.C., the ''Freedom of Information Act,'' insofar as it applies to the Postal Service.

(b) Official records of the Postal Service made available pursuant to the requirements of the Act shall be furnished to members of the public as prescribed by this part.

[40 FR 7331, Feb. 19, 1975]

§ 265.2 Policy.

(a) It is the policy of the Postal Service to make its official records available to the public to the maximum extent consistent with the public interest. This policy requires a practice of full disclosure subject only to the specific exemptions required or authorized by law.

(b) The exemptions from mandatory disclosure provided by section 552(b) of title 5, and section 410(c) of title 39, U.S.C., for various types of records, reflect the fact that under some circumstances the public interest may be better served by leaving the disclosure of particular records to the discretion of the Postal Service than by requiring their disclosure. As to those records the disclosure of which is not prohibited by statute, Executive Order, or regulation, the discretion vested in the Postal Service is exercised after giving consideration to the following: The effect of non-disclosure on the public's

right to know about a particular matter; the effect of disclosure on the right of privacy of any affected individuals; the effect of disclosure on the public interest in the economical, efficient, and orderly operation of the nation's mail system; and any other factors that may be relevant under the circumstances.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44270, July 1, 1980]

§ 265.3 Responsibility.

(a) *Custodian.* Official records are in the custody of the postmaster or other head of a facility or department at which they are maintained, as defined at § 262.2(c) of this chapter. These custodians are responsible for responding in the first instance to requests from members of the public for Postal Service records.

(b) *Manager, Records Office.* The Postal Service Manager, Records Office, under the Privacy Office, is responsible for the overall administration of this part, including the issuance of detailed instructions to custodians.

(c) *General Counsel.* The General Counsel decides timely appeals authorized by this part.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44270, July 1, 1980; 60 FR 57344, Nov. 15, 1995; 63 FR 6481, Feb. 9, 1998; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 265.4 Inquiries.

Inquiries regarding the availability of Postal Service records should be directed to the appropriate records custodian. If the appropriate records custodian is not known, inquiries should be directed to the Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260, telephone (202) 268–2608.

[60 FR 57345, Nov. 15, 1995, as amended at 64 FR 41290, July 30, 1999; 68 FR 56559, Oct. 1, 2003]

§ 265.5 Public reading rooms.

The Library of the Postal Service Headquarters, 475 L'Enfant Plaza SW, Washington, DC 20260–1641, serves as public reading room for the materials which are listed in paragraphs (a)(2), (3), (4) and (5) of § 265.6 as available for public inspection and copying. Such of this material as has been created by the Postal Service on or after November 1, 1996, and has not been published and offered for sale, also will be available in electronic format at the Postal Service's world wide web site at *http://www.usps.com/foia.*

[63 FR 6481, Feb. 9, 1998, as amended at 68 FR 56559, Oct. 1, 2003]

§ 265.6 Availability of records.

(a) *Records available to the public on request*—(1) *General.* Postal Service records are available for inspection or copying at the request of any person, in accordance with the provisions of this part, except as otherwise provided by law or regulations, including but not limited to paragraphs (b) through (g) of this section. Certain categories of records of particular interest are available on a continuing basis as provided in paragraphs (a)(2), (3), and (4) of this section and are listed in a public index as provided in paragraphs (a)(4) and (5) of this section. Access to other records may be requested on an individual basis in accordance with the procedures provided in § 265.7. Official records which are maintained on an electronic storage medium will normally be made available, in accordance with this part, as an exact duplicate of the requested original in a form readable by the human eye, such as a computer print-out. On request, records will be provided in a different form or format if they are maintained in the requested form or format or if they can be readily reproduced in the requested form or format.

(2) *Opinions.* All final opinions and orders made in the adjudication of cases by the Judicial Officer and Administrative Law Judges, all final determinations pursuant to section 404(b) of title 39, United States Code, to close or consolidate a post office, or to disapprove a proposed closing or consolidation, all advisory opinions concerning the private express statutes issued pursuant to 39 CFR 310.6, and all bid protest decisions are on file and available for inspection and copying at the Headquarters Library and, if created on or after November 1, 1996, also at the Postal Service's world wide web site identified at § 265.5.

(3) *Administrative manuals and instructions to staff.* The manuals, instructions, and other publications of the Postal Service that affect members of the public are available through the Headquarters Library and at many post offices and other postal facilities. Those which are available to the public but are not listed for sale may be inspected in the Headquarters Library, at any postal facility which maintains a copy, or, if created on or after November 1, 1996, through the world wide web site identified at § 265.5. Copies of publications which are not listed as for sale or as available free of charge may be obtained by paying a fee in accordance with § 265.9.

(4) *Previously released records.* Records processed and disclosed after March 31, 1997, in response to a Freedom of Information Act request, which the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records, are available for inspection and copying at the Headquarters Library. Any such records created by the Postal Service on or after November 1, 1996, also will be available at the Postal Service's world wide web site identified at § 265.5. Records described in this paragraph that were not created by, or on behalf of, the Postal Service generally will not be available at the world wide web site. Records will be available in the form in which they were originally disclosed, except to the extent that they contain information that is not appropriate for public disclosure and may be withheld pursuant to this section. Any deleted material will be marked and the applicable exemption(s) indicated in accordance with § 265.7(d)(3). A general index of the records described in this paragraph is available for inspection and copying at the Headquarters Library. [Beginning on or before December 31, 1999, the index also will be available at the Postal Service's world wide web site.]

(5) *Public index.* (i) A public index is maintained in the Headquarters Library and at the world wide web site of all final opinions and orders made by the Postal Service in the adjudication of cases, Postal Service policy statements which may be relied on as precedents in the disposition of cases, administrative staff manuals and instructions that affect the public, and other materials which the Postal Service elects to index and make available to the public on request in the manner set forth in paragraph (a) of this section.

(ii) The index contains references to matters issued after July 4, 1967, and may reference matters issued prior to that date.

(iii) Any person may arrange for the inspection of any matter in the public index in accordance with the procedures of § 265.7.

(iv) Copies of the public index and of matters listed in the public index may be purchased through the Headquarters Library with payment of fees as listed in the index or as provided in § 265.9.

(v) Materials listed in the public index that were created on or after November 1, 1996, will also be available in electronic format at the Postal Service's world wide web site at *http://www.usps.gov*.

(6) *Listings of employees' names.* Upon written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

(b) *Records not subject to mandatory public disclosure.* Certain classes of records are exempt from mandatory disclosure under exemptions contained in the Freedom of Information Act and in section 410(c) of title 39, U.S.C. The Postal Service will exercise its discretion, in accordance with the policy stated in § 265.2, as implemented by instructions issued by the Records Office with the approval of the General Counsel in determining whether the public interest is served by the inspection or copying of records that are:

(1) Related solely to the internal personnel rules and practices of the Postal Service.

(2) Trade secrets, or privileged or confidential commercial or financial information, obtained from any person.

(3) Information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed. This class includes, but is not limited to:

(i) Information pertaining to methods of handling valuable registered mail.

(ii) Records of money orders, except as provided in R900 of the *Domestic Mail Manual (DMM).*

(iii) Technical information concerning postage meters and prototypes submitted for Postal Service approval prior to leasing to mailers.

(iv) Reports of market surveys conducted by or under contract in behalf of the Postal Service.

(v) Records indicating rural carrier lines of travel.

(vi) Records compiled within the Postal Service which would be of potential benefit to persons or firms in economic competition with the Postal Service.

(vii) Information which, if publicly disclosed, could materially increase procurement costs.

(viii) Information which, if publicly disclosed, could compromise testing or examination materials.

(4) Interagency or internal memoranda or letters that would not be available by law to a private party in litigation with the Postal Service.

(5) Reports and memoranda of consultants or independent contractors, except to the extent they would be required to be disclosed if prepared within the Postal Service.

(6) Files personal in nature, including medical and personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Information prepared for use in connection with proceedings under chapter 36 of title 39, U.S.C., relating to rate, classification, and service changes.

(8) Information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, U.S.C., or minutes of, or notes kept during, negotiating sessions conducted under such chapter.

(9) Other matter specifically exempted from disclosure by statute.

(c) *Records or information compiled for law enforcement purposes.* (1) Investigatory files compiled for law enforcement purposes, whether or not considered closed, are exempt by statute from mandatory disclosure except to the extent otherwise available by law to a party other than the Postal Service, 39 U.S.C. 410(c)(6). As a matter of policy, however, the Postal Service will normally make records or information compiled for law enforcement purposes available upon request unless the production of these records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority (such as the Postal Inspection Service) in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Whenever a request is made which involves access to records described in § 265.6(c)(1)(i), and

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that,

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Postal Service may, during only such time as that circumstance continues, treat the records

as not subject to the requirements of the Freedom of Information Act.

(3) Whenever informant records maintained by a criminal law enforcement agency (such as the Postal Inspection Service) under an informant's name or personal identifier are requested by a third party according to the informant's name or personal identifier, the records may be treated as not subject to the requirements of the Freedom of Information Act unless the informant's status as an informant has been officially confirmed.

(4) Authority to disclose records or information compiled for law enforcement purposes to persons outside the Postal Service must be obtained from the Chief Postal Inspector, U.S. Postal Service, Washington, DC 20260–2100, or designee.

(d) *Disclosure of names and addresses of customers.* Upon request, the names and addresses of specifically identified Postal Service customers will be made available only as follows:

(1) *Change of address.* The new address of any specific customer who has filed a permanent or temporary change of address order (by submitting PS Form 3575, a hand-written order, or an electronically communicated order) will be furnished to any person, except that the new address of a specific customer who has indicated on the order that the address change is for an individual or an entire family will be furnished only in those circumstances stated at paragraph (d)(5) of this section. Disclosure will be limited to the address of the specifically identified individual about whom the information is requested (not other family members or individuals whose names may also appear on the change of address order). The Postal Service reserves the right not to disclose the address of an individual for the protection of the individual's personal safety. Other information on PS Form 3575 or copies of the form will not be furnished except in those circumstances stated at paragraphs (d)(5)(i), (d)(5)(iii), or (d)(5)(iv) of this section.

(2) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit (but not including postage meter licenses), and the name of any person applying for a permit in behalf of a holder will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9. For the name and address of a postage meter license holder, see paragraph (d)(3) of this section. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

(3) *Name and address of postage evidencing user.* The name and address of an authorized user of a postage meter or PC Postage product (postage evidencing systems) printing a specified indicium will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9, provided the user is using the postage meter or PC Postage product for business purposes. The request for this information must be sent to the manager of Postage Technology Management, Postal Service Headquarters. The request must include the original or a photocopy of the envelope or wrapper on which the postage meter or PC postage indicium in question is printed, and a copy or description of the contents to support that the sender is a business or firm and not an individual. (Lists of authorized users of postage meters or PC Postage products may not be disclosed to members of the public.)

(4) *Post Office boxholder information.* Information from PS Form 1093, *Application for Post Office Box or Caller Service,* will be provided as follows:

(i) Except as provided in paragraph (d)(4)(iii) of this section, the boxholder applicant name and address from PS Form 1093 will be provided only in those circumstances stated in paragraphs (d)(5)(i) through (d)(5)(iii) of this section.

(ii) Except as provided in paragraph (d)(4)(iii) of this section, the names of persons listed as receiving mail, other than the boxholder applicant, will be furnished from PS Form 1093 only in those circumstances stated in paragraphs (d)(5)(i) and (d)(5)(iii) of this section.

(iii) When a copy of a protective order has been filed with the postmaster, information from PS Form 1093 will not be disclosed except pursuant to

the order of a court of competent jurisdiction.

(5) *Exceptions.* Except as otherwise provided in these regulations, names or addresses of Postal Service customers will be furnished only as follows:

(i) To a federal, state or local government agency upon prior written certification that the information is required for the performance of its duties. The Postal Service requires government agencies to use the format appearing at the end of this section when requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, the postmaster will return the request to the agency, specifying the deficiency in the space marked 'OTHER'. A copy of PS Form 1093 may be provided.

(ii) To a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se,* upon receipt of written information that specifically includes all of the following: (A) A certification that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation; (B) a citation to the statute or regulation that empowers the requester to serve process, if the requester is other than the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*; (C) the names of all known parties to the litigation; (D) the court in which the case has been or will be commenced; (E) the docket or other identifying number, if one has been issued; and (F) the capacity in which the boxholder is to be served, *e.g.*, defendant or witness. By submitting such information, the requester certifies that it is true. The address of an individual who files with the postmaster a copy of a protective court order will not be disclosed except as provided under paragraphs (d)(5)(i), (d)(5)(iii), or (d)(5)(iv) of this section. A copy of Form 1093 will not be provided.

The Postal Service suggests use of the standard format appearing at the end of this section when requesting information under this paragraph. When using the standard format on the submitter's own letterhead, the standard format must be used in its entirety. The warning statement and certification specifically must be included immediately before the signature block. If the request lacks any of the required information or a proper signature, the postmaster will return it to the requester specifying the deficiency.

NOTE: The term *pro se* means that a party is not represented by an attorney but by himself or herself.

(iii) In compliance with a subpoena or court order, except that change of address or boxholder information which is not otherwise subject to disclosure under these regulations may be disclosed only pursuant to a court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service, but only after the Inspection Service has confirmed that the information is needed in the course of a criminal investigation. (All other requests from law enforcement agencies should be submitted in writing to the postmaster as in paragraph (d)(5)(i) of this section.)

(6) *Jury service.* The mailing address of any customer sought in connection with jury service, if known, will be furnished without charge upon prior written request to a court official, such as a judge, court clerk or jury commissioner.

(7) *Address verification.* The address of a postal customer will be verified at the request of a Federal, State, or local government agency upon written certification that the information is required for the performance of the agency's duties. ''Verification'' means advising such an agency whether or not its address for a postal customer is one at which mail for that customer is currently being delivered. ''Verification'' neither means nor implies knowledge on the part of the Postal Service as to the actual residence of the customer or as to the actual receipt by the customer of mail delivered to that address. The Postal Service requires government agencies to use the format appearing at the end of this section when

requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, the postmaster will return the request to the agency, specifying the deficiency in the space marked ''OTHER''.

(8) *Business/Residence location.* If the location of a residence or a place of business is known to a Postal Service employee, whether as a result of official duties or otherwise, the employee may, but need not, disclose the location or give directions to it. No fee is charged for such information.

(9) *Private mailbox information.* Information from PS Form 1583, *Application for Delivery of Mail Through Agent,* will be provided as follows:

(i) Except as provided in paragraph (d)(9)(iii) of this section, information from PS Form 1583 will be provided only in the circumstance stated in paragraph (d)(5)(iii) of this section.

(ii) To the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed to the public from PS Form 1583.

(iii) Information concerning an individual who has filed a protective court order with the postmaster will not be disclosed except pursuant to the order of a court of competent jurisdiction.

(e) *Information not available for public disclosure.* (1) Except as provided by paragraph (a)(6) of this section, the Postal Service and its officers and employees shall not make available to the public by any means or for any purpose any mailing list or other list of names or addresses (past or present) of postal patrons or other persons.

(2) Records or other documents which are classified or otherwise specifically authorized by Executive Order 12356 and implementing regulations to be kept secret in the interest of the national defense or foreign policy are not subject to disclosure pursuant to this part.

(3) Records consisting of trade secrets or confidential financial data, the disclosure of which is prohibited by section 1905 of title 18, U.S.C., are not subject to disclosure pursuant to this part.

(4) Other records, the disclosure of which is prohibited by statute, are not subject to disclosure pursuant to this part.

(f) *Protection of the right of privacy.* If any record required or permitted by this part to be disclosed contains the name of, or other identifying details concerning, any person, including an employee of the Postal Service, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the name or other identifying details shall be deleted before the record is disclosed and the requester so informed.

(g) *Disclosure in part of otherwise exempt record.* Any reasonably segregable portion of a record shall be provided after deleting the information which is neither subject to mandatory disclosure nor available as a matter of discretion.

Change of Address or Boxholder Request Format — Process Servers

Postmaster Date_____

_____
City, State, ZIP Code

REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS

Please furnish the new address or the name and address (if a boxholder) for the following:

Name:_____

Address:_____

Note: Only one request may be made per completed form. The name and last known address are required for change of address information. The name, if known, and Post Office box address are required for boxholder information.

The following information is provided in accordance with 39 CFR 265.6(d)(5)(ii). There is no fee for providing boxholder or change of address information.

1. Capacity of requester (e.g., process server, attorney, party representing self):_____

2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se — except a corporation acting pro se must cite statute):

_____

_____

3. The names of all known parties to the litigation:_____

4. The court in which the case has been or will be heard:_____

5. Docket or other identifying number (a or b must be completed):

☐ a. Docket or other identifying number: _____

☐ b. Docket or other identifying number has not been issued.

6. The capacity in which this individual is to be served (e.g., defendant or witness):_____

WARNING: THE SUBMISSION OF FALSE INFORMATION TO OBTAIN AND USE CHANGE OF ADDRESS INFORMATION OR BOXHOLDER INFORMATION FOR ANY PURPOSE OTHER THAN THE SERVICE OF LEGAL PROCESS IN CONNECTION WITH ACTUAL OR PROSPECTIVE LITIGATION COULD RESULT IN CRIMINAL PENALTIES INCLUDING A FINE OF UP TO $10,000 OR IMPRISONMENT OF NOT MORE THAN 5 YEARS, OR BOTH (TITLE 18 U.S.C. SECTION 1001).

I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.

_____ _____
Signature Address

_____ _____
Printed Name City, State, ZIP Code

POST OFFICE USE ONLY

☐ No change of address on file

☐ Moved, left no forwarding address

☐ No such address

NEW ADDRESS OR BOXHOLDER NAME POSTMARK AND STREET ADDRESS:

_____

_____

_____

Address Information Request Format - Government Agencies

(AGENCY LETTERHEAD)

TO: Postmaster

_____

Agency Control Number _____

Date_____

ADDRESS INFORMATION REQUEST

Please furnish this agency with the new address, if available, for the following individuals or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the address as recorded on the boxholder's application form.

Name: _____

Last Known Address:_____

I certify that the address information for this individual is required for the performance of this agency's official duties.

_____

(Signature of Agency Official)

_____

(Title)

FOR POST OFFICE USE ONLY

☐ MAIL IS DELIVERED TO ADDRESS GIVEN	NEW ADDRESS
☐ NOT KNOW AT ADRESS GIVEN	_____
☐ MOVED, LEFT NO FORWARDING ADDRESS	_____
☐ NO SUCH ADDRESS	
☐ OTHER (SPECIFY)	BOXHOLDER STREET ADDRESS
_____	_____
_____	_____
Agency return address	Postmark/Date Stamp

[40 FR 7331, Feb. 19, 1975, as amended at 41 FR 52052, Nov. 26, 1976; 42 FR 59085, Nov. 15, 1977; 45 FR 44270, July 1, 1980; 47 FR 20304, May 12, 1982; 47 FR 21248, May 18, 1982; 48 FR 1969, Jan. 17, 1983; 51 FR 8825, Mar. 14, 1986; 51 FR 26386, July 23, 1986; 52 FR 13668, Apr. 24, 1987; 52 FR 22778, June 16, 1987; 53 FR 49983, Dec. 13, 1988; 54 FR 3558, Jan. 24, 1989; 59 FR 11550, Mar. 11, 1994; 59 FR 22757, May 3, 1994; 59 FR 62324, Dec. 5, 1994; 59 FR 67225, 67226, 67227, Dec. 29, 1994; 60 FR 57345, Nov. 15, 1995; 62 FR 64282, Dec. 5, 1997; 63 FR 6481, Feb. 9, 1998; 64 FR 41290, July 30, 1999; 65 FR 3859, Jan. 25, 2000; 67 FR 46393, July 15, 2002; 68 FR 56559, Oct. 1, 2003; 69 FR 34932, June 23, 2004; 69 FR 39851, July 1, 2004; 70 FR 22512, Apr. 29, 2005; 70 FR 52016, Sept. 1, 2005]

§ 265.7 Procedure for inspection and copying of records.

(a) *Submission of requests*—(1) *Form and content of request.* To permit expeditious handling and timely response in accordance with the provisions of this part, a request to inspect or to obtain a copy of an identifiable Postal Service record shall be in writing and bear the caption "Freedom of Information Act Request" or otherwise be clearly and prominently identified as a request for records pursuant to the Freedom of Information Act. A request shall be

clearly and prominently identified as such on the envelope or other cover. Other requests for information will be considered informal requests and will be handled as expeditiously as practicable but not necessarily within the time limitations set forth in §265.7(b). An informal request will be granted or denied according to the substantive rules in §265.6, if found to be a request for a record. A Freedom of Information Act request shall identify the record sought as completely as possible, by name, description, or subject matter, and be sufficient to permit the custodian to locate it with a reasonable amount of effort. The request may state the maximum amount of fees for which the requester is willing to accept liability without prior notice. See paragraph (f)(2) of §265.8. If no amount is stated, the requester will be deemed willing to accept liability for fees not to exceed $25.

(2) *To whom submitted.* A request shall be submitted to the custodian of the requested record. If the location of the record is not known, inquiry should be directed to the Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260, telephone (202) 268–2608. If a request is submitted to a facility other than that at which the record is maintained, it shall be promptly transmitted to the appropriate custodian with a copy of the transmittal furnished to the requester. A request which is not initially submitted to the appropriate custodian shall be deemed to have been received by the Postal Service for purposes of computing the time for response is accordance with §265.7(b) at the time that it is actually received by the appropriate custodian. If a request seeks records maintained at two or more facilities, the custodian shall be deemed to be the next senior common supervisor of the heads of the facilities, e.g., district manager, area vice president. The Records Office is deemed to be the custodian, for purposes of this part, in all instances in which a request is for a listing of postal employees. See §265.6(a)(6).

(3) *Reasons for request.* In view of the possibility that some or all of the records may be exempt from mandatory disclosure, the requester may state any reasons why the record should nevertheless be made available to him even if exempt.

(4) *Request for waiver of fees.* The requester may ask that fees or the advance payment of fees be waived in whole or in part. A fee waiver request shall indicate how the information will be used; to whom it will be provided; whether the requester intends to use the information for resale at a fee above actual cost; any personal or commercial benefit that the requester expects as a result of disclosure; in what manner the general public will benefit from disclosure; and information as to the intended user's identity, qualifications, expertise in the subject area, and ability and intention to disseminate the information to the public. (See §265.9(g)(3).)

(5) *Categorical requests.* A request for all or substantially all of the records within a specific category will be deemed a reasonable description of those records only if it is possible, without further information, to determine which particular records are sought. See paragraph (b)(3) of this section concerning the providing of additional information.

(6) *Request for records located at numerous facilities.* A request for records which are, or may be, located at all or a substantial number of post offices or other postal facilities will be deemed to be a reasonable description only of such of those records as are maintained at the post office or other facility to which the request is submitted, and of those records maintained at any other post offices or facilities specifically identified in the request. See paragraph (a)(2) of this section concerning the custodian of records of two or more facilities.

(b) *Responsibilities of the custodian.* (1) The custodian of the requested record is the person responsible for determining whether to comply with or to deny the request. A custodian who is not an Officer as defined in §221.8 of this chapter, however, should not deny a request until he has obtained the advice of Chief Field Counsel. If denial of a request appears necessary, the custodian should seek advice as soon as possible after receipt of the request so as

to provide adequate time for legal review. Denial must be made in accordance with paragraph (d) of this section.

(2) The custodian shall make the determination whether to release or deny the record(s) within 20 working days (i.e., exclusive of Saturdays, Sundays, and holidays) of receiving the request, and more rapidly if feasible. The custodian and the requester may, by mutual agreement, preferably in writing, establish a different response period.

(3) If a requested record cannot be located from the information supplied, the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his/her representative, in an attempt to provide a reasonable description of the records sought. If additional information is furnished, the request will be deemed to have been received by the custodian when sufficient additional information to identify and locate the record with a reasonable amount of effort has been received.

(4) The custodian shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the automated information system.

(5) The 20 working day response period allowed in paragraph (b)(2) of this section may be extended by the custodian, after consultation with Chief Field Counsel or with the General Counsel if the custodian is at Headquarters, for a period not to exceed an additional 10 working days, except as provided in paragraph (b)(7) of this section, when, and to the extent, reasonably necessary to permit the proper processing of a particular request, under one or more of the following unusual circumstances:

(i) The request requires a search for and collection of records from a facility other than that processing the request.

(ii) The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records.

(iii) The request requires consultation:

(A) With another agency having a substantial interest in the determination of whether to comply with the request or

(B) Among two or more components of the Postal Service having substantial subject matter interest in the determination of whether to comply with the request.

(6) When the custodian finds that the additional time is required, he shall acknowledge the request in writing within the initial 20-day response period, state the reason for the delay, and indicate the date on which a decision as to disclosure is expected.

(7) If a request cannot be processed within the additional time provided by paragraph (b)(5) of this section, in spite of the exercise of due diligence, the custodian shall notify the requester of the exceptional circumstances preventing timely compliance and of the date by which it is expected that the determination will be made. The custodian also shall provide the requester an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange with the custodian an alternative time frame for processing the request or a modified request. The custodian shall nonetheless make a determination on the request as promptly as possible.

(8) If a requested record is known to have been destroyed, disposed of, or otherwise not to exist, the requester shall be so notified.

(c) *Compliance with request upon affirmative determination by custodian.* (1) When a requested record has been identified and is to be disclosed in whole or in part, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when and under what reasonable conditions, if any, including the payment of fees, the record will be available for inspection or copies will be available. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) Any fees authorized or required to be paid in advance by § 265.9(f)(3) shall

be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.9(g).

(3) A custodian complying with a request may designate a representative to monitor any inspection or copying.

(d) *Denial of request.* (1) A reply denying a request in whole or in part shall be in writing, signed by the custodian or his designee, and shall include:

(i) A statement of the reason for, or justification of, the denial (e.g., records personal in nature), including, if applicable, a reference to the provision or provisions of § 265.6 authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested.

(ii) If entire records or pages are withheld, a reasonable estimate of the number of records or pages, unless providing such estimate would harm an interest protected by the exemption relied upon.

(iii) A statement of the right to appeal and of the appeal procedure within the Postal Service (described in paragraph (e) of this section).

(2) The custodian is ordinarily the person responsible for the denial of the request. If the denial of a particular request has been directed by higher authority, however, the name and title or position of the person directing the denial shall be given in the reply to the requester in place of the custodian as the person responsible for the denial, and a copy of the denial shall be sent to that person.

(3) When information is deleted from a record that is disclosed in part, the custodian shall indicate, on the released portion of the record, the amount of information deleted, unless including that indication would harm an interest protected by the exemption relied on. The indication must appear, if technically feasible, at the place in the record where such deletion is made.

(e) *Appeal procedure.* (1) If a request to inspect or to copy a record, or a request for expedited processing of the request, is denied, in whole or in part, if no determination is made within the period prescribed by this section, or if a request for waiver of fees is not granted, the requester may appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260–1100.

(2) The requester shall submit his appeal in writing within 30 days of the date of the denial or of the other action complained of, or within a reasonable time if the appeal is from a failure of the custodian to act. The General Counsel may, in his discretion, consider late appeals.

(3) In the event of the denial of a request or of other action or failure to act on the part of a custodian from which no appeal is taken, the General Counsel may, if he considers that there is doubt as to the correctness of the custodian's action or failure to act, review the action or failure to act as though an appeal pursuant to this section had been taken.

(4) A letter of appeal should include, as applicable:

(i) A copy of the request, of any notification of denial or other action, and of any other related correspondence;

(ii) A statement of the action, or failure to act, from which the appeal is taken;

(iii) A statement of the reasons why the requester believes the action or failure to act is erroneous; and

(iv) A statement of the relief sought.

(f) *Action on appeals.* (1) The decision of the General Counsel or his designee constitutes the final decision of the Postal Service on the right of the requester to inspect or copy a record, or to expedited processing of the request, as appropriate. The General Counsel will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 working days from the time of the receipt by the General Counsel. The 20-day response period may be extended by the General Counsel or his designee for a period not to exceed an additional 10 working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (b)(5) of this section. The aggregate number of additional working days utilized pursuant to this paragraph (f)(1) and paragraph (b) of this section, however, may not exceed 10.

(2) The decision on the appeal shall be in writing. If the decision sustains a

denial of a record, in whole or in part, or if it denies expedited processing, it shall state the justification therefor and shall inform the requester of his right to judicial review. In the case of records withheld, the decision also shall specify any exemption or exemptions relied on and the manner in which they apply to the record, or portion thereof, withheld.

(3) If not prohibited by or under law, the General Counsel or his designee may direct the disclosure of a record even though its disclosure is not required by law or regulation.

(g) *Expedited processing*—(1) *Criteria.* A request for expedited processing of a request for records shall be granted when the requester demonstrates compelling need. For purposes of this paragraph, ''compelling need'' exists if:

(i) Failure of the requester to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or;

(ii) In the case of a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged federal government activity.

(2) *Request.* A request for expedited processing shall be directed in writing to the records custodian. The requester must provide information in sufficient detail to demonstrate compelling need for the records and certify this statement to be true and correct to the best of the requester's knowledge and belief. The custodian may waive the formality of certification when deemed appropriate.

(3) *Determination.* The records custodian shall make a determination of whether to provide expedited processing and notify the requester within ten days after the date of the request for expedited processing. If the request is granted, the records custodian shall process the request for records as soon as practicable. If the request for expedited processing is denied, the written response will include the procedures at paragraph (d) of this section for appealing the denial.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44271, July 1, 1980; 47 FR 20304, May 12, 1982; 51 FR 26386, July 23, 1986; 52 FR 13668, Apr. 24, 1987; 60 FR 57345, Nov. 15, 1995; 62 FR 64282, Dec. 5, 1997; 63 FR 6482, Feb. 9, 1998; 64 FR 41290, July 30, 1999; 68 FR 56559, Oct. 1, 2003; 69 FR 34935, June 23, 2004]

§ 265.8 Business information; procedures for predisclosure notification to submitters.

(a) *In general.* This section provides a procedure by which persons submitting business information to the Postal Service can request that the information not be disclosed pursuant to a request under the Freedom of Information Act. This section does not affect the Postal Service's right, authority, or obligation to disclose information in any other context, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Postal Service, its officers, or any person. Existing rights of submitters are also unaffected. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information provided directly or indirectly to the Postal Service by a submitter that arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which is restated in § 265.6(b)(2).

(2) *Submitter* means any person or entity who provides business information, directly or indirectly, to the Postal Service. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters.* (1) The custodian shall, to the extent permitted by law, provide a submitter with prompt written notice of a Freedom of Information Act request for the submitter's business information whenever required under paragraph (c) of this section, except as provided in paragraph (d) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice shall either describe the exact nature of the business information requested

or provide copies of the records or portions of records containing the business information. In the case of an administrative appeal, the General Counsel shall be responsible for providing such notification as may be appropriate under this section.

(2) When notice is given to a submitter under paragraph (b)(1) of this section, the requester also shall be notified that notice and an opportunity to object are being provided to the submitter pursuant to this section.

(c) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The submitter has in good faith designated the information as information deemed protected from disclosure under Exemption 4, in accordance with the procedure described in paragraph (e) of this section; or

(2) In the opinion of the custodian, or of the General Counsel in the case of an administrative appeal, it is likely that disclosure of the information would result in competitive harm to the submitter.

(d) *Exceptions to notice requirements.* The notice requirements of paragraph (b) of this section shall not apply if:

(1) The Postal Service determines without reference to the submitter that the information will not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than the Freedom of Information Act, 5 U.S.C. 552); or

(4) Disclosure of the particular kind of information is required by a Postal Service regulation, except that, in such case, advance written notice of a decision to disclose shall be provided to the submitter if the submitter had provided written justification for protection of the information under Exemption 4 at the time of submission or a reasonable time thereafter.

(e) *Procedure for designating business information at the time of its submission.* (1) Submitters of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem to be protected from disclosure under Exemption 4. Each record, or portion thereof, to be so designated, shall be clearly marked with a suitable legend such as Privileged Business Information—Do Not Release. When the designated records contain some information for which an exemption is not claimed, the submitter shall clearly indicate the portions for which protection is sought.

(2) At the time a designation is made pursuant to paragraph (e)(1) of this section, the submitter shall furnish the Postal Service with the name, title, address and telephone number of the person or persons to be contacted for the purpose of the notification described in paragraph (b) of this section.

(3) Submitters who provide to a postal facility business information on a recurring basis and in substantially identical form may use the following simplified process: The first submission will provide in full the information required in paragraphs (e)(1) and (2) of this section; shall identify the type of information, *e.g.,* PS Form 3602, to which it is intended to apply; and shall state that it is intended to serve as a designation for all of the information of this type that is submitted to the particular facility. Thereafter when providing this type of information, the submitter need only mark a submission with a reference to the designation, *e.g.,* Privileged: see letter of 4–1–91. By written agreement with the head of the facility, even this marking may be dispensed with if it is not necessary to alert postal employees at that facility of the claim of exemption.

(4) A designation made pursuant to paragraph (e) of this section shall be deemed to have expired ten years after the date the records were submitted unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(5) The Postal Service will not determine the validity of any request for confidential treatment until a request for disclosure of the information is received.

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, the submitter shall be afforded a reasonable period of

time within which to provide the Postal Service with a detailed written statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter that the information in question is in fact confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Determination that confidential treatment is warranted.* If the custodian determines that confidential treatment is warranted for any part of the requested records, he shall inform the requester in writing in accordance with the procedures set out in § 265.7(d) of this chapter, and shall advise the requester of the right to appeal. A copy of the letter of denial shall also be provided to the submitter of the records in any case in which the submitter had been notified of the request pursuant to paragraph (c) of this section.

(h) *Notice of intent to disclose.* The custodian, in the case of an initial request, or the General Counsel, in the case of an appeal, shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. In the event of a decision to disclose business information over the objection of the submitter, the submitter shall be furnished a written notice which shall include:

(1) A description of the business information to be disclosed;

(2) A statement of the reasons for which the submitter's disclosure objections were not sustained; and

(3) The specific date upon which disclosure will occur. Such notice of intent to disclose shall be forwarded to the submitter a reasonable number of days prior to the specified disclosure date and the requester shall be notified likewise.

(i) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the General Counsel shall promptly notify the submitter.

[56 FR 56934, Nov. 7, 1991]

§ 265.9 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit the furnishing of records to members of the public while recovering the full allowable direct costs incurred by the Postal Service. The Postal Service will use the most efficient and least costly methods available to it when complying with requests for records.

(b) *Standard rates*—(1) *Record retrieval.* Searches may be done manually or by computer using existing programming.

(i) *Manual search.* The fee for a manual search is $32 per hour (fractions of an hour are rounded to the nearest half hour).

(ii) *Computer search.* The fee for retrieving data by computer is the actual direct cost of the retrieval, including computer search time, and personnel cost in effect at the time that the retrieval services are performed. The fees are subject to periodic revision. A copy of the fees are included within the public index. (See appendix A.)

(2) *Duplication.* (i) Except where otherwise specifically provided in postal regulations, the fee for duplicating any record or publication is $.15 per page.

(ii) The Postal Service may at its discretion make coin-operated copy machines available at any location or otherwise give the requester the opportunity to make copies of Postal Service records at his own expense. Unless authorized by the Records Office, however, no off-site copying shall be permitted of records which, if lost, could not be replaced without inconvenience to the Postal Service.

(iii) The Postal Service will normally furnish only one copy of any record. If duplicate copies are furnished at the request of the requester, the $.15 per-page fee shall be charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to paragraph (c) or

(g) of this section. At his or her discretion, when it is reasonably necessary because of a lack of adequate copying facilities or other circumstances, the custodian may make the requested record available to the requester for inspection under reasonable conditions and need not furnish a copy thereof.

(3) *Review.* The fee for reviewing records located in response to a commercial use request is $32 per hour (fractions of an hour are rounded to the nearest half hour). Only requesters who are seeking documents for commercial use may be charged for review. ''Review'' is defined in paragraph (h)(4) of this section; ''commercial use'' is defined in paragraph (h)(5) of this section.

(4) *Micrographics.* Paragraphs (b) (1), (2) and (3) of this section also apply to information stored within micrographic systems.

(c) *Four categories of fees to be charged.* For the purpose of assessing fees under this section, a requester shall be classified into one of four categories: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. Requesters in each category must reasonably describe the records sought. Fees shall be charged requesters in each category in accordance with the following.

(1) *Commercial use requesters.* Fees shall be charged to recover the full direct costs of search, review and duplication in accordance with the rates prescribed in paragraphs (b) (1) through (3) of this section, subject only to the general waiver set out in paragraph (g)(1) of this section. The term ''commercial use request'' is defined in paragraph (h)(5).

(2) *Educational and noncommercial scientific institutions.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly or scientific research. These institutions are defined in paragraphs (h)(6) and (h)(7) of this section, respectively.

(3) *Representatives of the news media.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must meet the criteria in paragraph (h)(8) of this section, and the request must not be made for a commercial use.

(4) *All other requesters.* Fees shall be charged for search and duplication in accordance with paragraphs (b) (1) and (2) of this section, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. (See also paragraphs (g)(1) and (g)(2) of this section.)

(d) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly. The custodian shall not aggregate multiple requests when the requests pertain to unrelated subject matter. Requests made by more than one requester may be aggregated only when the custodian has a concrete basis on which to conclude that the requesters are acting in concert specifically to avoid payment of fees.

(e) *Other costs*—(1) *Publications.* Publications and other printed materials may, to the extent that they are available in sufficient quantity, be made available at the established price, if any, or at cost to the Postal Service. Fees established for printed materials pursuant to laws, other than the Freedom of Information Act, that specifically provide for the setting of fees for particular types of records are not subject to waiver or reduction under this section.

(2) *Other charges.* When a response to a request requires services or materials other than the common one listed in

paragraph (b) of this section, the direct cost of such services or materials to the Postal Service may be charged, but only if the requester has been notified of the nature and estimated amount of such cost before it is incurred.

(f) *Advance notice and payment of fees*—(1) *Liability and payment.* The requester is responsible, subject to limitations on liability provided by this section, for the payment of all fees for services resulting from his request, even if responsive records are not located or are determined to be exempt from disclosure. Checks in payment of fees should be made payable to ''U.S. Postal Service.''

(2) *Advance notice.* To protect members of the public from unwittingly incurring liability for unexpectedly large fees, the custodian shall notify the requester if the estimated cost is expected to exceed $25. When search fees are expected to exceed $25, but it cannot be determined in advance whether any records will be located or made available, the custodian shall notify the requester of the estimated amount and of the responsibility to pay search fees even through records are not located or are determined to be exempt from disclosure. The notification shall be transmitted as soon as possible after physical receipt of the request, giving the best estimate then available. It shall include a brief explanatory statement of the nature and extent of the services upon which the estimate is based and shall offer the requester an opportunity to confer with the custodian or his representative in an attempt to reformulate the request so as to meet his needs at lower cost. The time period for responding to the request shall not run during the interval between the date such notification is transmitted and the date of receipt of the requester's agreement to bear the cost. No notification is required if the request specifically states that whatever cost is involved is acceptable or is acceptable up to a specified amount that covers estimated costs or if payment of all fees in excess of $25 has been waived.

(3) *Advance payment.* Advance payment of fees shall not be required, except: (i) When it is estimated that the fees chargeable under this section are likely to exceed $250. If the requester has a history of prompt payment of FOIA fees, the custodian shall notify the requester of the likely cost and obtain satisfactory assurance of full payment before commencing work on the request. If the requester has no history of payment, the custodian may require an advance payment of an amount up to the full estimated charge before commencing work on the request.

(ii) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), the requester shall be required to pay the full amount owed, and to make an advance payment of the full amount of the estimated fee before processing will begin on a new or pending request.

(iii) When advance payment is required under paragraphs (f)(3)(i) or (ii) of this section, the time periods for responding to the initial request or to an appeal shall not run during the interval between the date that notice of the requirement is transmitted and the date that the required payment or assurance of payment is received.

(g) *Restrictions on assessing fees*—(1) *General waiver.* No fees shall be charged to any requester if they would amount, in the aggregate, for a request or a series of related requests, to $10 or less. When the fees for the first 100 pages or the first two hours of search time are excludable under paragraph (c) of this section, additional costs will not be assessed unless they exceed $10.

(2) *Certain fees not charged*—(i) *All requests except those for commercial use.* Fees shall not be charged for the first 100 pages of duplication and the first two hours of search time except when the request is for a commercial use as defined in paragraph (h)(5) of this section. When search is done by computer, the fees to be excluded for the first two hours of search time shall be determined on the basis of fee for computer searches then in effect. (See appendix A.) Assessment of search fees will begin at the point when the cost of the search (including the cost of personnel and computer processing time) reaches the equivalent dollar amount of personnel fees for 2 hours.

(ii) *Requests of educational and noncommercial scientific institutions, and*

representatives of the news media. Fees shall not be charged for time spent searching for records in response to requests submitted by educational and noncommercial scientific institutions or representatives of the news media.

(3) *Public interest waiver.* The custodian shall waive a fee, in whole or in part, and any requirement for advance payment of such a fee, when he determines that furnishing the records is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the federal government, and is not primarily in the commercial interest of the requester. This waiver may be granted notwithstanding the applicability of other fee reductions prescribed by this section for requesters in certain categories. In determining whether disclosure is in the public interest for the purposes of this waiver, the following factors may be considered:

(i) The relation of the records to the operations or activities of the Postal Services;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(4) *Waiver by officer.* Any officer of the Postal Service, as defined in § 221.8, his designee, or the Manager, Records Office may waive in whole or in part any fee required by this part or the requirement for advance payment of any fee.

(5) *Fee for other services.* Waivers do not apply for fees for address correction services performed in accordance with section R900 of the *Domestic Mail Manual.*

(h) *Definitions.* As used in this section, the term:

(1) *Direct costs* include expenditures actually incurred in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. A line-by-line search will be conducted only when necessary to determine whether the document contains responsive information and will not be employed in those instances in which duplication of the entire document would be the less expensive and quicker method of complying with a request. *Search* does not include review of material to determine whether the material is exempt from disclosure (see paragraph (h)(4) of this section).

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) *Review* refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (h)(5) of this section) to determine whether any portion of any document located is exempt from mandatory disclosure. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. Charges may be assessed only for the initial review, i.e., the first time the applicability of a specific exemption is analyzed. Costs for a subsequent review are properly assessable only when a

record or portion of a record withheld solely on the basis of an exemption later determined not to apply must be reviewed again to determine the applicability of other exemptions not previously considered.

(5) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category, the Postal Service will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the custodian shall seek additional clarification from the requester before assigning the request to this category.

(6) *Educational institution* refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Noncommercial scientific institution* refers to an institution that is not operated on a ''commercial'' basis as that term is defined in paragraph (h)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term ''news'' means information that is about current events or that would be of current interest to the public. Requests by news organizations for information that will be used for the furtherance of the organization's commercial interests, rather than for the dissemination of news to the public, shall be considered commercial use requests. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A ''freelance'' journalist will be regarded as a representative of the news media if he can demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. This may be demonstrated either by a publication contract with the news organization or by the past publication record of the requester.

[52 FR 13668, Apr. 24, 1987, as amended at 53 FR 49983, Dec. 13, 1988; 54 FR 7417, Feb. 21, 1989. Redesignated at 56 FR 56934, Nov. 7, 1991, and amended at 56 FR 57805, Nov. 14, 1991; 59 FR 11550, Mar. 11, 1994; 60 FR 57345, Nov. 15, 1995; 64 FR 41290, July 30, 1999; 68 FR 56559, Oct. 1, 2003; 69 FR 34935, June 23, 2004]

§ 265.10 Annual report.

A report concerning the administration of the Freedom of Information Act and this part will be submitted to the Attorney General of the United States on or before February 1 of each year, with the first such report, for fiscal year 1998, due on or before February 1, 1999. Data for the report will be collected on the basis of fiscal year that begins on October 1 of each year. The Attorney General, in consultation with the Director, Office of Management and Budget, will prescribe the form and content of the report. The report will be made available to the public at the headquarters Library and on the Postal Service's world wide web site at *http://www.usps.com/foia*.

[63 FR 6483, Feb. 9, 1998, as amended at 68 FR 56559, Oct. 1, 2003]

§ 265.11 Compliance with subpoena duces tecum, court orders, and summonses.

(a) *Compliance with subpoena duces tecum.* (1) Except as required by Part 262, produce other records of the Postal Service only in compliance with a subpoena duces tecum or appropriate court order.

(2) Time, leave, and payroll records of postal employees are subject to production when a subpoena duces tecum or

appropriate court order has been properly served. The custodian of the records may designate a postal employee to present the records. The presentation by a designee rather than the employee named in the subpoena or court order must meet with the approval of the attorneys for each side. In addition, such records may be released if authorized in writing by the employee.

(3) If the subpoena involves a job-connected injury, the records are under the exclusive jurisdiction of the Office of Workers' Compensation Programs, Department of Labor. Requests for authorization to produce these records shall be addressed to: Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210–0001. Also notify the attorney responsible for the issuance of the subpoena or court order.

(4) Employee medical records are primarily under the exclusive jurisdiction of the U.S. Civil Service Commission. The Commission has delegated authority to the Postal Service and to the Commission's Regional Directors to release medical information, in response to proper requests and upon competent medical advice, in accordance with the following criteria:

(i) Except in response to a subpoena or court order, do not release any medical information about an employee to any non-Federal entity or individual without authorization from the employee.

(ii) With authorization from the employee, the Area, Information Systems Service Center, or Chief Field Counsel will respond as follows to a request from a non-Federal source for medical information:

(*a*) If, in the opinion of a Federal medical officer, the medical information indicates the existence of a malignancy, a mental condition, or other condition about which a prudent physician would hesitate to inform a person suffering from such a condition as to its exact nature and probable outcome, do not release the medical information to the employee or to any individual designated by him, except to a physician, designated by the employee in writing. If a subpoena or court order was issued, the responding official shall caution the moving party as to the possible dangers involved if the medical information is divulged.

(*b*) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person of the exact nature and probable outcome of his condition, release it in response to a subpoena or court order, or to the employee or to any person, firm, or organization he authorizes in writing.

(*c*) If a Federal medical officer is not available, refer the request to the Civil Service Commission regional office with the medical certificates or other medical reports concerned.

(5) Do not release any records containing information as to the employee's security or loyalty.

(6) Honor subpoenas or court orders only when disclosure is authorized.

(7) When authorized to comply with a subpoena duces tecum, do not leave the original records with the court.

(b) [Reserved]

[40 FR 7331, Feb. 19, 1975, as amended at 51 FR 26386, July 23, 1986; 56 FR 55824, Oct. 30, 1991. Redesignated at 56 FR 56934, Nov. 7, 1991; 60 FR 36712, July 18, 1995; 60 FR 57345, Nov. 15, 1995]

§ 265.12 Demands for testimony or records in certain legal proceedings.

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service;

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress;

(iii) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the employee's official duties or the functions of the Postal Service; or

(iv) A demand for testimony or records submitted to the Postal Inspection Service (a demand for Inspection Service records or testimony will be handled in accordance with rules in § 265.11).

(4) This section does not exempt a request from applicable confidentiality requirements, including the requirements of the Privacy Act. 5 U.S.C. 552a.

(b) *Definitions.* The following definitions apply to this section:

(1) *Adjudicative authority* includes, but is not limited to, the following:

(i) A court of law or other judicial forums, whether local, state, or federal; and

(ii) Mediation, arbitration, or other forums for dispute resolution.

(2) *Demand* includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

(3) *Employee* means a current employee or official of the Postal Service.

(4) *General Counsel* means the General Counsel of the United States Postal Service, the Chief Field Counsels, or an employee of the Postal Service acting for the General Counsel under a delegation of authority.

(5) *Legal proceeding means:*

(i) A proceeding before an adjudicative authority;

(ii) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress; or

(iii) An administrative proceeding.

(6) *Private litigation* means a legal proceeding to which the United States is not a party.

(7) *Records custodian* means the employee who maintains a requested record. For assistance in identifying the custodian of a specific record, contact the Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260, telephone (202) 268–2608.

(8) *Testimony* means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

(9) *United States* means the federal government of the United States and any of its agencies, establishments, or instrumentalities, including the United States Postal Service.

(c) *Requirements for submitting a demand for testimony or records.* (1) Ordinarily, a party seeking to obtain records from the Postal Service should submit a request in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Postal Service's regulations implementing the FOIA at 39 CFR 265.1 through 265.9 or the Privacy Act, 5 U.S.C. 552a and the Postal Service's regulations implementing the Privacy Act at 39 CFR 266.1 through 266.9.

(2) A demand for testimony or records issued pursuant to the rules governing the legal proceeding in which the demand arises must:

(i) Be in writing;

(ii) Identify the requested record and/or state the nature of the requested testimony, describe the relevance of the record or testimony to the proceeding, and why the information sought is unavailable by any other means; and

(iii) If testimony is requested, contain a summary of the requested testimony and a showing that no document could be provided and used in lieu of testimony.

(3) Procedures for service of demand are made as follows:

(i) Service of a demand for testimony or records (including, but not limited to, personnel or payroll information) relating to a current or former employee must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the District Manager, Customer Services and Sales, for all current employees whose work location

is within the geographic boundaries of the manager's district, and any former employee whose last position was within the geographic boundaries of the manager's district. A demand for testimony or records must be received by the employee whose testimony is requested and the appropriate District Manager, Customer Services and Sales, at least ten (10) working days before the date the testimony or records are needed.

(ii) Service of a demand for testimony or records other than those described in paragraph (c)(3)(i) of this section must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington DC 20260–1100, or the Chief Field Counsel. A demand for testimony or records must be received by the employee and the General Counsel or Chief Field Counsel at least ten (10) working days before the date testimony or records are needed.

(d) *Procedures followed in response to a demand for testimony or records.* (1) After an employee receives a demand for testimony or records, the employee shall immediately notify the General Counsel or Chief Field Counsel and request instructions.

(2) An employee may not give testimony or produce records without the prior authorization of the General Counsel.

(3)(i) The General Counsel may allow an employee to testify or produce records if the General Counsel determines that granting permission:

(A) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, privileges, rules, authority, and regulations; and

(B) Would not be contrary to the interest of the United States. The interest of the United States includes, but is not limited to, furthering a public interest of the Postal Service and protecting the human and financial resources of the United States.

(ii) An employee's testimony shall be limited to the information set forth in the statement described at paragraph (c)(2) of this section or to such portions thereof as the General Counsel determines are not subject to objection. An employee's testimony shall be limited to facts within the personal knowledge of the employee. A Postal Service employee authorized to give testimony under this rule is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to privileged subject matter. The General Counsel may waive the prohibition of expert testimony under this paragraph only upon application and showing of exceptional circumstances and the request substantially meets the requirements of this section.

(4) The General Counsel may establish conditions under which the employee may testify. If the General Counsel authorizes the testimony of an employee, the party seeking testimony shall make arrangements for the taking of testimony by those methods that, in the General Counsel's view, will least disrupt the employee's official duties. For example, at the General Counsel's discretion, testimony may be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(5) If a response to a demand for testimony or records is required before the General Counsel determines whether to allow an employee to testify, the employee or counsel for the employee shall do the following:

(i) Inform the court or other authority of the regulations in this section; and

(ii) Request that the demand be stayed pending the employee's receipt of the General Counsel's instructions.

(6) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the General Counsel's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), and the regulations in this section.

(7) The General Counsel may request the assistance of the Department of

Justice or a U.S. Attorney where necessary to represent the interests of the Postal Service and the employee.

(8) At his or her discretion, the General Counsel may grant a waiver of any procedure described by this section, where waiver is considered necessary to promote a significant interest of the United States or for other good cause.

(9) If it otherwise is permissible, the records custodian may authenticate, upon the request of the party seeking disclosure, copies of the records. No employee of the Postal Service shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

(e) *Postal Service employees as expert witnesses.* No Postal Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the General Counsel may approve such expert testimony in private litigation. A Postal Service employee may not testify as such an expert witness without the express authorization of the General Counsel. A litigant must obtain authorization of the General Counsel before designating a Postal Service employee as an expert witness.

(f) *Substitution of Postal Service employees.* Although a demand for testimony may be directed to a named Postal Service employee, the General Counsel, where appropriate, may designate another Postal Service employee to give testimony. Upon request and for good cause shown (for example, when a particular Postal Service employee has direct knowledge of a material fact not known to the substitute employee designated by the Postal Service), the General Counsel may permit testimony by a named Postal Service employee.

(g) *Fees and costs.* (1) The Postal Service may charge fees, not to exceed actual costs, to private litigants seeking testimony or records by request or demand. The fees, which are to be calculated to reimburse fully the Postal Service for processing the demand and providing the witness or records, may include, among others:

(i) Costs of time spent by employees, including attorneys, of the Postal Service to process and respond to the demand;

(ii) Costs of attendance of the employee and agency attorney at any deposition, hearing, or trial;

(iii) Travel costs of the employee and agency attorney;

(iv) Costs of materials and equipment used to search for, process, and make available information.

(2) All costs for employee time shall be calculated on the hourly pay of the employee (including all pay, allowance, and benefits) and shall include the hourly fee for each hour, or portion of each hour, when the employee is in travel, in attendance at a deposition, hearing, or trial, or is processing or responding to a request or demand.

(3) At the discretion of the Postal Service, where appropriate, costs may be estimated and collected before testimony is given.

(h) *Acceptance of service.* This section does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

[60 FR 17224, Apr. 5, 1995, as amended at 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56559, Oct. 1, 2003]

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

(a) *Applicability of this section.* The rules in this section apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(4) Employees serving as expert witnesses in connection with professional and consultative services under 5 CFR

part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(5) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (e.g., cases arising from traffic accidents, domestic relations) and do not involve professional or consultative services; and

(6) When in the opinion of the Counsel or the Counsel's designee, Office of the Chief Postal Inspector, it has been determined that it is in the best interest of the Inspection Service or in the public interest.

(b) *Purpose and scope.* The provisions in this section limit the participation of postal employees within or assigned to the Inspection Service, in private litigation, and other proceedings in which the Postal Service, the United States, or any other federal agency is not a party. The rules are intended to promote the careful supervision of Inspection Service resources and to reduce the risk of inappropriate disclosures that might affect postal operations.

(c) *Definitions.* For the purposes of this section:

(1) *Authorizing official* is the person responsible for giving the authorization for release of documents or permission to testify.

(2) *Case* or *matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(3) *Demand* includes any request, order, or subpoena for testimony or the production of documents.

(4) *Document* means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions;

(5) *Employee* or *Inspection Service employee,* for the purpose of this section only, refers to a Postal Service employee currently or formerly assigned to the Postal Inspection Service, student interns, contractors and employees of contractors who have access to Inspection Service information and records.

(6) *Inspection Service* means the organizational unit within the Postal Service as outlined in § 224.3 of this chapter.

(7) *Inspection Service Legal Counsel* is an attorney authorized by the Chief Postal Inspector to give legal advice to members of the Inspection Service.

(8) *Inspection Service Manual* is the directive containing the standard operating procedures for Postal Inspectors and certain Inspection Service employees.

(9) *Nonpublic* includes any material or information not subject to mandatory public disclosure under § 265.6(b).

(10) *Official case file* means official documents that relate to a particular case or investigation. These documents may be kept at any location and do not necessarily have to be in the same location in order to constitute the file.

(11) *Postal Inspector reports* include all written reports, letters, recordings, or other memorializations made in conjunction with the duties of a Postal Inspector.

(12) *Testify* or *testimony* includes both in-person oral statements before any body conducting a judicial or administrative proceeding and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

(13) *Third-party action* means an action, judicial or administrative, in which the United States, the Postal Service, or any other federal agency is not a named party.

(d) *Policy.* (1) No current or former employee within the Inspection Service may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this section applies (see paragraph (a) of this section), unless authorized to do so. Authorization will be provided by:

(i) The Postal Inspector in Charge of the affected field Division, or designee,

for Division personnel and records, after that official has determined through consultation with Inspection Service legal counsel that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(ii) The Chief Postal Inspector or designee for Headquarters employees and records, after that official has determined through consultation with Inspection Service legal counsel, that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(2) Consideration shall be given to:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of the expenditure of Postal Service resources for private purposes.

(3) If additional information is necessary before a determination can be made, the authorizing official may, in coordination with Inspection Service legal counsel, request assistance from the Department of Justice.

(e) *Compliance with subpoena duces tecum.* (1) Except as required by part 262 of this chapter, produce any other record of the Postal Service only in compliance with a subpoena *duces tecum* or appropriate court order.

(2) Do not release any record containing information relating to an employee's security or loyalty.

(3) Honor subpoenas and court orders only when disclosure is authorized.

(4) When authorized to comply with a subpoena *duces tecum* or court order, do not leave the originals with the court.

(5) Postal Inspector reports are considered to be confidential internal documents and shall not be released unless there is specific authorization by the Chief Postal Inspector or the Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel.

(6) The Inspection Service Manual and other operating instructions issued to Inspection Service employees are considered to be confidential and shall not be released unless there is specific authorization, after consultation with Inspection Service legal counsel. If the requested information relates to confidential investigative techniques, or release of the information would adversely affect the law enforcement mission of the Inspection Service, the subpoenaed official, through Inspection Service legal counsel, may request an *in camera, ex parte* conference to determine the necessity for the release of the information. The entire Manual should not be given to any party.

(7) Notes, memoranda, reports, transcriptions, whether written or recorded and made pursuant to an official investigation conducted by a member of the Inspection Service, are the property of the Inspection Service and are part of the official case file, whether stored with the official file.

(f) *Compliance with summonses and subpoenas ad testificandum.* (1) If an Inspection Service employee is served with a third-party summons or a subpoena requiring an appearance in court, contact should be made with Inspection Service legal counsel to determine whether and which exemptions or restrictions apply to proposed testimony. Inspection Service employees are directed to comply with summonses, subpoenas, and court orders, as to appearance, but may not testify without authorization.

(2) Postal Inspector reports or records will not be presented during testimony, in either state or federal courts in which the United States, the Postal Service, or another federal agency is not a party in interest, unless authorized by the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, who will make the decision after consulting with Inspection Service legal counsel. If an attempt is made to compel production, through testimony, the employee is directed to decline to produce the information or matter and to state that it may be exempted and may not be disclosed or produced without the specific approval of the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division. The Postal Service will offer all

possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the appropriate official. Paragraph (e) of this section covers the release of Inspection Service documents in cases where the Postal Service or the United States is not a party.

(g) *General procedures for obtaining Inspection Service documents and testimony from Inspection Service employees.* (1) To facilitate the orderly response to demands for the testimony of Inspection Service employees and production of documents in cases where the United States, the Postal Service, or another federal agency is not a party, all demands for the production of nonpublic documents or testimony of Inspection Service employees concerning matters relating to their official duties and not subject to the exemptions set forth in paragraph (a) of this section shall be in writing and conform to the requirements outlined in paragraphs (g)(2) and (g)(3) of this section.

(2) Before or simultaneously with service of a demand described in paragraph (g)(1) of this section, the requesting party shall serve on the Counsel, Office of the Chief Postal Inspector, 475 L'Enfant Plaza SW., Washington, DC 20260–2181, an affidavit or declaration containing the following information:

(i) The title of the case and the forum where it will be heard;

(ii) The party's interest in the case;

(iii) The reasons for the demand;

(iv) A showing that the requested information is available, by law, to a party outside the Postal Service;

(v) If testimony is sought, a summary of the anticipated testimony;

(vi) If testimony is sought, a showing that Inspection Service records could not be provided and used in place of the requested testimony;

(vii) The intended use of the documents or testimony; and

(viii) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

(3) The Counsel, Office of the Chief Postal Inspector, shall act as agent for the receipt of legal process for demands for production of records or testimony of Inspection Service employees where the United States, the Postal Service, or any other federal agency is not a party. A subpoena for testimony or for the production of documents from an Inspection Service employee concerning official matters shall be served in accordance with the applicable rules of civil procedure. A copy of the subpoena and affidavit or declaration, if not previously furnished, shall also be sent to the Chief Postal Inspector or the appropriate Postal Inspector in Charge.

(4) Any Inspection Service employee who is served with a demand shall promptly inform the Chief Postal Inspector, or the appropriate Postal Inspector in Charge, of the nature of the documents or testimony sought and all relevant facts and circumstances.

(h) *Authorization of testimony or production of documents.* (1) The Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel, shall determine whether testimony or the production of documents will be authorized.

(2) Before authorizing the requested testimony or the production of documents, the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division shall consider the following factors:

(i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;

(ii) Relevant legal standards for disclosure of nonpublic information and documents;

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of expenditures of government time and resources solely for private purposes.

(3) If, in the opinion of the authorizing official, the documents should not be released or testimony should not be furnished, that official's decision is final.

(4) Inspection Service legal counsel may consult or negotiate with the party or the party's counsel seeking testimony or documents to refine and limit the demand, so that compliance

is less burdensome, or obtain information necessary to make the determination whether the documents or testimony will be authorized. If the party or party's counsel seeking the documents or testimony fails to cooperate in good faith, preventing Inspection Service legal counsel from making an informed recommendation to the authorizing official, that failure may be presented to the court or other body conducting the proceeding as a basis for objection.

(5) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in paragraph (g)(2) of this section or to such parts as deemed appropriate by the authorizing official.

(6) If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the least disruptive methods to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(i) While giving a deposition, the employee may, at the option of the authorizing official, be represented by Inspection Service legal counsel.

(ii) While completing affidavits, or other written reports or at any time during the process of preparing for testimony or releasing documents, the employee may seek the assistance of Inspection Service legal counsel.

(7) Absent written authorization from the authorizing official, the employee shall respectfully decline to produce the requested documents, testify, or, otherwise, disclose the requested information.

(8) If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

(9) The employee shall appear as ordered by the subpoena, summons, or other appropriate court order, unless:

(i) Legal counsel has advised the employee that an appearance is inappropriate, as in cases where the subpoena, summons, or other court order was not properly issued or served, has been withdrawn, discovery has been stayed; or

(ii) Where the Postal Service will present a legal objection to furnishing the requested information or testimony.

(i) *Inspection Service employees as expert or opinion witnesses.* No Inspection Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's duties or functions at the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the Counsel, Office of the Chief Postal Inspector, may approve such testimony in private litigation. An Inspection Service employee may not testify as such an expert or opinion witness without the express authorization of the Counsel, Office of the Chief Postal Inspector. A litigant must first obtain authorization of the Counsel, Office of the Chief Postal Inspector, before designating an Inspection Service employee as an expert or opinion witness.

(j) *Postal liability.* This section is intended to provide instructions to Inspection Service employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Postal Service.

(k) *Fees.* (1) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including transcripts, shall be borne by the requesting party.

(2) Unless limited by statute, such costs shall also include reimbursement to the Postal Service for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(i) The Inspection Service is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Postal Service for the cost of responding to a demand, may include

the costs of time expended by Inspection Service employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; travel costs of the employee and the agency attorney, including lodging and per diem where appropriate. Such fees shall be assessed at the rates and in the manner specified in § 265.9.

(ii) At the discretion of the Inspection Service where appropriate, fees and costs may be estimated and collected before testimony is given.

(iii) The provisions in this section do not affect rights and procedures governing public access to official documents pursuant to the Freedom of Information Act, 5 U.S.C 552a.

(l) *Acceptance of service.* The rules in this section in no way modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

[60 FR 36712, July 18, 1995, as amended at 69 FR 34935, June 23, 2004]

APPENDIX A TO PART 265—FEES FOR COMPUTER SEARCHES

When requested information must be retrieved by computer, fees charged to the requester are based on rates for personnel and computer time. Estimates are provided to the requester in advance and are based on the following rates:

	Price	Unit
Personnel:		
High technical	$120	per hour.
Medium technical	70	per hour.
Low technical	50	per hour.
Computer Processing:		
Mainframe usage	.39	per second.
Midrange server usage	.06	per second.
PC usage	7.00	per 15 minutes.
Printing computer output	.14	per page.
Magnetic tape production	24.00	per volume.

[68 FR 56559, Oct. 1, 2003]

PART 266—PRIVACY OF INFORMATION

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AUTHORITY: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 266.1 Purpose and scope.

This part is intended to protect individual privacy and affects all personal information collection and usage activities of the entire U.S. Postal Service. This includes the information interface of Postal Service employees to other employees, to individuals from the public at large, and to any private organization or governmental agency.

[40 FR 45723, Oct. 2, 1975]

§ 266.2 Policy.

It is the policy of the U.S. Postal Service to ensure that any record within its custody that identifies or describes any characteristic or provides historical information about an individual or that affords a basis for inferring personal characteristics, or things done by or to such individual, including the record of any affiliation with an organization or activity, or admission to an institution, is accurate, complete, timely, relevant, and reasonably secure from unauthorized access. Additionally, it is the policy to provide the means for individuals to know: (a) Of the existence of all Postal Service Privacy Act systems of records, (b) the recipients and usage made of such information, (c) what information is optional or mandatory to provide to the Postal Service, (d) the procedures for individuals to review and request update to all information maintained about themselves, (e) the reproduction fees for releasing records, (f) the procedures for individual legal appeal in cases of dissatisfaction; and (g) of the

establishment or revision of a computer matching program.

[45 FR 44272, July 1, 1980, as amended at 59 FR 37160, July 21, 1994]

§ 266.3 Responsibility.

(a) *Records Office.* The Records Office, within the Privacy Office, will ensure Postal Service-wide compliance with this policy.

(b) *Custodian.* Custodians are responsible for adherence to this part within their respective units and in particular for affording individuals their rights to inspect and obtain copies of records concerning them.

(c) *Information System Executive.* These managers are responsible for reporting to the Records Office the existence or proposed development of Privacy Act systems of records. They also must report any change that would alter the systems description as published in the FEDERAL REGISTER. They establish the relevancy of the information within those systems.

(d) *Data Integrity Board*—(1) *Responsibilities.* The Data Integrity Board oversees Postal Service computer matching activities. Its principal function is to review, approve, and maintain all written agreements for use of Postal Service records in matching programs to ensure compliance with the Privacy Act and all relevant statutes, regulations, and guidelines. In addition, the Board annually reviews matching programs and other matching activities in which the Postal Service has participated during the preceding year to determine compliance with applicable laws, regulations, and agreements; compiles a biennial matching report of matching activities; and performs review and advisement functions relating to records accuracy, recordkeeping and disposal practices, and other computer matching activities.

(2) *Composition.* The Privacy Act requires that the senior official responsible for implementation of agency Privacy Act policy and the Inspector General serve on the Board. The Chief Privacy Officer, as administrator of Postal Service Privacy Act policy, serves as Secretary of the Board and performs the administrative functions of the Board. The Board is composed of these and other members designated by the Postmaster General, as follows:

(i) Vice President and Consumer Advocate (Chairman).

(ii) Chief Postal Inspector.

(iii) Inspector General.

(iv) Senior Vice President, Human Resources.

(v) Vice President, General Counsel.

(vi) Chief Privacy Officer.

[40 FR 45723, Oct. 2, 1975, as amended at 45 FR 44272, July 1, 1980; 59 FR 37160, July 21, 1994; 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003]

§ 266.4 Collection and disclosure of information about individuals.

(a) The following rules govern the collection of information about individuals throughout Postal Service operations;

(1) The Postal Service will:

(i) Collect, solicit and maintain only such information about an individual as is relevant and necessary to accomplish a purpose required by statute or Executive Order,

(ii) Collect information, to the greatest extent practicable, directly from the subject individual when such information may result in adverse determinations about an individual's rights, benefits or privileges,

(iii) Inform any individual who has been asked to furnish information about himself whether that disclosure is mandatory or voluntary, by what authority it is being solicited, the principal purposes for which it is intended to be used, the routine uses which may be made of it, and any penalties and specific consequences for the individual, which are known to the Postal Service, which will result from refusal to furnish it.

(2) The Postal Service will not discriminate against any individual who fails to provide information about himself unless that information is required or necessary for the conduct of the system or program in which the individual desires to participate.

(3) No information will be collected (or maintained) describing how individuals exercise rights guaranteed by the First Amendment unless the Postmaster General specifically determines that such information is relevant and

necessary to carry out a statutory purpose of the Postal Service.

(4) The Postal Service will not require individuals to furnish their Social Security account number or deny a right, privilege or benefit because of an individual's refusal to furnish the number unless it must be provided by Federal law.

(b) *Disclosures*—(1) *Disclosure: Limitations On.* The Postal Service will not disseminate information about an individual unless reasonable efforts have been made to assure that the information is accurate, complete, timely and relevant and unless:

(i) The individual to whom the record pertains has requested in writing that the information be disseminated, or

(ii) It has obtained the prior written consent of the individual to whom the record pertains, or

(iii) The dissemination is in accordance with paragraph (b)(2) of this section.

(2) Dissemination of personal information may be made:

(i) To a person pursuant to a requirement of the Freedom of Information Act (5 U.S.C. 552);

(ii) To those officers and employees of the Postal Service who have a need for such information in the performance of their duties;

(iii) For a routine use as contained in the system notices published in the FEDERAL REGISTER;

(iv) To a recipient who has provided advance adequate written assurance that the information will be used solely as a statistical reporting or research record, and to whom the information is transferred in a form that is not individually identifiable;

(v) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, U.S.C.;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual;

(viii) To a federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if such activity is authorized by law and if the head of the agency or instrumentality has made a written request to the Postal Service specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;

(ix) To either House of Congress or its committees or subcommittees to the extent of matter within their jurisdiction;

(x) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction.

(3) *Names and Addresses of Postal Customers.* The disclosure of lists of names or addresses of Postal customers or other persons to the public is prohibited (39 U.S.C. 412). Names or addresses will be disclosed only in those cases permitted by 39 CFR 265.6(d) relating to the Release of Information.

(4) *Employee Credit References.* A credit bureau or commercial firm from which an employee is seeking credit may be given the following information upon request: grade, duty status, length of service, job title, and salary.

(5) *Employee Job References.* Prospective employers of a postal employee or a former postal employee may be furnished with the information in paragraph (b)(4) of this section, in addition to the date and the reason for separation, if applicable. The reason for separation must be limited to one of the following terms: retired, resigned, or separated. Other terms or variations of these terms (e.g., retired—disability) may not be used. If additional information is desired, the requester must submit the written consent of the employee, and an accounting of the disclosure must be kept.

(6) *Computer matching purposes.* Records from a Postal Service system

of records may be disclosed to another agency for the purpose of conducting a computer matching program or other matching activity as defined in paragraphs (c) and (d) of § 262.5, but only after a determination by the Data Integrity Board that the procedural requirements of the Privacy Act, the guidelines issued by the Office of Management and Budget, and these regulations as may be applicable are met. These requirements include:

(i) *Routine use.* Disclosure is made only when permitted as a routine use of the system of records. The Manager, Records Office, determines the applicability of a particular routine use and the necessity for adoption of a new routine use.

(ii) *Notice.* Publication of new or revised matching programs in the FEDERAL REGISTER and advance notice to Congress and the Office of Management and Budget must be made pursuant to paragraph (f) of § 266.5.

(iii) *Computer matching agreement.* The participants in a computer matching program must enter into a written agreement specifying the terms under which the matching program is to be conducted (see § 266.10). The Manager, Records Office, may require that other matching activities be conducted in accordance with a written agreement.

(iv) *Data Integrity Board approval.* No record from a Postal Service system of records may be disclosed for use in a computer matching program unless the matching agreement has received approval by the Postal Service Data Integrity Board (see § 266.10). Other matching activities may, at the discretion of the Manager, Records Office, be submitted for Board approval.

(c) *Correction Disclosure.* Any person or other agency to which a personal record has been or is to be disclosed shall be informed of any corrections or notations of dispute relating thereto affecting the accuracy, timeliness or relevance of that personal record.

(d) *Recording of Disclosure.* (1) An accurate accounting of each disclosure will be kept in all instances except those in which disclosure is made to the subject of the record, or to Postal Service employees in the performance of their duties or is required by the Freedom of Information Act (5 U.S.C. 552).

(2) The accounting will be maintained for at least five (5) years or the life of the record, whichever is longer.

(3) The accounting will be made available to the individual named in the record upon inquiry, except for disclosures made pursuant to provision paragraph (b)(2)(viii) of this section relating to law enforcement activities.

[40 FR 45723, Oct. 2, 1975, as amended at 45 FR 44272, July 1, 1980; 58 FR 62036, Nov. 24, 1993; 59 FR 37160, July 21, 1994; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003]

§ 266.5 Notification.

(a) *Notification of Systems.* Upon written request, the Postal Service will notify any individual whether a specific system named by the individual contains a record pertaining to him or her. See § 266.6 for suggested form of request.

(b) *Notification of Disclosure.* The Postal Service shall make reasonable efforts to serve notice on an individual before any personal information on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(c) *Notification of Amendment.* (See § 266.6(c)(1) relating to amendment of records upon request.)

(d) *Notification of New Use.* Any newly intended use of personal information maintained by the Postal Service will be published in the FEDERAL REGISTER thirty (30) days before such use becomes operational. Public views may then be submitted to the Records Office.

(e) *Notification of Exemptions.* The Postal Service will publish within the FEDERAL REGISTER its intent to exempt any system of records and shall specify the nature and purpose of that system.

(f) *Notification of computer matching program.* The Postal Service publishes in the FEDERAL REGISTER and forwards to Congress and the Office of Management and Budget advance notice of its intent to establish, substantially revise, or renew a matching program, unless such notice is published by another participant agency. In those instances in which the Postal Service is the ''recipient'' agency, as defined in the Act,

but another participant agency sponsors and derives the principal benefit from the matching program, the other agency is expected to publish the notice. The notice must be sent to Congress and OMB 40 days, and published at least thirty (30) days, prior to (1) initiation of any matching activity under a new or substantially revised program, or (2) expiration of the existing matching agreement in the case of a renewal of a continuing program.

[40 FR 45724, Oct. 2, 1975; 40 FR 48512, Oct. 16, 1975, as amended at 45 FR 44272, July 1, 1980; 59 FR 37161, July 21, 1994; 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003; 69 FR 34935, June 23, 2004]

§ 266.6 Procedures for requesting inspection, copying, or amendment of records.

The purpose of this section is to provide procedures by which an individual may have access and request amendment to personal information within a Privacy Act System of Records.

(a) *Submission of Requests*—(1) *Manner of submission.* Inquiries regarding the contents of records systems or access or amendment to personal information should be submitted in writing to the custodian of the official record, if known, or to the Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260, telephone (202) 268–2608. Requests submitted to the Office of Inspector General should be submitted to the Freedom of Information Act/Privacy Officer, Office of Inspector General, 1735 North Lynn Street, Arlington, Virginia, 22209–2020. Inquiries should be clearly marked, ''Privacy Act Request''. Any inquiry concerning a specific system of records should provide the Postal Service with the information contained under ''Notification'' for that system as published in the FEDERAL REGISTER. If the information supplied is insufficient to locate or identify the record, the requester will be notified promptly and, if possible, informed of additional information required. If the requester is not a Postal Service employee, he should designate the post office at which he wishes to review or obtain copies of records. Amendment requests contest the relevance, accuracy, timeliness or completeness of the record and will include a statement of the amendment requested.

(2) *Third party inquiries.* Anyone desiring to review or copy records pertaining to another person must have the written consent of that person.

(3) *Period for response by custodian.* Upon receipt of an inquiry, the custodian will respond with an acknowledgement of receipt within ten (10) days. If the inquiry requires the custodian to determine whether a particular record exists, the inquirer shall be informed of this determination as a part of the acknowledgement letter.

(b) *Compliance with Request for Access*—(1) *Notification of time and place for inspection.* When a requested record has been identified and is to be disclosed, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when the record will be available for inspection or copying. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) *Identification of requester.* The requester must present personal identification sufficient to satisfy the custodian as to his identity prior to record review. Examples of sufficient identification are a valid driver's license, Medicare card, and employee identification cards.

(3) *Responsibilities of requester.* The requester shall assume the following responsibilities regarding the review of official personal records:

(i) Requester must agree not to leave Postal Services premises with official records unless specifically given a copy for that purpose by the custodian or his representative.

(ii) Requester must sign a statement indicating he has reviewed a specific record(s) or category of record.

(iii) Requester may be accompanied by a person he so chooses to aid in the

inspection of information; however, requester must furnish the Postal Service with written authorization for such review in that person's presence.

(4) *Special rules for medical records.* A medical record shall be disclosed to the requester to whom it pertains unless, in the judgment of the medical officer, access to such record could have an adverse effect upon such individual. When the medical officer determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, the medical officer will transmit such information to a medical doctor named by the requesting individual.

(5) *Limitations on access.* Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding. Other limitations on access are those specifically addressed in §§ 266.6(b)(4) and 266.9.

(6) *Response when compliance is not possible.* A reply denying a written request to review a record shall be in writing signed by the custodian or other appropriate official and shall be made only if such a record does not exist or does not contain personal information relating to the requester, or is exempt from disclosure. This reply shall include a statement regarding the determining factors of denial, and the right to appeal to denial to the General Counsel.

(c) *Compliance With Request for Amendment.* (1) Correct or eliminate any information that is found to be incomplete, inaccurate, not relevant to a statutory purpose of the Postal Service, or not timely and notify the requester when this action is complete, or

(2) Not later than thirty (30) working days after receipt of a request to amend, notify the requester of a determination not to amend and of the requester's right to appeal, or to submit, in lieu of an appeal, a statement of reasonable length setting forth a position regarding the disputed information to be attached to the contested personal record.

(d) *Availability of Assistance in Exercising Rights.* The Manager, Records Office is available to provide an individual with assistance in exercising rights pursuant to this part.

[40 FR 45723, Oct. 2, 1975, as amended at 45 FR 44272, July 1, 1980; 51 FR 26386, July 23, 1986; 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 67 FR 16024, Apr. 4, 2002; 68 FR 56560, Oct. 1, 2003]

§ 266.7 Appeal procedure.

(a) *Appeal Procedure.* (1) If a request to inspect, copy, or amend a record is denied, in whole or in part, or if no determination is made within the period prescribed by this part, the requester shall appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260–1100.

(2) The requester should submit his appeal in writing within thirty (30) days of the date of denial, or within ninety (90) days of such request if the appeal is from a failure of the custodian to make a determination. The letter of appeal should include, as applicable:

(i) Reasonable identification of the record access to which or the amendment of which was requested.

(ii) A statement of the Postal Service action or failure to act and of the relief sought.

(iii) A copy of the request, of the notification of denial and of any other related correspondence.

(3) Any record found on appeal to be incomplete, inaccurate, not relevant, or not timely, shall within thirty (30) working days of the date of such findings be appropriately amended.

(4) The decision of the General Counsel, constitutes the final decision of the Postal Service on the right of the requester to inspect, copy, change, or update a record. The decision on the appeal shall be in writing and in the event of a denial shall set forth the reasons for such denial and state the individual's right to obtain judicial review in a district court. An indexed file of decisions on appeals shall be maintained by the General Counsel.

(b) *Submission of Statement of Disagreement.* If the final decision concerning a request for the amendment of a record does not satisfy the requester, any statement of reasonable length provided by that individual setting forth a

position regarding the disputed information will be accepted and attached to the relevant personal record.

[40 FR 45723, Oct. 2, 1975, as amended at 41 FR 24709, June 18, 1976; 45 FR 44273, July 1, 1980; 51 FR 26386, July 23, 1986; 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003]

§ 266.8 Schedule of fees.

(a) *Policy*. The purpose of this section is to establish fair and equitable fees to permit duplication of records for subject individuals (or authorized representatives) while recovering the full allowable direct costs incurred by the Postal Service.

(b) *Duplication*. (1) For duplicating any paper or micrographic record or publication or computer report, the fee is $.15 per page, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. See paragraph (d) of this section for fee limitations.

(2) The Postal Service may at its discretion make coin-operated copy machines available at any location. In that event, requesters will be given the opportunity to make copies at their own expense.

(3) The Postal Service normally will not furnish more than one copy of any record. If duplicate copies are furnished at the request of the requester, $.15 per page fee is charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to § 266.8(b)(1).

(c) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request for similar types of records down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly.

(d) *Limitations.* No fee will be charged an individual for the process of retrieving, reviewing, or amending a record pertaining to that individual.

(e) The Postal Service may, at its discretion, require reimbursement of its costs as a condition of participation in a computer matching program or activity with another agency. The agency to be charged is notified in writing of the approximate costs before they are incurred. Costs are calculated in accordance with the schedule of fees at § 265.9.

[52 FR 38230, Oct. 15, 1987, as amended at 59 FR 37161, July 21, 1994; 68 FR 56560, Oct. 1, 2003]

§ 266.9 Exemptions.

(a) Subsections 552a(j) and (k) of 5 U.S.C. 552a empower the Postmaster General to exempt systems of records meeting certain criteria from various other subsections of 5 U.S.C. 552a. With respect to systems of records so exempted, nothing in this part shall require compliance with provisions hereof implementing any subsections of 5 U.S.C. 552a from which those systems have been exempted.

(b) Paragraph (b)(1) of this section contains a summary of provisions of 5 U.S.C. 552a for which exemption is claimed for some systems of records pursuant to, and to the extent permitted by, subsections 552a(j) and (k) of 5 U.S.C. 552a. Paragraphs (b)(2) through (5) of this section identify the exempted systems of records, the exemptions applied to each, and the reasons for the exemptions:

(1) *Explanation of provisions under 5 U.S.C. 552a for which an exemption is claimed in the systems discussed below*. (i) Subsection (c)(3) requires an agency to make available to the individual named in the records an accounting of each disclosure of records.

(ii) Subsection (c)(4) requires an agency to inform any person or other agency to which a record has been disclosed of any correction or notation of dispute the agency has made to the record in accordance with 5 U.S.C. 552a(d).

(iii) Subsections (d)(1) through (4) require an agency to permit an individual to gain access to records about the individual, to request amendment of such records, to request a review of an agency decision not to amend such records, and to provide a statement of disagreement about a disputed record to be filed and disclosed with the disputed record.

(iv) Subsection (e)(1) requires an agency to maintain in its records only such information about an individual

that is relevant and necessary to accomplish a purpose required by statute or executive order of the President.

(v) Subsection (e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs.

(vi) Subsection (e)(3) requires an agency to inform each person whom it asks to supply information of the authority under which the information is sought, the purposes for which the information will be used, the routine uses that may be made of the information, whether disclosure is mandatory or voluntary, and the effects of not providing the information.

(vii) Subsection (e)(4)(G) and (H) requires an agency to publish a FEDERAL REGISTER notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content.

(viii) Subsection (e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual.

(ix) Subsection (e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(x) Subsection (f) requires an agency to establish procedures whereby an individual can be notified upon request if any system of records named by the individual contains a record pertaining to the individual, obtain access to the record, and request amendment.

(xi) Subsection (g) provides for civil remedies if an agency fails to comply with the access and amendment provisions of subsections (d)(1) and (d)(3), and with other provisions of 5 U.S.C. 552a, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(xii) Subsection (m) requires an agency to cause the requirements of 5 U.S.C. 552a to be applied to a contractor operating a system of records to accomplish an agency function.

(2) Pursuant to subsection 552a(j)(2), *Emergency Management Records, USPS 500.300; Inspection Service Investigative File System, USPS 700.000; Mail Cover Program Records, USPS 700.100; and Inspector General Investigative Records, USPS 700.300,* are exempt from subsections 552a (c)(3), (c)(4), (d)(1)–(4), (e)(1)–(3), (e)(4) (G) and (H), (e)(5), (e)(8), (f), (g), and (m) because the systems contain information pertaining to the enforcement of criminal laws. The reasons for exemption follow:

(i) Disclosure to the record subject pursuant to subsections (c)(3), (c)(4), or (d)(1)–(4) could:

(A) Alert subjects that they are targets of an investigation or mail cover by the Postal Inspection Service or an investigation by the Office of Inspector General;

(B) Alert subjects of the nature and scope of the investigation and of evidence obtained;

(C) Enable the subject of an investigation to avoid detection or apprehension;

(D) Subject confidential sources, witnesses, and law enforcement personnel to harassment or intimidation if their identities were released to the target of an investigation;

(E) Constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation;

(F) Intimidate potential witnesses and cause them to be reluctant to offer information;

(G) Lead to the improper influencing of witnesses, the destruction or alteration of evidence yet to be discovered, the fabrication of testimony, or the compromising of classified material; and

(H) Seriously impede or compromise law enforcement, mail cover, or background investigations that might involve law enforcement aspects as a result of the above.

(ii) Application of subsections (e)(1) and (e)(5) is impractical because the

relevance, necessity, or correctness of specific information might be established only after considerable analysis and as the investigation progresses. As to relevance (subsection (e)(1)), effective law enforcement requires the keeping of information not relevant to a specific Postal Inspection Service investigation or Office of Inspector General investigation. Such information may be kept to provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Office of Inspector General, Postal Inspection Service, and/or other agencies. As to accuracy (subsection (e)(5)), the correctness of records sometimes can be established only in a court of law.

(iii) Application of subsections (e)(2) and (e)(3) would require collection of information directly from the subject of a potential or ongoing investigation. The subject would be put on alert that he or she is a target of an investigation by the Office of Inspector General, or an investigation or mail cover by the Postal Inspection Service, enabling avoidance of detection or apprehension, thereby seriously compromising law enforcement, mail cover, or background investigations involving law enforcement aspects. Moreover, in certain circumstances the subject of an investigation is not required to provide information to investigators, and information must be collected from other sources.

(iv) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(v) Application of subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(vi) The provisions of subsection (g) do not apply because exemption from the provisions of subsection (d) renders the provisions on suits to enforce subsection (d) inapplicable.

(vii) If one of these systems of records is operated in whole or in part by a contractor, the exemptions claimed herein shall remain applicable to it (subsection (m)).

(3) Pursuant to subsection 552a(k)(2), *Labor Relations Records, USPS 200.000; Emergency Management Records, USPS 500.300; Inspection Service Investigative File System, USPS 700.000; Mail Cover Program Records, USPS 700.100; Inspector General Investigative Records, USPS 700.300; and Financial Transactions, USPS 860.000,* are exempt from certain subsections of 5 U.S.C. 552a because the systems contain investigatory material compiled for law enforcement purposes other than material within the scope of subsection 552a(j)(2).

(i) *Emergency Management Records, USPS 500.300; Inspection Service Investigative File System, USPS 700.000; Mail Cover Program Records, USPS 700.100; and Inspector General Investigative Records, USPS 700.300,* are exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4) (G) and (H), and (f) for the same reasons as stated in paragraph (b)(2) of this section.

(ii) *Labor Relations Records, USPS 200.000,* is exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Application of the requirements at subsections (d)(1)-(4) would cause disruption of enforcement of the laws relating to equal employment opportunity (EEO). It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(B) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply for the same reasons described in paragraph (b)(2)(iv) of this section.

(iii) *Financial Transactions, USPS 860.000,* is exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Disclosure to the record subject pursuant to subsections (c)(3) and (d)(1)–(4) would violate the non-notification provision of the Bank Secrecy Act, 31 U.S.C. 5318(g)(2), under which the Postal Service is prohibited from notifying a transaction participant that a suspicious transaction report has been made. In addition, the access provisions of subsections (c)(3) and

(d)(1)–(4) would alert individuals that they have been identified as suspects or possible subjects of investigation and thus seriously hinder the law enforcement purposes underlying the suspicious transaction reports.

(B) This system is in compliance with subsection (e)(1) because maintenance of the records is required by law. Strict application of the relevance and necessity requirements of subsection (e)(1) to suspicious transactions would be impractical, however, because the relevance or necessity of specific information can often be established only after considerable analysis and as an investigation progresses.

(C) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(4) Pursuant to subsection 552a(k)(5), *Recruiting, Examining, and Placement Records, USPS 100.100; Labor Relations Records, USPS 200.000; Inspection Service Investigative File System, USPS 700.000; and Inspector General Investigative Records, USPS 700.300* are exempt from certain subsections of 5 U.S.C. 552a because the systems contain investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for employment, contracts, or access to classified information.

(i) *Recruiting, Examining, and Placement Records, USPS 100.100,* is exempt from subsections 552a(d)(1)–(4) and (e)(1) for the following reasons:

(A) During its investigation and evaluation of an applicant for a position, the Postal Service contacts individuals who, without an assurance of anonymity, would refuse to provide information concerning the subject of the investigation. If a record subject were given access pursuant to subsection (d)(1)–(4), the promised confidentiality would be breached and the confidential source would be identified. The result would be restriction of the free flow of information vital to a determination of an individual's qualifications and suitability for appointment to or continued occupancy of his or her position.

(B) In collecting information for investigative and evaluative purposes, it is impossible to determine in advance what information might be of assistance in determining the qualifications and suitability of an individual for appointment. Information that seems irrelevant, when linked with other information, can sometimes provide a composite picture of an individual that assists in determining whether that individual should be appointed to or retained in a position. For this reason, exemption from subsection (e)(1) is claimed.

(C) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(ii) *Labor Relations Records, USPS 200.000,* is exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Application of the provisions at subsection (d)(1)–(4) would reveal to the EEO complainant the identity of individuals who supplied information under a promise of anonymity. It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(B) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(iii) *Inspection Service Investigative File System, USPS 700.000; and Inspector General Investigative Records, USPS 700.300,* are exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4) (G) and (H), and (f) for the same reasons as stated in paragraph (b)(2) of this section.

(5) Pursuant to subsection 552a(k)(6), *Employee Development and Training Records, USPS 100.300; Personnel Research Records, 100.600; and Emergency Management Records, USPS 500.300* are

exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) because the systems contain testing or examination material the disclosure of which would compromise the objectivity or fairness of the material. The reasons for exemption follow:

(i) These systems contain questions and answers to standard testing materials, the disclosure of which would compromise the fairness of the future use of these materials. It is not feasible to develop entirely new examinations after each administration as would be necessary if questions or answers were available for inspection and copying. Consequently, exemption from subsection (d) is claimed.

(ii) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

[70 FR 22513, Apr. 29, 2005]

§ 266.10 Computer matching.

(a) *General.* Any agency or Postal Service component that wishes to use records from a Postal Service automated system of records in a computerized comparison with other postal or non-postal records must submit its proposal to the Postal Service Manager Records Office. Computer matching programs as defined in paragraph (c) of § 262.5 must be conducted in accordance with the Privacy Act, implementing guidance issued by the Office of Management and Budget and these regulations. Records may not be exchanged for a matching program until all procedural requirements of the Act and these regulations have been met. Other matching activities must be conducted in accordance with the Privacy Act and with the approval of the Manager, Records Office. See paragraph (b)(6) of § 266.4.

(b) *Procedure for submission of matching proposals.* A proposal must include information required for the matching agreement discussed in paragraph (d)(1) of this section. The Inspection Service must submit its proposals for matching programs and other matching activities to the Postal Service Manager Records Office through: Independent Counsel, Inspection Service, U.S. Postal Service, 475 L'Enfant Plaza SW, Rm 3417, Washington, DC 20260–2181. All other matching proposals, whether from postal organizations or other government agencies, must be mailed directly to: Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

(c) *Lead time.* Proposals must be submitted to the Postal Service Manager Records Office at least 3 months in advance of the anticipated starting date to allow time to meet Privacy Act publication and review requirements.

(d) *Matching agreements.* The participants in a computer matching program must enter into a written agreement specifying the terms under which the matching program is to be conducted. The Manager, Records Office may require similar written agreements for other matching activities.

(1) *Content.* Agreements must specify:

(i) The purpose and legal authority for conducting the matching program;

(ii) The justification for the program and the anticipated results, including, when appropriate, a specific estimate of any savings in terms of expected costs and benefits, in sufficient detail for the Data Integrity Board to make an informed decision;

(iii) A description of the records that are to be matched, including the data elements to be used, the number of records, and the approximate dates of the matching program;

(iv) Procedures for providing notice to individuals who supply information that the information may be subject to verification through computer matching programs;

(v) Procedures for verifying information produced in a matching program and for providing individuals an opportunity to contest the findings in accordance with the requirement that an agency may not take adverse action against an individual as a result of information produced by a matching program until the agency has independently verified the information and provided the individual with due process;

(vi) Procedures for ensuring the administrative, technical, and physical security of the records matched; for the retention and timely destruction of

records created by the matching program; and for the use and return or destruction of records used in the program;

(vii) Prohibitions concerning duplication and redisclosure of records exchanged, except where required by law or essential to the conduct of the matching program;

(viii) Assessments of the accuracy of the records to be used in the matching program; and

(ix) A statement that the Comptroller General may have access to all records of the participant agencies in order to monitor compliance with the agreement.

(2) *Approval.* Before the Postal Service may participate in a computer matching program or other computer matching activity that involves both USPS and non-USPS records, the Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement. To be effective, the matching agreement must receive approval by each member of the Board. Votes are collected by the Postal Service Manager Records Office. Agreements are signed on behalf of the Board by the Chairman. If a matching agreement is disapproved by the Board, any party may appeal the disapproval in writing to the Director, Office of Management and Budget, Washington, DC 20503–0001, within 30 days following the Board's written disapproval.

(3) *Effective dates.* No matching agreement is effective until 40 days after the date on which a copy is sent to Congress. The agreement remains in effect only as long as necessary to accomplish the specific matching purpose, but no longer than 18 months, at which time the agreement expires unless extended. The Data Integrity Board may extend an agreement for one additional year, without further review, if within 3 months prior to expiration of the 18-month period it finds that the matching program is to be conducted without change, and each party to the agreement certifies that the program has been conducted in compliance with the matching agreement. Renewal of a continuing matching program that has run for the full 30-month period requires a new agreement that has received Data Integrity Board approval.

[59 FR 37161, July 21, 1994, as amended at 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003; 69 FR 34935, June 23, 2004]

PART 267—PROTECTION OF INFORMATION

Sec.
267.1 Purpose and scope.
267.2 Policy.
267.3 Responsibility.
267.4 Information security standards.
267.5 National Security Information.

AUTHORITY: 39 U.S.C. 401; Pub. L. 93–579, 88 Stat. 1896.

§ 267.1 Purpose and scope.

This part addresses the protection of information and records in the custody of the Postal Service throughout all phases of information flow and within all organization components, and includes micromated, manual and data processing information.

[40 FR 45726, Oct. 2, 1975]

§ 267.2 Policy.

Consistent with the responsibility of the Postal Service to make its official records available to the public to the maximum extent required by the public interest, and to ensure the security, confidentiality, and integrity of official records containing sensitive or national security information, it is the policy of the Postal Service to maintain definitive and uniform information security safeguards. These safeguards will have as their purpose: (a) Ensuring the effective operation of the Postal Service through appropriate controls over critical information, and (b) Protecting personal privacy, the public interest, and the national security by limiting unauthorized access to both restricted and national security information.

[44 FR 51224, Aug. 31, 1979]

§ 267.3 Responsibility.

(a) *Chief Postal Inspector and Chief Privacy Officer.* The Chief Postal Inspector and the Chief Privacy Officer will ensure within their respective areas of jurisdiction:

(1) Postal Service-wide compliance with this policy and related standards and procedures; and

(2) Implementation of remedial action when violations or attempted violations of these standards and procedures occur.

(b) *Custodians.* All custodians are responsible for insuring that information security standards and procedures are followed and that all relevant employees participate in the information security awareness programs.

[40 FR 45726, Oct. 2, 1975, as amended at 60 FR 57345, Nov. 15, 1995; 68 FR 56560, Oct. 1, 2003]

§ 267.4 Information security standards.

(a) The Postal Service will operate under a uniform set of information security standards which address the following functional aspects of information flow and management:

(1) Information system development,

(2) Information collection,

(3) Information handling and processing,

(4) Information dissemination and disclosure,

(5) Information storage and destruction,

(b) Supplementing this list are information security standards pertaining to the following administrative areas:

(1) Personnel selection and training,

(2) Physical environment protection,

(3) Contingency planning,

(4) Information processing or storage system procurement,

(5) Contractual relationships.

[40 FR 45726, Oct. 2, 1975; 40 FR 48512, Oct. 16, 1975]

§ 267.5 National Security Information.

(a) *Purpose and scope.* The purpose of this section is to provide regulations implementing Executive Order 12356 National Security Information (hereinafter referred to as the Executive Order) which deals with the protection, handling and classification of national security information.

(b) *Definitions.* (1) In this section, *National Security Information* means information on the national defense and foreign relations of the United States that has been determined under the Executive Order or prior Orders to require protection against unauthorized disclosure and has been so designated.

(2) *Derivative Classification* means the carrying forward of a classification from one document to a newly created document that contains national security information which is in substance the same as information that is currently classified.

(3) *In the Custody of the Postal Service* means any national security information transmitted to and held by the U.S. Postal Service for the information and use of postal officials. (This does not include any national security information in the U.S. Mails.)

(c) *Responsibility and authority.* (1) The Manager, Payroll Accounting and Records, serves as the USPS National Security Information Oversight Officer. This officer shall:

(i) Conduct an active oversight program to ensure that the appropriate provisions of these regulations are complied with;

(ii) Chair a committee composed of the Manager, Payroll Accounting and Records; the Chief Postal Inspector (USPS Security Officer); the General Counsel; the Executive Assistant to the Postmaster General; and the Director, Operating Policies Office; or their designees, with authority to act on all suggestions and complaints concerning compliance by the Postal Service with the regulations in this part;

(iii) Ensure that appropriate and prompt corrective action is taken whenever a postal employee knowingly, willfully and without authorization:

(A) Discloses national security information properly classified under the Executive order, or prior orders,

(B) Compromises properly classified information through negligence, or

(C) Violates any provisions of these regulations or procedures;

(iv) Establish, staff, and direct activities for controlling documents containing national security information at USPS Headquarters and to provide functional direction to the field.

(v) In conjunction with the USPS Security Officer, prepare and issue instructions for the control, protection, and derivative classification of national security information in the custody of, and use by, the Postal Service.

These instructions shall include requirements that:

(A) A demonstrable need for access to national security information is established before requesting the initiation of administrative clearance procedures;

(B) Ensure that the number of people granted access to national security information is reduced to and maintained at the minimum number consistent with operational requirements and needs;

(vi) Establish, staff and direct activities for controlling documents containing national security information at USPS Headquarters and provide functional direction to each Regional Records Control Officer;

(vii) As part of the overall program implementation, develop a training program to familiarize appropriate postal employees of the requirements for control, protection and classification; and

(viii) Report to the USPS Security Officer any incidents of possible loss or compromise of national security information.

(2) The USPS Security Officer (the Chief Postal Inspector) shall:

(i) Provide technical guidance to the Manager, Payroll Accounting and Records in implementing the national security information program;

(ii) Conduct investigations into reported program violations or loss or possible compromise of national security information and report any actual loss or compromise to the originating agency;

(iii) Periodically conduct an audit of the USPS national security information program;

(iv) Process requests for sensitive clearances; conduct the appropriate investigations and grant or deny a sensitive clearance to postal employees having an official ''need to know'' national security information; and

(v) Report to the Attorney General any evidence of possible violations of federal criminal law by a USPS employee and of possible violations by any other person of those federal criminal laws.

(3) All postal employees who have access to national security information shall:

(i) Sign a nondisclosure agreement;

(ii) Be familiar with and follow all Program regulations and instructions;

(iii) Actively protect and be accountable for all national security information entrusted to their care;

(iv) Disclose national security information only to another individual who is authorized access;

(v) Immediately report to the Manager, Payroll Accounting and Records and the USPS Security Officer any suspected or actual loss or compromise of national security information; and

(vi) Be subject to administrative sanctions should requirements (ii) through (v) not be followed.

(d) *Derivative classification*. When applying derivative classifications to documents created by the Postal Service, the Postal Service shall:

(1) Respect original classification decisions;

(2) Verify the information's current level of classification so far as practicable before applying the markings; and

(3) Carry forward to any newly created documents the assigned dates or events for declassification or review and any additional authorized markings in accordance with section 2 of the Executive order.

(e) *General provisions*—(1) *Dissemination*. National security information received by the U.S. Postal Service shall not be further disseminated to any other agency without the consent of the originating agency.

(2) *Disposal*. Classified documents no longer needed by the Postal Service shall be either properly destroyed or returned to the originating agency.

(3) Freedom of Information Act or mandatory review requests.

(i) Requests for classified documents made under the Freedom of Information Act (FOIA) and mandatory review requests (requests under Section 3–501 of the Executive Order for the declassification and release of information), including requests by the news media, should be submitted to: Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260.

(ii) In response to an FOIA request or a mandatory review request, the Postal Service shall not refuse to confirm the

existence or non-existence of a document, unless the fact of its existence or non-existence would itself be classifiable.

(iii) The Postal Service shall forward all FOIA and mandatory review requests for national security information in its custody (including that within records derivatively classified by the USPS) to the originating agency for review unless the agency objects on the grounds that its association with the information requires protection. The requester shall be notified that:

(A) The request was referred; and

(B) The originating agency will provide a direct response.

(4) *Research requests.* Requests from historical researchers for access to national security information shall be referred to the originating agency.

(39 U.S.C. 401 (2), (10), 404(a)(7))

[44 FR 51224, Aug. 31, 1979, as amended at 45 FR 30069, May 7, 1980; 49 FR 22476, May 30, 1984; 60 FR 57345, 57346, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003]

PART 268—PRIVACY OF INFORMATION—EMPLOYEE RULES OF CONDUCT

Sec.

268.1 General principles.
268.2 Consequences of non-compliance.

AUTHORITY: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 268.1 General principles.

In order to conduct its business, the Postal Service has the need to collect various types of personally identifiable information about its customers, employees and other individuals. Information of this nature has been entrusted to the Postal Service, and employees handling it have a legal and ethical obligation to hold it in confidence and to actively protect it from uses other than those compatible with the purpose for which the information was collected. This obligation is legally imposed by the Privacy Act of 1974, which places specific requirements upon all Federal agencies, including the Postal Service, and their employees. In implementation of these requirements, the following rules of conduct apply:

(a) Except as specifically authorized in § 266.4(b)(2) of this chapter, no employee shall disclose, directly or indirectly, the contents of any record about another individual to any person or organization. Managers are to provide guidance in this regard to all employees who must handle such information.

(b) *No employee will maintain a secret system of records about individuals.* All records systems containing personally identifiable information about individuals must be reported to the Manager, Records Office.

(c) All employees shall adhere strictly to the procedures established by the U.S. Postal Service to ensure the confidentiality and integrity of information about individuals that is collected, maintained and used for official Postal Service business. Employees shall be held responsible for any violation of these procedures.

[45 FR 44273, July 1, 1980, as amended at 60 FR 57346, Nov. 15, 1995; 68 FR 56560, Oct. 1, 2003]

§ 268.2 Consequences of non-compliance.

(a) The Privacy Act authorizes any individual, whether or not an employee, to bring a civil action in U.S. District Court to obtain judicial review of the failure of the Postal Service to comply with the requirements of the Act or its implementing regulations. In certain instances of willful or intentional non-compliance, the plaintiff may recover damages from the Postal Service in the minimum amount of $1,000 together with costs of the action and attorney fees.

(b) The Act provides criminal sanctions for individuals, including employees, who violate certain of its provisions.

(1) Any officer or employee who, by virtue of his employment or position, has possession of, or access to, official records which contain individually identifiable information and who, knowing that disclosure of the specific material is prohibited by Postal Service regulations, willfully discloses the material to a person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than $5,000.

(2) Any officer or employee who willfully maintains a system of records

without meeting the notice requirements set forth in Postal Service regulations shall be guilty of a misdemeanor and fined not more than $5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning another individual from the Postal Service under false pretense shall be guilty of a misdemeanor and fined not more than $5,000.

(c) In addition to the criminal sanctions, any employee violating any provisions of these rules of conduct is subject to disciplinary action which may result in dismissal from the Postal Service.

[40 FR 45726, Oct. 2, 1975]

PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.
273.1 Purpose.
273.2 Definitions.
273.3 Liability for false claims and statements.
273.4 Non-exclusivity of penalty authority.
273.5 Investigations of alleged violations.
273.6 Evaluation by reviewing official.
273.7 Concurrence of Attorney General.
273.8 Issuance of complaint.
273.9 Collection of civil penalties or assessments.
273.10 Reports.

AUTHORITY: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

SOURCE: 52 FR 12901, Apr. 20, 1987, unless otherwise noted.

§ 273.1 Purpose.

This part establishes procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801–3812) against any person who makes, submits, or presents, or causes to be made, submitted, or presented, a false fictitious, or fraudulent claim or written statement to the Postal Service. Procedures governing the hearing and appeal rights of any person alleged to be liable for such penalties and assessments are set forth in part 962 of this title.

§ 273.2 Definitions.

(a) *Claim* means any request, demand, or submission:

(1) Made to the Postal Service for property, services, or money (including money representing grants, loans, insurance, or benefits); or

(2) Made to a recipient of property, services, or money from the Postal Service or to a party to a contract with the Postal Service:

(i) For property or services if the United States:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance or benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the Postal Service which has the effect of decreasing an obligation to pay or account for property, services, or money.

(b) *Complaint* refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8.

(c) Investigating Official refers to the Inspector General of the Postal Service or any designee within the United States Office of the Inspector General who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(d) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in § 962.21 of this title any designee within the Judicial Officer Department.

(e) *Knows or has reason to know*, for purposes of establishing liability under 31 U.S.C. 3802, means that, with respect to a claim or statement, although no proof of specific intent to defraud is required, a person:

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(f) *Person* refers to any individual, partnership, corporation, association, or private organization.

(g) *Postmaster General* refers to the Postmaster General of the United States or his designee.

(h) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803 in accordance with Part 962 of this title.

(i) *Respondent* refers to any person alleged to be liable for civil penalty or assessment under 31 U.S.C. 3802.

(j) *Reviewing Official* refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS–16 under the General Schedule.

(k) *Statement* means any representation, certification, affirmation, document, record, or accounting or bookkeeping entry made:

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the Postal Service, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan or benefit.

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991; 67 FR 16024, Apr. 4, 2002]

§ 273.3 Liability for false claims and statements.

Section 3802 of title 31, United States Code, provides for liability as follows:

(a) *Claims.* (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent; or

(ii) Includes or is supported by any written statement asserting a material fact which is false, fictitious, or fraudulent; or

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed

Shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,500 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made, presented, or submitted to the Postal Service, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service, recipient, or party.

(4) Each claim for property, services, or money is subject to the civil penalty referred to in paragraph (a)(1) of this section regardless of whether such property, service, or money is actually delivered or paid.

(5) If the Government has made payment on a claim, a person subject to the civil penalty referred to in paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or twice the amount of that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. This assessment shall be in lieu of

damages sustained by the United States because of such claim.

(b) Statements. (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making, presenting or submitting such statement had a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

Shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than $5,500 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made, presented, or submitted to the Postal Service when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service.

(c) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, the civil penalty referred to in paragraph (a)(1) of this section may be imposed on each such person without regard to the amount of any penalties collected or demanded from others.

(d) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment, an assessment may be imposed against any such person or jointly and severally against any combination of such persons. The aggregate amount of the assessments collected with respect to such claim shall not exceed twice the portion of such claim determined to be in violation of paragraph (a)(1) of this section.

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991; 61 FR 55750, Oct. 29, 1996]

§ 273.4 Non-exclusivity of penalty authority.

(a) A determination by the Reviewing Official that there is adequate evidence to believe that a person is liable under 31 U.S.C 3802, or a final determination that a person is liable under such statute, may provide the Postal Service with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under chapter 38 of title 31, United States Code.

(b) In the case of an administrative or contractual action to suspend or debar any person from eligibility to enter into contracts with the Postal Service, a determination referred to in paragraph (a) of this section shall not be considered as a conclusive determination of such person's responsibility pursuant to Postal Service procurement regulations.

§ 273.5 Investigations of alleged violations.

(a) Investigations of allegations of liability under 31 U.S.C. 3802 shall be conducted by the Investigating Official.

(b)(1) For purposes of an investigation under this part, the Investigating Official may issue a subpoena requiring the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the Postal Service. Any subpoena issued by the Investigating Official under this authority shall cite 31 U.S.C. 3804(a) as the authority under which it is issued, shall be signed by the Investigating Official, and shall command each person to whom it is directed to produce the specified documentary material at a prescribed time and place.

(2) In the case of contumacy or refusal to obey a subpoena issued pursuant to paragraph (b)(1) of this section, the district courts of the United States have jurisdiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section,

the Postal Service shall request the Attorney General to petition the district court for the district in which the person receiving the subpoena resides or conducts business to issue such an order.

(c) Upon completing an investigation under this part, the Investigating Official shall submit to the Reviewing Official a report containing the findings and conclusions of his investigation, including:

(1) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(2) A description of any evidence which supports allegations of liability under 31 U.S.C. 3802, or where applicable, a description of any evidence that tends to support a conclusion that such statute has not been violated;

(3) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(4) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(5) A statement of the amount of penalties and assessments that, considering the information described in paragraphs (c) (3) and (4) of this section, the Investigating Official recommends be demanded from the person alleged to be liable; and

(6) An estimate of the prospects of collecting the amount specified in paragraph (c)(5) of this section, and any reasons supporting such estimate.

(d) Nothing in these regulations modifies any responsibility of the Investigating Official to report violations of criminal law to the Attorney General

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991]

§ 273.6 Evaluation by reviewing official.

(a) Based upon the investigatory report prepared by the Investigating Official, the Reviewing Official shall determine whether there is adequate evidence to believe that a person is liable under 31 U.S.C. 3802, and, if so, whether prosecution would likely result in the imposition and collection of civil penalties and applicable assessments.

(b) If the Reviewing Official determines that a case has merit and should be referred to the Judicial Officer for assignment to a Presiding Officer, he must first transmit to the Attorney General a written notice containing the following information:

(1) A statement setting forth the Reviewing Official's reasons for proposing to refer the case to a Presiding Officer;

(2) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(3) A statement specifying the evidence that supports the allegations of liability;

(4) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(5) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(6) A statement of the amount of penalties and assessments that, considering the factors listed in paragraphs (b)(4) and (5) of this section, the Reviewing Official recommends be demanded from the person alleged to be liable; and

(7) A statement that, in the opinion of the Reviewing Official, there is a reasonable prospect of collecting the amount specified in paragraph (b)(6) of this section and the reasons supporting such statement.

(c) No allegations of liability under 31 U.S.C. 3802 with respect to any claim made, presented, or submitted by any person shall be referred to the Judicial Officer if the Reviewing Official determines that (1) an amount of money in excess of $150,000; or (2) property or service with a value in excess of $150,000 is requested or demanded in violation of section 3802 in such claim or in a group of related claims which are submitted at the time such claim is submitted.

§ 273.7 Concurrence of Attorney General.

(a) The Attorney General is required by 31 U.S.C. 3803(b) to respond to the Reviewing Official's written notice described in § 273.6 within 90 days. The Reviewing Official may refer allegations of liability to the Judicial Officer

only if the Attorney General or his designee approves such action in a written statement which specifies:

(1) That the Attorney General or his designee approves the referral to the Judicial Officer of the allegations of liability set forth in the notice described in § 273.6; and

(2) That the initiation of a proceeding under the Program Fraud Civil Remedies Act is appropriate.

(b) If at any time after the Attorney General approves the referral of a case to the Judicial Officer, the Attorney General or his designee transmits to the Postmaster General a written finding that the continuation of any proceeding under the Program Fraud Civil Remedies Act with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such proceeding shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

§ 273.8 Issuance of complaint.

(a) If the Attorney General or his designee approves the referral of allegations of liability to the Judicial Officer, the Reviewing Official shall serve on the Respondent, pursuant to paragraph (b) of this section, a Complaint, which:

(1) Specifies the allegations of liability against the Respondent, including the statutory basis for liability;

(2) Identifies the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(3) Specifies the amount of penalties or assessments the Postal Service seeks to impose;

(4) Informs the Respondent of his right to request an oral hearing before, or a decision on the record by, a Presiding Officer concerning the allegations of liability and the amount of proposed penalties or assessments;

(5) Informs the Respondent of how to request a hearing described in paragraph (a)(4) of this section;

(6) Includes a copy of the procedures which govern hearings under the Program Fraud Civil Remedies Act, and which are set forth in part 962 of this title; and

(7) Notifies the Respondent that his or her failure to request a hearing on the issues raised by the Complaint within 30 days of its receipt may result in the imposition of the proposed penalty and assessments pursuant to §§ 962.4(a) and 962.15(d) of this title.

(b) Service of a Complaint issued under paragraph (a) of this section must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the person sought to be served, or his or her agent, a written acknowledgment of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991]

§ 273.9 Collection of civil penalties or assessments.

(a) Any penalty or assessment imposed under the Program Fraud Civil Remedies Act may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under part 962 of this title or pursuant to judicial review under 31 U.S.C. 3805 may be raised as a defense and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review. A civil action to recover a penalty or assessment shall be commenced within three years after the date on which the determination of liability for such penalty or assessment becomes final.

(b) The amount of any penalty or assessment which has become final may be collected by administrative offset in accordance with 31 U.S.C 3716, 3807.

(c) Any penalty or assessment imposed by the Postal Service under this part shall be deposited in the Postal Service Fund established by section 2003 of title 39.

§ 273.10 Reports.

(a) Not later than October 31 of each year, the Postmaster General shall prepare and transmit to the appropriate committees and subcommittees of the Congress an annual report summarizing actions taken under the Program Fraud Civil Remedies Act during the most recent 12-month period ending the previous September 30.

(b) The report referred to in paragraph (a) of this section shall include the following information for the period covered by the report:

(1) A summary of matters referred by the Investigating Official to the Reviewing Official under this part;

(2) A summary of matters transmitted to the Attorney General under this part;

(3) A summary of all hearings conducted by a Presiding Officer under part 962 of this title, and the results of such hearings; and

(4) A summary of the actions taken during the reporting period to collect any civil penalty or assessment imposed under the Program Fraud Civil Remedies Act.

Damage to or Destruction of Firm Mailings

PART 281—FIRM MAILINGS DAMAGED OR DESTROYED THROUGH TRANSPORTATION ACCIDENTS OR CATASTROPHES

Sec.

281.1 Notification of firm mailers.
281.2 Action required by processing postal officials.
281.3 Postal inspector responsibilities.
281.4 Disclaimer.

AUTHORITY: 39 U.S.C. 401, 403, and 404.

§ 281.1 Notification of firm mailers.

Whenever bulk firm mail shipments are involved in transportation accidents or catastrophes, such as train or highway accidents, fire, flood, etc., it will be the responsibility of the sectional center director of customer services at the office of mailing to give known mailers timely notification of the incident and its effect on their mail shipment(s).

[39 FR 20974, June 17, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

§ 281.2 Action required by processing postal officials.

Postal officials processing salvable mail recovered from the scene of an accident or catastrophe are responsible for giving timely notification of the incident to the sectional center director of customer services at the office of mailing. The notification should include, but not be limited to:

(a) The determinable names of the major mailers involved;

(b) The nature and extent of damage or destruction;

(c) Anticipated delivery delay; and

(d) If known, the shipment delivery destination(s).

[39 FR 20974, June 17, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

§ 281.3 Postal inspector responsibilities.

The postal inspector investigating the incident should assure that the processing postal officials are fulfilling their notification responsibilities on a timely basis. Should the situation arise where no postal officials are involved in processing affected mail, then the investigating postal inspector will take necessary action to insure that appropriate notification is made.

[39 FR 20974, June 17, 1974]

§ 281.4 Disclaimer.

The Postal Service will not be liable in damages for any loss occasioned by any failure to notify firm mailers in accordance with this part of damage to or destruction of firm mailings.

[39 FR 20974, June 17, 1974]

SUBCHAPTER E—RESTRICTIONS ON PRIVATE CARRIAGE OF LETTERS

PART 310—ENFORCEMENT OF THE PRIVATE EXPRESS STATUTES

Sec.
310.1 Definitions.
310.2 Unlawful carriage of letters.
310.3 Exceptions.
310.4 Responsibility of carriers.
310.5 Payment of postage on violation.
310.6 Advisory opinions.
310.7 Amendment of regulations.

AUTHORITY: 39 U.S.C. 401, 404, 601–606; 18 U.S.C. 1693–1699.

SOURCE: 39 FR 33211, Sept. 16, 1974, unless otherwise noted.

§ 310.1 Definitions.

(a) *Letter* is a message directed to a specific person or address and recorded in or on a tangible object, subject to the following:

(1) Tangible objects used for letters include, but are not limited to, paper (including paper in sheet or card form), recording disks, and magnetic tapes. Tangible objects used for letters do not include (i) objects the material or shape and design of which make them valuable or useful for purposes other than as media for long-distance communications, unless they are actually used as media for personal and business correspondence, and (ii) outsized, rigid objects not capable of enclosure in envelopes, sacks, boxes or other containers commonly used to transmit letters or packets of letters.

(2) *Message* means any information or intelligence that can be recorded as described in paragraph (a)(4) of this section.

(3) A message is directed to a ''specific person or address'' when, for example, it, or the container in which it is carried, singly or with other messages, identical or different, is marked for delivery to a specific person or place, or is delivered to a specific person or place in accordance with a selective delivery plan. Selective delivery plans include delivery to particular persons or addresses by use of detached address labels or cards; address lists; memorized groups of addresses; or ''piggy-backed'' delivery with addressed articles of merchandise, publications, or other items. Selective delivery plans do not include distributions of materials without written addresses to passersby on a particular street corner, or to all residents or randomly selected residents of an area. A message bearing the name or address of a specific person or place is a letter even if it is intended by the sender to be read or otherwise used by some person or persons other than or in addition to the addressee.

(4) Methods by which messages are recorded on tangible objects include, but are not limited to, the use of written or printed characters, drawing, holes, or orientations of magnetic particles in a manner having a predetermined significance.

(5) Whether a tangible object bears a message is to be determined on an objective basis without regard to the intended or actual use made of the object sent.

(6) Identical messages directed to more than one specific person or address or separately directed to the same person or address constitute separate letters.

(7) The following are not letters within the meaning of these regulations:[1]

(i) Telegrams.

(ii) Checks, drafts, promissory notes, bonds, other negotiable and nonnegotiable financial instruments, stock certificates, other securities, insurance policies, and title policies when shipped to, from, or between financial institutions.

(A) As used above, *checks* and *drafts* include documents intrinsically related to and regularly accompanying the

[1] Several of the items enumerated in this paragraph (a)(7) do not self-evidently lie outside of the definition of ''letter''. To the extent, however, that there is any question whether these items may properly be excluded by definition, the Postal Service has determined by adoption of these regulations that the restrictions of the Private Express Statutes are suspended pursuant to 39 U.S.C. 601(b).

movement of checks or drafts within the banking system. ''Checks'' do not include materials accompanying the movement of checks to financial institutions from persons who are not financial institutions, or vice versa, except such materials as would qualify under §310.3(a) if ''checks'' were treated as cargo. Specifically, for example, ''checks'' do not include bank statements sent to depositors showing deposits, debits, and account balances.

(B) As used above, *financial institutions* means:

(*1*) As to checks and drafts: banks, savings banks, savings and loan institutions, credit unions, and their offices, affiliates, and facilities.

(*2*) As to other instruments: institutions performing functions involving the bulk generation, clearance, and transfer of such instruments.

(iii) Abstracts of title, mortgages and other liens, deeds, leases, releases, articles of incorporation, papers filed in lawsuits or formal quasi-judicial proceedings, and orders of courts and of quasi-judicial bodies.

(iv) Newspapers and periodicals.

(v) Books and catalogs consisting of 24 or more bound pages with at least 22 printed, and telephone directories. Separate letters of less than 24 bound and 22 printed pages bound to other material do not qualify for this exclusion. In determining whether separate letters have been bound to other material, the following factors will be considered, along with any other relevant factors: Whether the parts are visually similar; whether the parts were printed and bound together at the same time and by the same process; whether the binding serves an important purpose and has been a longstanding practice; and whether the same individual reads all parts of the bound document. Ordinarily, books and catalogs deal with matters of interest to, and are intended for, a substantial number of recipients. In addition, books generally contain a substantial number of pages. Accordingly, this exclusion will not apply when the nature of the message conveyed, the limited numbers of published copies and of recipients, the limited number of pages, or other relevant factors suggest that it is not appropriate to treat the material as a book or catalog. An item distributed privately, or privately and by mail, to fewer than 25 separate persons or places will generally not be treated as a book or catalog falling within this exclusion.

(vi) Matter sent from a printer, stationer, or similar source, to a person ordering such matter for use as his letters. This exclusion applies whether or not the printer, stationer, or similar source is owned by or affiliated with the person who orders such matter for use as his letters.

(vii) Letters sent to a records storage center exclusively for storage, letters sent exclusively for destruction, letters retrieved from a records storage center, and letters sent as part of a household or business relocation.

(viii) Tags, labels, stickers, signs or posters the type-size, layout or physical characteristics of which indicate they are primarily intended to be attached to other objects for reading.

(ix) Photographic material being sent by a person to a processor and processed photographic material being returned from the processor to the person sending the material for processing.

(x) Copy sent from a person to an independent or company-owned printer or compositor, or between printers and compositors, and proofs or printed matter returned from the printer or compositor to the office of the person who initially sent the copy.

(xi) Sound recordings, films, and packets of identical printed letters containing messages all or the overwhelming bulk of which are to be disseminated to the public. The ''public'' does not include individuals residing at the place of address; individuals employed by the organization doing business at the place of address (whether or not the actual place of employment is the place of address); individuals who are members of an organization, if an organization is located at the place of address; or other individuals who, individually or as members of a group, are reasonably identifiable to the sender.

(xii) Computer programs recorded on media suitable for direct input. For the conditions under which the Private Express Statutes are suspended for data processing materials, see §320.2.

(b) *Packet* means two or more letters, identical or different, or two or more packets of letters, under one cover or otherwise bound together. As used in these regulations, unless the context otherwise requires, ''letter'' or ''letters'' includes ''packet'' or ''packets''.

(c) *Person* means an individual, corporation, association, partnership, governmental agency, or other organization or entity.

(d) *Post routes* are routes on which mail is carried by the Postal Service, and includes post roads as defined in 39 U.S.C. 5003, as follows:

(1) The waters of the United States, during the time the mail is carried thereon;

(2) Railroads or parts of railroads and air routes in operation;

(3) Canals, during the time the mail is carried thereon;

(4) Public roads, highways, and toll roads during the time the mail is carried thereon; and

(5) Letter-carrier routes established for the collection and delivery of mail.

(e) *Private carriage, private carrier,* and terms of similar import used in connection with the Private Express Statutes or these regulations mean carriage by anyone other than the Postal Service, regardless of any meaning ascribed to similar terms under other bodies of law or regulation.

(f) The *Private Express Statutes* are set forth in 18 U.S.C. 1693–1699 and 39 U.S.C. 601–606 (1970).

(g) The term *identical printed letters* includes letters that differ only in name, address or serial number.

[39 FR 33211, Sept. 16, 1974, as amended at 44 FR 52833, Sept. 11, 1979; 45 FR 3034, Jan. 16, 1980; 45 FR 59873, Sept. 11, 1980; 48 FR 42354, Sept. 27, 1982]

§ 310.2 Unlawful carriage of letters.

(a) It is generally unlawful under the Private Express Statutes for any person other than the Postal Service in any manner to send or carry a letter on a post route or in any manner to cause or assist such activity. Violation may result in injunction, fine or imprisonment or both and payment of postage lost as a result of the illegal activity (see § 310.5).

(b) Activity described in paragraph (a) of this section is lawful with respect to a letter if:

(1)(i) The letter is enclosed in an envelope or other suitable cover;

(ii) The amount of postage which would have been charged on the letter if it had been sent through the Postal Service is paid by stamps, or postage meter stamps, on the cover or by other methods approved by the Postal Service;

(iii) The name and address of the person for whom the letter is intended appear on the cover;

(iv) The cover is so sealed that the letter cannot be taken from it without defacing the cover;

(v) Any stamps on the cover are canceled in ink by the sender; and

(vi) The date of the letter, or of its transmission or receipt by the carrier, is endorsed on the cover in ink by the sender or carrier, as appropriate; or

(2)(i) The activity is in accordance with the terms of a written agreement between the shipper or the carrier of the letter and the Postal Service. Such an agreement may include some or all of the provisions of paragraph (b)(1) of this section, or it may change them, but it must:

(A) Adequately ensure payment of an amount equal to the postage to which the Postal Service would have been entitled had the letters been carried in the mail;

(B) Remain in effect for a specified period (subject to renewals); and

(C) Provide for periodic review, audit, and inspection.

(ii) Possible alternative arrangements may include but are not limited to:

(A) Payment of a fixed sum at specified intervals based on the shipper's projected shipment of letters for a given period, as verified by the Postal Service; or

(B) Utilization of a computer record to determine the volume of letters shipped during an interval and the applicable postage to be remitted to the Postal Service.

(c) The Postal Service may suspend the operation of any part of paragraph (b) of this section where the public interest requires the suspension.

(d) Activity described in paragraph (a) of this section is permitted with respect to letters which:

(1) Relate to some part of the cargo of, or to some article carried at the same time by, the conveyance carrying it (see §310.3(a));

(2) Are sent by or addressed to the carrier (see §310.3(b));

(3) Are conveyed or transmitted without compensation (see §310.3(c));

(4) Are conveyed or transmitted by special messenger employed for the particular occasion only, provided that not more than twenty-five such letters are conveyed or transmitted by such special messenger (see §310.3(d)); or

(5) Are carried prior or subsequent to mailing (see §310.3(e)).

[39 FR 33211, Sept. 16, 1974, as amended at 45 FR 77029, Nov. 21, 1980]

§310.3 Exceptions.

(a) *Cargo.* The sending or carrying of letters is permissible if they accompany and relate in all substantial respects to some part of the cargo or to the ordering, shipping or delivering of the cargo.

(b) *Letters of the carrier.* (1) The sending or carrying of letters is permissible if they are sent by or addressed to the person carrying them. If the individual actually carrying the letters is not the person sending the letters or to whom the letters are addressed, then such individual must be an officer or employee of such person (see §310.3(b)(2)) and the letters must relate to the current business of such person.

(2) The fact that the individual actually carrying the letters may be an officer or employee of the person sending the letters or to whom the letters are addressed for certain purposes does not necessarily mean that he is an officer or employee for purposes of this exception. The following factors bear on qualifications for the exception: the carrying employee is employed for a substantial time, if not fulltime (letters must not be privately carried by casual employees); the carrying employee carries no matter for other senders; the carrying employee is a regular salaried employee and shares in all privileges enjoyed by other regular employees (including employees not engaged primarily by the letter carrying function), including but not limited to salary, annual vacation time, absence allowed for illness, health benefits, workmen's compensation insurance, and retirement benefits.

(3) Separately incorporated carriers are separate entities for purposes of this exception, regardless of any subsidiary, ownership, or leasing arrangement. When, however, two concerns jointly operate an enterprise with joint employees and share directly in its revenues and expenses, either of the concerns may carry the letters of the joint enterprise.

(c) *Private hands without compensation.* The sending or carrying of letters without compensation is permitted. Compensation generally consists of a monetary payment for services rendered. Compensation may also consist, however, of non-monetary valuable consideration and of good will Thus, for example, when a business relationship exists or is sought between the carrier and its user, carriage by the carrier of the user's letter will ordinarily not fall under this exception; or, when a person is engaged in the transportation of goods or persons for hire, his carrying of letters ''free of charge'' for customers whom he does charge for the carriage of goods or persons does not fall under this exception.

(d) *Special messenger.* (1) The use of a special messenger employed for the particular occasion only is permissible to transmit letters if not more than twenty-five letters are involved. The permission granted under this exception is restricted to use of messenger service on an infrequent, irregular basis by the sender or addressee of the message.

(2) A special messenger is a person who, at the request of either the sender or the addressee, picks up a letter from the sender's home or place of business and carries it to the addressees home or place of business, but a messenger or carrier operating regularly between fixed points is not a special messenger.

(e) *Carriage prior or subsequent to mailing.* (1) The private carriage of letters which enter the mail stream at some point between their origin and their destination is permissible. Except as provided in paragraph (e)(3) of this section, however, the carriage of letters

from a place where they have been opened, read, separated, or otherwise utilized, does not fall within this exception even though such letters had previously been in the mail stream. Similarly, the carriage of letters to a place where they will be consolidated or otherwise utilized does not fall within this exception even though they will subsequently enter the mail stream.

(2) Examples of permitted activities are the pickup and carriage of letters which are delivered to post offices for mailing; the pickup and carriage of letters at post offices for delivery to addressees; and the bulk shipment of individually addressed letters ultimately carried by the Postal Service.

(3) The private carriage of letters from branches of an organization to a location for preparation for mailing does not constitute a consolidation. The private carriage of letters from an organization's point of mail delivery to its branches in the locality does not constitute a separation.

[39 FR 33211, Sept. 16, 1974, as amended at 44 FR 52834, Sept. 11, 1979; 45 FR 59873, Sept. 11, 1980]

§ 310.4 Responsibility of carriers.

Private carriers are cautioned to make sure that their carriage of matter is lawful within the definition, exceptions, suspension, and conditions contained in this part and in part 320 of this chapter. They should take reasonable measures to inform their customers of the contents of these regulations so that only proper matter is tendered to them for carriage. Carriers should desist from carrying any matter when the form of shipment, identity of sender or recipient, or any other information reasonably accessible to them indicates that matter tendered to them for carriage is not proper under these regulations.

§ 310.5 Payment of postage on violation.

(a) Upon discovery of activity made unlawful by the Private Express Statutes, the Postal Service may require any person or persons who engage in, cause, or assist such activity to pay an amount or amounts not exceeding the total postage to which it would have been entitled had it carried the letters between their origin and destination.

(b) The amount equal to postage will be due and payable not later than 15 days after receipt of formal demand from the Inspection Service or the Chicago Rates and Classification Service Center (RCSC) unless an appeal is taken to the Judicial Officer Department in accordance with rules of procedure set out in part 959 of this chapter.

(c) Refusal to pay an unappealed demand or a demand that becomes final after appeal will subject the violator to civil suit by the Postal Service to collect the amount equal to postage.

(d) The payment of amounts equal to postage on violation shall in no way limit other actions to enforce the Private Express Statutes by civil or criminal proceedings.

[39 FR 33211, Sept. 16, 1974, as amended at 69 FR 54006, Sept. 7, 2004]

§ 310.6 Advisory opinions.

An advisory opinion on any question arising under this part and part 320 of this chapter may be obtained by writing the Senior Counsel, Ethics and Information, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1127. A numbered series of advisory opinions is available for inspection by the public in the Library of the U.S. Postal Service, and copies of individual opinions may be obtained upon payment of charges for duplicating services.

[69 FR 54006, Sept. 7, 2004]

§ 310.7 Amendment of regulations.

Amendments of the regulations in this part and in part 320 may be made only in accordance with the rulemaking provisions of the Administrative Procedure Act.

[40 FR 23295, May 29, 1975]

PART 320—SUSPENSION OF THE PRIVATE EXPRESS STATUTES

Sec.

320.1 Definitions.
320.2 Suspension for certain data processing materials.
320.3 Operations under suspension for certain data processing materials.

320.4 Suspension for certain letters of college and university organizations.
320.5 Suspension for certain international-ocean carrier-related documents.
320.6 Suspension for extremely urgent letters.
320.7 Suspension for advertisements accompanying parcels or periodicals.
320.8 Suspension for international remailing.
320.9 Revocation or amendment of suspensions.

AUTHORITY: 39 U.S.C. 401, 404, 601–606; 18 U.S.C. 1693–1699.

§ 320.1 Definitions.

The definitions in § 310.1 apply to part 320 as well.[1]

[39 FR 33212, Sept. 16, 1974]

§ 320.2 Suspension for certain data processing materials.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for data processing materials defined in paragraph (c) of this section on the terms detailed in paragraph (b) of this section, subject to the operating requirements in § 320.3.

(b) The suspension referred to in paragraph (a) of this section is for data processing materials conveyed (1) to a data processing center, if carriage is completed within 12 hours or by noon of the addressee's next business day and if data processing work is commenced on such materials within 36 hours of their receipt at the center; or (2) back from the data processing center to the address of the office originating the incoming materials, if carriage is completed within 12 hours or by noon of the addressee's next business day, and if data processing work was commenced on the incoming materials within 36 hours of their receipt at the center. For purposes of the time limitations for completion of delivery referred to in the preceding sentence, delivery of shipments between a domestic point and a foreign point shall be deemed to begin at the time materials of foreign origin are received at the international gateway city or end at the time materials of domestic origin leave the international gateway city. This suspension does not apply to carriages from or to originating offices that are neither part of the firm owning the data processing center nor data processing customers of the firm owning the data processing center.

(c) For purposes of this suspension, (1) ''addressee's next business day'' means the first calendar day, stated in his local time, on which he conducts business, following the calendar day of dispatch, stated in the sender's local time; (2) ''data processing'' means electro-mechanical or electronic processing and includes the recording of data by electro-mechanical or electronic means for further processing; and (3) ''data processing materials'' means materials of all types that are sent exclusively for data processing and are ready for immediate data processing, but only if they are produced recurringly in the course of the normal business operations of the office originating them or receiving them back from the processing center. The performance of clerical work which is merely preparatory and incidental to the commencement of data processing is not, for purposes of this suspension, inconsistent with the requirement that the materials be sent exclusively for data processing and be ready for immediate data processing.

[44 FR 52834, Sept. 11, 1979]

§ 320.3 Operations under suspension for certain data processing materials.

(a) Carriers intending to establish or alter operations based on the suspension granted pursuant to § 320.2 shall, as a condition to the right to operate under the suspension, notify the National Administrator for the Private Express Statutes, U.S. Postal Service, RCSC, 3900 Gabrielle Lane, Rm. 111, Fox Valley, IL 60597–9599, of their intention to establish such operations not later than the beginning of such operations. Such notification, on a form available from the office of the National Administrator for the Private

[1] Several of the items enumerated in § 310.1(a)(7) do not self-evidently lie outside of the definition of ''letter''. To the extent, however, that there is any question whether these items may properly be excluded by definition, the Postal Service has determined by adoption of these regulations that the restrictions of the Private Express Statutes are suspended pursuant to 39 U.S.C. 601(b).

Express Statutes, shall include information on the identity and authority of the carrier and the scope of its proposed operations.

(b) Carriers operating under the suspension granted pursuant to § 320.2 are responsible for making sure that their carriage of matter under the suspension meets all conditions contained in § 320.2. (See § 310.4.) The containers or covers of any matter carried under the suspension must be made available for examination upon request by a properly identified representative of the RCSC. Carrier records—either in the form of notations on the containers or covers of any matter carried under the suspension granted pursuant to § 320.2 or in the form of records kept by employees of the actual times they make delivery or pickup stops—must be sufficient to show that the delivery of such matter was completed within the applicable time limitation prescribed in § 320.2. The provisions of this paragraph shall not restrict the Postal Service in the exercise of search powers conferred upon it by law.

(c) The filing of notifications under this section does not relieve the operator of responsibility for assuring that its operations conform to applicable statutes and regulations.

(d) Failure to comply with the notification requirements of this section and carriage of material or other action in violation of other provisions of this part and of part 310 are grounds for administrative revocation of the suspension as to a particular carrier for a period of not less than one year, in a proceeding instituted by the General Counsel, following a hearing by the Judicial Officer Department in accordance with the rules of procedure set out in part 959 of this chapter.

NOTE: The form referred to in § 320.3 is reproduced below.

NOTICE OF INTENT TO ESTABLISH OPERATIONS UNDER SUSPENSION OF THE PRIVATE EXPRESS STATUTES[1]

(SEE 39 CFR PART 320, SUSPENSION OF THE PRIVATE EXPRESS STATUTES)

Private Carriage of Letters

Name of Carrier _____
Address _____
State of Incorporation _____
Geographical Area To Be Served _____

1. Designate the specific markets or areas in which operations will be conducted.

2. Describe specifically any authorizations issued by local, state, or federal regulatory agencies under which operations will be conducted.

(Signature of Officer)

(Name and Title)

Subscribed and sworn to before me this ____ day of _____, 197____.

Notary Public

Seal

My commission expires _____

(NOTE: False statements contained herein are punishable by law, 18 U.S.C. 1001.)

[39 FR 33212, Sept. 16, 1974; 39 FR 34533, Sept. 26, 1974, as amended at 40 FR 23295, May 29, 1975; 44 FR 52835, Sept. 11, 1979; 69 FR 54006, Sept. 7, 2004]

§ 320.4 Suspension for certain letters of college and university organizations.

The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes to permit colleges and universities to carry in their internal mail systems the letters of their *bona fide* student or faculty organizations to campus destinations. This suspension does not cover the letters of faculty members, students, or organizations other than *bona fide* student or faculty organizations of the carrying college or university. Colleges and universities choosing to provide their student or faculty organizations access to their internal mail systems are responsible

[1] Information relates exclusively to operations under the suspension for data processing materials. This form should be used for an initial notice of operations and for any amendments to the initial or subsequent notices.

for assuring that only letters of *bona fide* student or faculty organizations addressed to campus destinations are carried. (See § 310.4.) For purposes of this suspension, ''internal mail systems'' are those which carry letters on, between, and among the various campuses of a single college or university and which operate in accordance with the *Letters of the carrier* exception in 39 CFR 310.3(b).

[44 FR 52835, Sept 11, 1979]

§ 320.5 Suspension for certain international-ocean carrier-related documents.

The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for documents, sent by a shipper or an ocean carrier from a foreign origin to a United States ocean-carrier port city destination or from a United States ocean-carrier port city origin to a foreign destination, that would be excepted under § 310.3(a) if the documents accompanied the cargo. This suspension covers only shipments to or from ports where the cargo to which the documents relate is actually loaded on, or unloaded from, an ocean vessel. For purposes of this suspension ''foreign origins'' or ''foreign destinations'' means origins or destinations outside the contiguous 48 states.

[44 FR 52835, Sept 11, 1979]

§ 320.6 Suspension for extremely urgent letters.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for extremely urgent letters if the conditions of either paragraph (b) or (c) of this section, and of the other paragraphs of this section, are met.

(b)(1) For letters dispatched within 50 miles of the intended destination, delivery of those dispatched by noon must be completed within 6 hours or by the close of the addressee's normal business hours that day, whichever is later, and delivery of those dispatched after noon and before midnight must be completed by 10 A.M. of the addressee's next business day. For other letters, delivery must be completed within 12 hours or by noon of the addressee's next business day. The suspension is available only if the value or usefulness of the letter would be lost or greatly diminished if it is not delivered within these time limits. For any part of a shipment of letters to qualify under this paragraph (b), each of the letters must be extremely urgent.

(2) Letters sent from the 48 contiguous states of the United States to other jurisdictions of the United States or to other nations are deemed ''delivered'' when they are in the custody of the international or overseas carrier at its last scheduled point of departure from the 48 contiguous states. Letters sent from other jurisdictions of the United States or from other nations into the 48 contiguous states are deemed ''dispatched'' when they are in the custody of the domestic carrier, having been passed by United States Customs, if applicable, at the letters' point of arrival in the 48 contiguous states.

(3) Except as provided in this paragraph (b)(3), the times and time limits specified in paragraph (b)(1) of this section are not applicable to any locations outside the 48 contiguous states. The times and time limits specified in paragraph (b)(1) of this section are applicable to letters dispatched and delivered wholly within Alaska, Hawaii, Puerto Rico or a territory or possession of the United States. The regulations provided in paragraph (b)(2) of this section relating to the delivery and dispatch of letters are applicable by analogy to letters shipped between these jurisdictions and other nations.

(c) It will be conclusively presumed that a letter is extremely urgent and is covered by the suspension if the amount paid for private carriage of the letter is at least three dollars or twice the applicable U.S. postage for First-Class Mail (including priority mail) whichever is the greater. If a single shipment consists of a number of letters that are picked up together at a single origin and delivered together to a single destination, the applicable U.S. postage may be computed for purposes of this paragraph as though the shipment constituted a single letter of the weight of the shipment. If not actually charged on a letter-by-letter or

shipment-by-shipment basis, the amount paid may be computed for purposes of this paragraph on the basis of the carrier's actual charge divided by a *bona fide* estimate of the average number of letters or shipments during the period covered by the carrier's actual charge.

(d) The sender must prominently mark the outside covers or containers of letters carried under this suspension with the words ''Extremely Urgent'' or ''Private Carriage Authorized by Postal Regulations (39 CFR 320.6)'' or with a similar legend identifying the letters as carried pursuant to this suspension. In addition, each outside container or cover must show the name and address of the carrier, and the name and address of the addressee. Carrier records must be sufficient to show that the delivery of the letters was completed within the applicable time limitations, if carried under the authority of paragraph (b) of this section, and must be made available for inspection at the request of the Postal Service. The required records may be either in the form of notations on the containers or covers of any letters asserted to be carried under this suspension, or in the form of records kept by employees of the actual times they pick up and deliver such materials.

(e) Violation by a shipper or carrier of the terms of this suspension is grounds for administrative revocation of the suspension as to such shipper or carrier for a period of one year in a proceeding instituted by the General Counsel, following a hearing by the Judicial Officer Department in accordance with the rules of procedure set out in Part 959 of this chapter. The period of the revocation may be reduced or be extended for not to exceed one additional year by the Judicial Officer, depending on such mitigating or aggravating factors as the extent of the postal revenue lost because of the violation and the presence or absence of good faith error or of previous violations. The failure of a shipper or carrier to cooperate with an authorized inspection or audit conducted by the Postal Inspection Service for the purpose of determining compliance with the terms of this suspension shall be deemed to create a presumption of a violation for the purpose of this paragraph (e) and shall shift to the shipper or carrier the burden of establishing the fact of compliance. Revocation of this suspension as to a shipper or carrier shall in no way limit other actions as to such shipper or carrier to enforce the Private Express Statutes by administrative proceedings for collection of postage (see § 310.5) or by civil or criminal proceedings.

(f) The following examples illustrate the application of this suspension.

Example (1). The headquarters of a city police department each night compiles a list of the license plate numbers and descriptions of automobiles reported stolen within the metropolitan area during the previous 24 hours. This list is delivered by 7 a.m. the following day to each of the local precinct offices located throughout the city. By 9 a.m. that day, the list is circulated for use by law enforcement units operating from each office. Effective police recovery of stolen vehicles depends upon having this information handed out in written form to all units on at least a daily basis. The private carriage of these lists would qualify under the test set in paragraph (b) of this section.

Example (2). The same police department headquarters also from time to time distributes memoranda advising the local precinct officers on departmental policy and vacation schedules, and responding to inquiries from the local precinct offices. Nothing substantial turns on whether these memoranda arrive by midnight or by 10 a.m. of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these memoranda would not qualify under the test set out in paragraph (b) of this section.

Example (3). A health maintenance organization (HMO) operating its own hospital, clinics, and medical laboratory daily sends test samples and specimens from the HMO's hospital and clinics to its medical laboratory in a different location for immediate analysis. In return, the HMO laboratory sends to the HMO's hospital and clinics the laboratory reports for these samples and specimens on the day the reports are completed. The reports are then promptly utilized by the hospital and clinics as part of regular diagnostic procedures. The private carriage of these reports would qualify under the loss-of-value test set out in paragraph (b) of this section.

Example (4). The same HMO's hospital and clinics send requisitions and invoices to the HMO's central office as the need arises for the ordering of and payment for goods and services, which are handled centrally. Every other Friday, the central office sends to the hospital and clinics reports and memoranda

on expenditures for personnel, supplies, utilities, and other goods and services. Nothing substantial turns on whether these materials arrive the same day or by 10 a.m. of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

Example (5). On Sunday, Tuesday, and Thursday evenings, the central office of a regional grocery store chain sends out to its various stores in the area inventory bulletins prepared over the previous 24 hours showing the current availability and prices of meat, produce, dairy products, breadstuffs, frozen foods and similar items. Early the following afternoon, each store must send these inventory bulletins back to the central office with a notation of the store's orders to assure that the central office can ship sufficient supplies of such items for sale by the store on its next business day. The private carriage of these bulletins would qualify under the test set out in paragraph (b) of this section.

Example (6). On Sunday, Tuesday, and Thursday evenings, the central office of a different regional grocery chain sends out to its various stores in the area inventory bulletins showing the current availability and prices of meat, produce, dairy products, breadstuffs, frozen foods and similar items. Early in the afternoon of the second day following receipt of the bulletins, each store sends the bulletins back to the central office so that supplies of such items may be shipped to the store four days later. Nothing substantial turns on whether these bulletins arrive within 12 hours or by noon of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

Example (7). The headquarters office of a large bank each business day prepares and sends to its branch offices lists showing current foreign exchange rates and similar information that must be updated and distributed to the branches on a daily basis in order for the bank to avoid the risk of serious financial loss. Within three hours of their receipt by each branch office, these lists are circulated and utilized by officials of the branch office in conducting regular banking procedures involving the use of such lists. The private carriage of these lists would qualify under the test set out in paragraph (b) of this section.

Example (8). The field office of an insurance company daily sends the insurance applications it has taken in that day to the company's central office. The applications are bound (i.e., constitute evidence of insurance) for 30 days, but may be canceled by the company. Few if any policies have been canceled by the company within 48 hours of their receipt at the central office, though the company normally begins processing the applications soon after their receipt. Nothing substantial turns on whether these bound applications arrive within 12 hours or by noon of the next business day or whether their transmission takes a day or more longer to complete. The private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

Example (9). An organization of real estate brokers in a community issues periodic bulletins containing information about properties which have been listed for sale by the constituent brokers. Each broker is entitled to show the properties to prospective buyers. In order to provide each broker with substantially equal opportunity to secure a buyer, it is necessary that the bulletins be delivered on the same day and within the shortest time span within that day. The bulletins constitute the basic source of information for the brokers and delivery in the foregoing manner is a key element in the functioning of the brokers. The private carriage of the bulletins would therefore qualify under the test set out in paragraph (b) of this section.

Example (10). The same organization distributes memoranda regarding speakers at real estate seminars, sales figures for a given period, and other information of significance and interest to real estate brokers but which does not affect their competitive positions. A failure to make simultaneous or near simultaneous delivery to the brokers, or a failure to make delivery within a specified period of time, has no material bearing upon the day-to-day operations of the brokers and private carriage of these materials would not qualify under the test set out in paragraph (b) of this section.

[44 FR 61181, Oct. 24, 1979]

§ 320.7 Suspension for advertisements accompanying parcels or periodicals.

(a) The operation of 39 U.S.C. 601(a) (1) through (6) and § 310.2(b) (1) through (6) of this chapter is suspended on all post routes for advertisements enclosed with merchandise in parcels or accompanying periodicals under the following circumstances:

(1) The advertisements must not be marked with the names or addresses of the intended recipients.

(2) The advertisements must be incidental to the shipment of the merchandise or the periodical.

(i) An advertisement is incidental to the shipment of the accompanying merchandise or the periodical when the

merchandise or the periodical has been ordered by or would otherwise be sent to the recipient even without the accompanying advertisement.

(ii) Notwithstanding § 320.7(a)(2)(i), an advertisement is not incidental to the merchandise when the pertinent circumstances, such as the nominal value of the merchandise, its shipment on an unsolicited basis, or its status as a sample, reasonably indicate that the shipper's primary purpose is the conveyance of the advertisement itself and that the merchandise is merely an adjunct to the advertisement.

(b) An item is an advertisement if its primary purpose is to cause or induce the purchase of goods or services from the shipper or others.

[45 FR 59874, Sept. 11, 1980]

§ 320.8 Suspension for international remailing.

(a) The operation of 39 U.S.C. 601(a)(1) through (6) and § 310.2(b)(1) through (6) of this chapter is suspended on all post routes to permit the uninterrupted carriage of letters from a point within the United States to a foreign country for deposit in its domestic or international mails for delivery to an ultimate destination outside the United States.

Example (1). The letters to overseas customers of commercial firm A in Chicago are carried by Carrier B to New York where they are delivered to Carrier C for carriage to Europe. Carrier C holds the letters in its distribution center overnight, then sorts them by country of destination and merges them with letters of other firms to those countries before starting the carriage to Europe in the morning. The carriage of firm A's letters is not interrupted. The suspension for international remailing applies to the carriage by Carrier B and by Carrier C.

Example (2). The bills addressed to foreign customers of the Chicago branch office of commercial firm D are carried by Carrier E to New York where they are delivered to the accounting department of firm D's home office. The accounting department uses the information in the bills to prepare its reports of accounts receivable. The bills are then returned to Carrier E which carries them directly to Europe where they are entered into the mails of a foreign country. The carriage of the bills from Chicago to Europe is interrupted in New York by the delivery to firm D's home office. The suspension for international remailing does not apply to the carriage from Chicago to New York. It does apply to the subsequent carriage from New York to Europe.

(b) This suspension shall not permit the shipment or carriage of a letter or letters out of the mails to any foreign country for subsequent delivery to an address within the United States.

Example (1). A number of promotional letters originated by firm F in Los Angeles are carried by Carrier G to Europe for deposit in the mails of a foreign country. Some of the letters are addressed to persons in Europe, some to persons in the United States. The suspension for international remailing does not apply to the letters addressed to persons in the United States.

(c) Violation by a shipper or carrier of the terms of this suspension is grounds for administrative revocation of the suspension as to such shipper or carrier for a period of one year in a proceeding instituted by the General Counsel in accordance with part 959 of this chapter. The failure of a shipper or carrier to cooperate with an inspection or audit authorized and conducted by the Postal Inspection Service for the purpose of determining compliance with the terms of this suspension shall be deemed to create a presumption of a violation for the purpose of this paragraph (c) and shall shift to the shipper or carrier the burden of establishing the fact of compliance. Revocation of this suspension as to a shipper or carrier shall in no way limit other actions as to such shipper or carrier to enforce the Private Express Statutes by administrative proceedings for collection of postage (see § 310.5) or by civil or criminal proceedings.

[51 FR 29638, Aug. 20, 1986]

§ 320.9 Revocation or amendment of suspensions.

These suspensions may be revoked or amended in accordance with § 310.7. No revocation of the suspension provided in § 320.2 will curtail operations of particular carriers existing at the time of the revocation to a level of operations (in dollar or volume terms, whichever is larger) lower than that antedating the revocation in a particular market served prior to the revocation. Should the suspension referred to in § 320.2 be revoked, carriers, as a condition to

continuing operations under this section, will be required to provide reasonably complete and accurate data to support estimates of past operating levels in particular markets.

[44 FR 52835, Sept. 11, 1979. Redesignated at 44 FR 61181, Oct. 24, 1979]

SUBCHAPTER F—PERSONNEL

PART 447—RULES OF CONDUCT FOR POSTAL EMPLOYEES

Subpart A—Applicability and Definitions

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447.12 Definitions.

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447.51 General.
447.52 Holding of State or local office by Postal Service employees.

Subpart F—Bribery, Undue Influence, or Coercion

447.61 General.

AUTHORITY: 39 U.S.C. 401.

SOURCE: 39 FR 1990, Jan. 16, 1974, unless otherwise noted.

Subpart A—Applicability and Definitions

SOURCE: 60 FR 47243, Sept. 11, 1995, unless otherwise noted.

§ 447.11 Applicability.

This part contains rules of conduct for the employees of the Postal Service. Employees are required to comply with the regulations in this part, and violations of the regulations may be cause for disciplinary action. The regulations in this part are in addition to other rules of conduct provided by applicable statutes, regulations, or Postal Service handbooks and manuals. For applicable rules of ethical conduct, employees are referred to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Postal Service regulations supplemental thereto, 5 CFR part 7001.

§ 447.12 Definitions.

The following definitions apply for purposes of this part.

(a) *Postal Service.* The United States Postal Service as established by 39 U.S.C. 201.

(b) *Employee.* An individual appointed to a position, temporary or permanent, within the Postal Service, or hired as an executive under an employment contract, including a substitute or a special employee as defined by 18 U.S.C. 202(a). The term ''employee'' does not include the Governors of the Postal Service.

Subpart B—Employee Conduct

§ 447.21 Prohibited conduct.

(a) An employee must not engage, either on a paid or unpaid basis, in teaching, lecturing, or writing for the purpose of the special preparation of a person or class of persons for an examination of the Office of Personnel Management or Board of Examiners for the Foreign Service, or for appointment in the U.S. Postal Service, when these activities are dependent on information obtained as a result of his or her employment with the Postal Service, except when that information has been made available to the general public, or will be made available on request, or when the Postmaster General gives written authorization that the use of nonpublic information is in the public interest.

(b) No employee shall take sick leave to enable himself to engage in outside work.

(c) No employee while acting in his official capacity shall directly or indirectly authorize, permit, or participate in any action, event or course of conduct which subjects any person to discrimination, or results in any person being discriminated against, on the

basis of race, color, religion, sex, national origin, or age.

(d) No employee shall engage in criminal, dishonest, notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service. Conviction of a violation of any criminal statute may be grounds for disciplinary action by the Postal Service in addition to any other penalty imposed by or pursuant to statute.

(e) No employee shall habitually use intoxicating beverages to excess. No employee shall drink beer, wine, or other intoxicating beverages while on duty. No employee shall begin work or return to duty while intoxicated. No employee shall drink intoxicating beverages in a public place while in uniform. Unless the Postmaster General specifically authorizes an exception (as in the case, for example, of an official reception) no employee shall have or bring any container of beer, wine, or other intoxicating beverage on premises occupied by a postal facility, whether or not the container has been opened.

(f) Illegal use of drugs may be grounds for removal from the Postal Service.

(g) No employee while on property owned or leased by the Postal Service or the United States or while on duty, shall participate in any gambling activity, including the operation of a gambling device, in conducting or acting as an agent for a lottery or pool, in conducting a game for money or property, or in selling or purchasing a numbers slip or ticket.

NOTE: Paragraph (g) of this section does not prohibit participation in activities specified herein if participation is necessitated by an employee's law enforcement duties, or if participation is in accordance with section 3 of Executive Order No. 10927, of March 18, 1961, relating to agency-approved solicitations.

[39 FR 1990, Jan. 16, 1974; 39 FR 3677, Jan. 28, 1974, as amended at 48 FR 48231, Oct. 18, 1983. Redesignated and amended at 60 FR 47244, Sept. 11, 1995]

Subpart C—Ethical Conduct Advisory Services and Post-Employment Activities

§ 447.31 Advisory service.

(a) The Ethical Conduct Officer is responsible for the administration of the ethics program of the Postal Service. In the exercise of that responsibility, the Ethical Conduct Officer shall coordinate the advisory service provided by this section, assure that authoritative interpretations of the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) and Supplemental Postal Service Regulations (Supplemental Regulations) are available to the Associate Ethical Conduct Officers, and render final rulings on behalf of the Postal Service in appeals by employees from rulings under the Standards and Supplemental Regulations made by an agency designee. The Ethical Conduct Officer shall provide advice and guidance for the Postmaster General and all Associate Ethical Conduct Officers concerning questions arising under the Standards and Supplemental Regulations. The Ethical Conduct Officer may delegate to an Assistant Ethical Conduct Officer authority to perform any duty or function vested in him or her by this Section. The General Counsel is the Ethical Conduct Officer of the Postal Service and the Designated Agency Ethics Official for purposes of the Ethics in Government Act, as amended, and implementing regulations of the Office of Government Ethics, including 5 CFR part 2638.

(b) The Deputy Postmaster General is the Associate Ethical Conduct Officer for the Office of the Postmaster General and the Office of the Deputy Postmaster General. The Chief Operating Officer, Senior Vice Presidents, Vice Presidents, and such other persons as the Ethical Conduct Officer may designate are Associate Ethical Conduct Officers for their respective organizational elements. Each Associate Ethical Conduct Officer shall designate a suitable employee to coordinate the ethics program within his or her organization and to act as liaison with the Ethical Conduct Officer. Each Associate may designate other suitable employees to assist or act for him or

her and shall ensure that there is an adequate number of Qualified Ethics Trainers to comply with the requirements of the annual ethics training program.

(c) The Ethical Conduct Officer and, with his or her approval, Associate Ethical Conduct Officers, may delegate to additional persons or classes of persons the authority to make determinations, to give approval, or to take other action in accordance with the Standards of Ethical Conduct, as is contemplated by 5 CFR 2635.102(b), defining ''agency designee.''

(d) An employee may obtain advice and guidance on questions of conflicts of interest from the Ethical Conduct Officer or the Associate Ethical Conduct Officer having appropriate jurisdiction. In order to avoid undue interference with established grievance and disciplinary procedures, advisory service under this subpart will not normally be available in an instance in which a grievance is pending or disciplinary action has been initiated.

(e) An employee may request any ruling provided for by the Standards and Supplemental Regulations by submitting a request in writing to the Senior Counsel, Ethics, or, in the field, to the Chief Field Counsel or Deputy Chief Field Counsel, General Law.

(f) An employee may appeal to the Ethical Conduct Officer from a ruling made by an agency designee concerning matters covered by the Standards and Supplemental Regulations within 30 days from the date of the ruling. The appeal must be in writing and must contain a full statement of the relevant facts. It should be addressed to the Ethical Conduct Officer, U.S. Postal Service, Washington, DC 20260, and a copy thereof should be sent to the official whose ruling is being appealed.

[60 FR 47244, Sept. 11, 1995]

§ 447.32 Post-employment activities.

(a) Restrictions on the post-employment activities of persons who have been employed by the Postal Service are imposed by 18 U.S.C. 207. The Ethics Reform Act of 1989 includes amendments to 18 U.S.C. 207, which became effective January 1, 1991. Employees who terminated their employment prior to January 1, 1991, are subject to the restrictions imposed under 18 U.S.C. 207 in effect prior to that date, while all other employees are subject to the restrictions imposed under 18 U.S.C. 207 as amended.

(b) The Office of Government Ethics has issued regulations, contained in 5 CFR part 2637, that implement 18 U.S.C. 207 as in effect prior to January 1, 1991. Employees who terminated their employment with the Postal Service prior to January 1, 1991, may refer to 5 CFR part 2637 for guidance concerning applicable post-employment restrictions, and further guidance may be obtained in accordance with § 447.31 of this part.

(c) Employees who terminate their postal employment on or after January 1, 1991, are subject to 18 U.S.C. 207 as amended. Guidance concerning post-employment restrictions applicable to such employees may be obtained in accordance with § 447.31 of this part.

[60 FR 47244, Sept. 11, 1995]

Subpart D—Political Activities

§ 447.41 General.

(a) Postal Service employees, except those mentioned in paragraph (b) of this section, are subject, at all times to restrictions on their participation in political activity (5 U.S.C. subchapter III of chapter 73, and 18 U.S.C. 602, 603, and 607), and to the regulations issued by the Office of Personnel Management relating thereto.

(b) Those Postal Service employees who are employed on an irregular or occasional basis; e.g., experts and consultants, substitute rural carriers, others on a per diem basis, and without compensation or when actually employed employees, are subject to the restrictions mentioned in paragraph (a) of this section only while in an active duty status and only for the entire 24 hours of any day of actual employment. Notwithstanding this paragraph, full-time employees in a leave status and part-time employees are fully subject to the restrictions of paragraph (a) of this section.

[39 FR 1990, Jan. 16, 1974, as amended at 48 FR 48231, Oct. 18, 1983. Redesignated at 60 FR 47245, Sept. 11, 1995]

§ 447.42 Additional prohibited political activities.

(a) In addition to the restrictions on political activities mentioned in § 447.51, an employee may not:

(1) Display a political picture or sticker on property owned or leased by the Postal Service. He is not forbidden by this paragraph, however, from displaying a picture, including a personally autographed picture of a political figure in his office or place of work if it has no language in the nature of political campaigning;

(2) Wear a political badge or button while in uniform or while on duty when that duty requires him to deal with the public or be in the view of the public;

(3) Display a political picture or sticker on his private vehicle while that vehicle is being used for official postal purposes.

[39 FR 1990, Jan. 16, 1974. Redesignated at 60 FR 47245, Sept. 11, 1995]

§ 447.43 Investigation and enforcement.

The Office of the Special Counsel and the Merit Systems Protection Board investigate and adjudicate allegations of political activity in violation of the regulations of the Office of Personnel Management by Postal Service employees. For jurisdiction in such a case, see 5 CFR 734.102 and part 1201.

[60 FR 47245, Sept. 11, 1995]

Subpart E—Participation in Community Affairs

§ 447.51 General.

An employee is permitted to participate in community affairs to the extent consistent with the proper performance of his postal duties and with applicable laws and regulations. Nothing in this section shall prevent an employee from serving as an official of a religious or fraternal organization or of a civil nonpolitical organization which is supported by dues or contributions from its own members.

[39 FR 1990, Jan. 16, 1974. Redesignated at 60 FR 47245, Sept. 11, 1995]

§ 447.52 Holding of State or local office by Postal Service employees.

(a) An employee may seek, accept, or hold a nonpartisan State or local office subject to the provisions of this Code and in particular this section. A ''nonpartisan'' office is one filled by a ''nonpartisan election'', which is an election at which none of the candidates are to be nominated or elected as representing a political party any of whose candidates for presidential elector received votes in the last preceding election at which presidential electors were selected.

(b) An employee who wishes to seek, accept, or hold a nonpartisan State or local office is responsible for ascertaining:

(1) Whether the office is ''nonpartisan'' within the definition in § 447.62(a).

(2) Whether State or local law permits a Postal Service employee to seek, accept, or hold the particular office.

(3) Whether the duties of the office would result in a conflict with his Postal Service employment.

(4) Whether the discharge of the duties of the office would interfere with the performance by the particular employee of his Postal Service duties in an acceptable manner or would interfere with the performance by other Postal Service employees of their respective duties in an acceptable manner.

(c) An employee is encouraged to seek advice from his Associate Ethical Conduct Counselor prior to taking any action to seek, accept, or hold a State or local office. If, after the employee has entered upon the discharge of the duties of this non-postal office, his non-postal duties interfere with the proper discharge of postal duties, either by him or by other postal employees, the employee holding the non-postal office shall be advised by his superior to eliminate the interference, either by resignation from the non-postal office, or in such other manner as is appropriate under the circumstances. If the employee fails, refuses, or neglects to comply with the foregoing advice and the interference continues, he will be subject to disciplinary proceedings.

(d) Employees, other than postmasters or acting postmasters in a salary level of EAS–25 or higher, may be granted permission to campaign for a full-time State or local nonpartisan office while on annual leave or on authorized leave without pay during the campaign when:

(1) The criteria in paragraphs (b) (1) and (2) of this section are met, and

(2) The Vice President, Area Operations, determines that the employee's postal responsibilities are being conducted in a satisfactory manner and that the absence of the employee during the campaign period will not disrupt the operation of the facility where he or she is employed.

NOTE: Requests shall be submitted through the postmaster or other installation head to the Vice President, Area Operations. If the employee is elected to and takes such a full-time office, he or she may either be separated from the Postal Service or granted leave without pay.

(e) A postmaster or acting postmaster in salary level EAS–25 or higher shall not be authorized to take annual leave or leave without pay for the purpose of campaigning for a full-time State or local nonpartisan office.

[39 FR 1990, Jan. 16, 1974, as amended at 48 FR 48231, Oct. 18, 1983. Redesignated and amended at 60 FR 47245, Sept. 11, 1995]

Subpart F—Bribery, Undue Influence, or Coercion

§ 447.61 General.

(a) An employee shall report immediately to the General Counsel, U.S. Postal Service, Washington, DC 20260:

(1) Any instance in which a person either within or outside the Postal Service uses or attempts to use a bribe, undue influence, or coercion to induce or attempt to induce the employee to act or neglect to act in regard to his official responsibilities; and

(2) Any information that causes him to believe that there has been a violation of a Federal criminal statute or any law or regulation directly or indirectly related to the responsibilities of the Postal Service. A copy of a report made under this paragraph shall also be sent by the employee to the Chief Postal Inspector, Washington, DC 20260. The report shall be sent in a sealed envelope clearly marked ''Limited Official Use—To Be Opened by Addressee Only''.

[39 FR 1990, Jan. 16, 1974. Redesignated at 60 FR 47245, Sept. 11, 1995]

PART 491—GARNISHMENT OF SALARIES OF EMPLOYEES OF THE POSTAL SERVICE AND THE POSTAL RATE COMMISSION

Sec.

491.1 Authorized Agent to receive service.
491.2 Manner of service.
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491.4 Identification of employees.
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491.8 Execution of process.
491.9 Restrictions on garnishment.

AUTHORITY: 5 U.S.C. 5520a; 39 U.S.C. 401; E.O.12897, 59 FR 5517, 3 CFR, 1994 Comp., p. 858.

SOURCE: 63 FR 67403, Dec. 7, 1998, unless otherwise noted.

§ 491.1 Authorized Agent to receive service.

Notwithstanding the designation, in § 2.2 of this chapter, of the General Counsel as agent for the receipt of legal process against the Postal Service, the sole agent for service of garnishment process directed to the pay of Postal Service employees and employees of the Postal Rate Commission (''employees'') is the Manager, Payroll Processing Branch, 2825 Lone Oak Parkway, Eagan, MN 55121–9650 (''Authorized Agent''). The Authorized Agent shall have sole authority to receive service of legal process in the nature of garnishment (hereinafter sometimes referred to as ''process'') arising under the law of any state, territory, or possession, or the order of a court of competent jurisdiction of any state, territory, or possession (including any order for child support and alimony or bankruptcy). The Authorized Agent may not receive or transmit service of process in a private legal matter on behalf of an employee. No process shall be effectively served until it is received by the Authorized Agent or his designee. No other employee shall have the authority to accept service of such

process. Service of process in conformity with Rule 4(i) of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) is not waived for any suit or action wherein the Postal Service, its officers, or employees are parties. Any Order, issued in bankruptcy, for the withholding of sums from pay due an employee and which is directed to the Postal Service for handling outside the voluntary allotment procedure, is legal process subject to the provisions of these regulations.

§491.2 Manner of service.

Service of process on the Authorized Agent or his designee may be made in person or by certified or registered mail, with return receipt requested, at the address of the Authorized Agent. Service may also be made on the Authorized Agent by means of any private delivery service pursuant to its authority for the private carriage of letters under an exception to the Private Express Statutes, 39 U.S.C. 601–606, provided that the private delivery organization issues a receipt bearing the name and address of both the addressee and sender, as well as the date of delivery and the signature of the receiving agent. No garnishment is effectively served until it is received by the Authorized Agent or his designee regardless of the chosen mode of delivery. Process addressed to, delivered to, or in any manner given to any employee, other than the Authorized Agent or his designee, may, at the sole discretion of the employee, be returned to the issuing court marked ''Not Effectively Served.'' A copy of or reference to these regulations may be included. Employees are not authorized to redirect or forward garnishment process to the Authorized Agent. In the event that the address of the Authorized Agent is changed, mail may be forwarded from his last published address to his new official address until such time as these regulations are amended to reflect the new address.

§491.3 Sufficient legal form.

No document purporting to garnish employee wages shall be deemed sufficient unless it can be determined from the face of the document that it is legal process in the nature of garnishment; that it is issued by a court of competent jurisdiction or an authorized official pursuant to an order of such a court or pursuant to federal, state or local law, evidenced by a signature of the issuing person; and that it contains the name of the garnished party, with his or her social security number, orders the employing agency to withhold from pay a specific amount of money, specifically describes the judgment of debt or administrative action complete with statutory citation and contains specific advice as to where to send the funds as they are periodically withheld including the complete Zip Code (Zip + 4). When there is a suggestion that the employee is under the jurisdiction of a bankruptcy proceeding, the creditor must provide documentary evidence to prove that his legal process is not in violation of the bankruptcy court's jurisdiction before the creditor's garnishment may be processed. Documents deficient in any of these respects may be returned to the issuing court or authorized official inscribed ''Insufficient as to legal form.''

§491.4 Identification of employees.

Garnishments must be accompanied by sufficient information to permit prompt identification of the employee and the payments involved. Garnishment of an employee whose name and social security number is similar to but not identical with the name and social security number on the garnishment will not be processed. An exact match of both name and social security number is required in order to permit processing; otherwise, the garnishment will be returned marked ''Insufficient identifying information.'' Garnishments which are insufficient in regard to identifying information will not be held pending receipt of further information and must be served again when the proper information is obtained.

§491.5 Costs.

The Postal Service's administrative costs in executing the garnishment action shall be added to each garnishment and the costs recovered shall be retained as offsetting collections. The Postal Service reserves the right to redetermine the administrative cost of

any garnishment if, in administering any garnishment, extra costs beyond those normally encountered are incurred, and add the extra cost to each garnishment. The extra costs recovered shall be retained as offsetting collections.

§ 491.6 Response to process.

(a) Within fifteen days after receipt of process that is sufficient for legal form and contains sufficient information to identify the employee, the Authorized Agent shall send written notice that garnishment process has been served, together with a copy thereof, to the affected employee at his or her duty station or last known address. The Authorized Agent shall respond, in writing, to the garnishment or interrogatories within thirty days of receipt of process. The Authorized Agent may respond within a longer period of time as may be prescribed by applicable state Law. Neither the Authorized Agent nor any employee shall be required to respond in person to any garnishment served according to the provisions of 5 U.S.C. 5520a and the regulations in this section. A sufficient response to legal process shall consist of any action of the Postal Service consistent with these regulations. The action shall be considered to be given under penalty of perjury and shall constitute a legally sufficient answer to any garnishment. The Postal Service may, in its sole discretion, answer or otherwise respond to documents purporting to be legal process which are insufficient as to the manner of service, insufficient as to the identification of the employee, insufficient as to legal form or insufficient for any other reason.

(b) The requirements of paragraph (a) of this section are illustrated by the following example:

Example: Each periodic check with the accompanying Financial Institution Statement shall be considered to be a legally sufficient answer. Where legal process has been processed but no money was deducted, (for the reason of insufficient pay, prior garnishment in force, etc.) the mailing label or other written response shall be a sufficient answer. Where the Postal Service sends a check or mailing label, no further action will be required (such as a cumulative report or notarized statement.) Documents which are defective with respect to service, lack of legal sufficiency, failure to properly identify the employee, or other reason, do not require a response or an answer but if the Postal Service chooses to act in any way, such as to return the document, that act shall be a sufficient answer.

§ 491.7 Release of information.

(a) No employee whose duties include responding to interrogatories to garnishments shall release information in response to a garnishment until it is determined that sufficient information, as required in § 491.4, has been received in writing as part of the garnishment legal process. The Authorized Agent may, at his or her sole discretion, accept or initiate telephone or telefax inquiries concerning garnishments. No other employee may release any information about employees except in conformity with the Privacy Act of 1974, 5 U.S.C. 552a, and the regulations in 39 CFR Part 266, ''Privacy of Information.''

(b) The Authorized Agent's response to legal process is sufficient if it contains only that information not otherwise protected from release by any federal statute including the Privacy Act. Neither the Postal Service nor the Postal Rate Commission shall be required to provide formal answers to interrogatories received prior to the receipt of legal process. Employment verification may be obtained by accessing the Postal Service's employment verification system by dialing 1–(800) 276–9850.

§ 491.8 Execution of process.

(a) All legal process in the nature of garnishment shall be date and time stamped by the Authorized Agent when received for the purpose of determining the order of receipt of process which is sufficient as to legal form and contains sufficient information for identification of the employee, the Authorized Agent's date and time stamp shall be conclusive evidence. Child support and alimony garnishments will be accorded priority over commercial garnishments under 5 U.S.C. 5520a as provided in 5 U.S.C. 5520a(h)(2). Garnishments shall be executed provided that the pay cycle is open for input or, if closed, will be held until the next cycle. In no event shall the Postal Service be required to

vary its normal pay or disbursement cycles in order to comply with legal process of any kind. Garnishments shall be recalculated, if required, to fit within the normal postal pay cycles. The Postal Service shall not be required to withhold pay and hold the funds in escrow. The Postal Service, in its sole discretion, may process more than one garnishment at a time within the restrictions on garnishments in Section 491.9 of these regulations. The Postal Service may, in its sole discretion, accept and hold for processing garnishments received after the garnishment currently in force.

(b) The Postal Service will only accept and effectuate legal process for a person who is currently employed. Upon cessation of employment, process relating to that individual will be terminated and not retained. The Postal Service shall not be required to establish an escrow account to comply with legal process even if the applicable law of the jurisdiction requires private employers to do so. Legal process must state on its face that the Postal Service withhold up to a specific total amount of money, the Postal Service will not calculate interest, charges, or any variable in processing a garnishment. The Postal Service may continue processing a garnishment if the garnishing attorney provides the adjusted total including the additional money owed, as determined from his calculation of the variable amounts. The attorney is deemed to certify on his professional responsibility that the calculations are correct and will indemnify the employee directly for any errors. All garnishments of periodic pay may be effectuated in accordance with the bi-weekly pay schedule. The Postal Service need not vary its pay and disbursement cycles to accommodate withholding on any other cycle.

(c) Neither the Postal Service, the Postal Rate Commission nor any disbursing officer shall be liable for any payment made from moneys due from, or payable by the Postal Service or the Postal Rate Commission to any individual pursuant to legal process regular on its face.

(d) The Postal Service, the Postal Rate Commission, any disbursing officer or any other employee shall not be liable to pay money damages for failure to comply with legal process.

§491.9 Restrictions on garnishment.

Garnishments under this section shall be subject to the restrictions in 15 U.S.C. 1671–1677, including limits on the amounts which can be withheld from an employee's pay and the priority of garnishments.

SUBCHAPTER G—POSTAGE PROGRAMS

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

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AUTHORITY: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); 5 U.S.C. App. 3.

SOURCE: 71 FR 65733, Nov. 9, 2006, unless otherwise noted.

§ 501.1 Definitions.

(a) *Postage Evidencing Systems* regulated by part 501 produce evidence of prepayment of postage by any method other than postage stamps and permit imprints. A Postage Evidencing System is a device or system of components that a customer uses to generate and print evidence that postage required for mailing has been paid. Postage Evidencing Systems print indicia, such as meter imprints or information-based indicia to indicate postage payment. They include but are not limited to postage meters and PC Postage systems.

(b) A *postage meter* is a Postal Service-approved Postage Evidencing System that uses a device to account for postage purchased and printed. The term *meter* as used in this part refers to a postage meter.

(c) *PC Postage products* are Postal Service-approved Postage Evidencing Systems that use a personal computer as an integral part of the system. PC Postage products may use the Internet to download postage to a mailer's computer from which the postage indicia may then be printed.

(d) A *provider* is a person or entity authorized under this section to manufacture and/or distribute Postage Evidencing Systems to customers.

(e) A *manufacturer* of postage meters produces postage meters.

(f) A *distributor* of postage meters may be a manufacturer who leases postage meters directly to end-user customers or may be an independent entity who leases postage meters to end-user customers on behalf of the manufacturer.

(g) A *customer* is a person or entity authorized by the Postal Service to use a Postage Evidencing System in accordance with *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) 604 Postage Payment Methods, 4.0 Postage Meters and PC Postage Products (Postage Evidencing Systems).

§ 501.2 Postage Evidencing System provider authorization.

(a) The Postal Service considers Postage Evidencing Systems and their respective infrastructure to be essential to the exercise of its specific powers to prescribe postage and provide evidence of payment of postage under 39 U.S.C. 404(a)(2) and (4).

(b) Due to the potential for adverse impact upon Postal Service revenue, the following activities may not be engaged in by any person or entity without prior, written approval of the Postal Service:

(1) Producing or distributing any Postage Evidencing System that generates U.S. postage.

(2) Repairing, distributing, refurbishing, remanufacturing, modifying, or destroying any component of a Postage Evidencing System that accounts for or authorizes the printing of U.S. postage.

(3) Owning or operating an infrastructure that maintains operating data for the production of U.S. postage, or accounts for U.S. postage purchased for distribution through a Postage Evidencing System.

(4) Owning or operating an infrastructure that maintains operating data that is used to facilitate registration with the Postal Service of customers of a Postage Evidencing System.

(c) Any person or entity seeking authorization to perform any activity described in paragraph (b) of this section, or to materially modify any activity previously approved by the Postal Service, must submit a request to the Postal Service in person or in writing. Decisions of the Postal Service upon such requests are effective only if in writing (including electronic mail).

(d) Approval shall be based upon satisfactory evidence of the applicant's integrity and financial responsibility, commitment to the security of the Postage Evidencing System, and a determination that disclosure to the applicant of Postal Service customer, financial, or other data of a commercial nature necessary to perform the function for which approval is sought would be appropriate and consistent with good business practices within the meaning of 39 U.S.C. 410(c)(2). The Postal Service may condition its approval upon the applicant's agreement to undertakings that would give the Postal Service appropriate assurance of the applicant's ability to meet its obligations under this section, including but not limited to the method and manner of performing certain financial, security, and servicing functions and the need to maintain sufficient financial reserves to guarantee uninterrupted performance of not less than 3 months of operation.

(e) Qualification and approval may be based upon additional conditions agreed to by the Postal Service and the applicant. The applicant is approved in writing to engage in the function(s) for which authorization was sought and approved.

(f) To the extent that any provider manufactures and/or distributes any PC Postage product through any authorized Postage Evidencing System, such provider must adhere to the requirements of these regulations.

(g) The Postal Service office responsible for administration of this Part 501 is the office of Postage Technology Management (PTM) or successor organization. All submissions to the Postal Service required or invited by this Part 501 are to be made to this office in person or via mail to 475 L'Enfant Plaza SW, North Building Suite 4200, Washington, DC 20260–4200. Information updates may be found on the Postal Service Web site at *http://www.usps.com/postagesolutions/flash.htm*.

§ 501.3 Postage Evidencing System provider qualification.

Any person or entity seeking authorization to manufacture and/or distribute Postage Evidencing Systems must:

(a) Satisfy the Postal Service of its integrity and financial responsibility.

(b) Obtain Postal Service approval under this part of at least one Postage Evidencing System satisfying the requirements of Postal Service regulations.

(c) As a condition of obtaining authorization under this section, the Postage Evidencing System provider's facilities used for the manufacture, distribution, storage, resetting, or destruction of postage meters and all facilities housing infrastructure supporting Postage Evidencing Systems will be subject to unannounced inspection by representatives of the Postal Service. If such facilities are outside the continental United States, the provider will be responsible for all reasonable and necessary travel-related costs incurred by the Postal Service to conduct the inspections. Travel-related costs are determined in accordance with Postal Service Handbook F–15, *Travel and Relocation*. At its discretion, the Postal Service may continue to fund routine inspections outside the

continental United States as it has in the past, provided the costs are not associated with particular security issues related to a provider's Postage Evidencing System or supporting infrastructure, or with the start-up or implementation of a new plant or of a new or substantially changed manufacturing process.

(1) When conducting an inspection outside the continental United States, the Postal Service will make every effort to combine the inspection with other inspections in the same general geographic area in order to enable affected providers to share the costs. The Postal Service team conducting such inspections will be limited to the minimum number necessary to conduct the inspection. All air travel will be contracted for at the rates for official government business, when available, under such rules respecting class of travel as apply to those Postal Service representatives inspecting the facility at the time the travel occurs.

(2) If political or other impediments prevent the Postal Service from conducting security evaluations of Postage Evidencing System facilities in foreign countries, Postal Service approval of the activities conducted in such facilities may be suspended until such time as satisfactory inspections may be conducted.

(d) Have, or establish, and keep under its active supervision and control adequate facilities for the control, distribution, and maintenance of Postage Evidencing Systems and their replacement or secure disposal or destruction when necessary and appropriate.

§ 501.4 Changes in ownership or control, bankruptcy, or insolvency.

(a) Any person or entity authorized under § 501.2 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in its ownership or control including changes in the ownership of an affiliate which exercises control over its Postage Evidencing System operations in the United States. A change of ownership or control within the meaning of this section includes entry into a strategic alliance or other agreement whereby a third party either has access to data related to the security of the system or is a competitor to the Postal Service. Any person or entity seeking to acquire ownership or control of a person or entity authorized under § 501.2 must provide the Postal Service satisfactory evidence that upon completion of the contemplated transaction, it will satisfy the conditions for approval stated in § 501.2. Early notification of a proposed change in ownership or control will facilitate expeditious review of an application to acquire ownership or control under this section.

(b) Any person or entity authorized under § 501.2 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in the status of its financial condition either through bankruptcy, insolvency, assignment for the benefit of creditors, or other similar financial action. Any person or entity authorized under § 501.2 who experiences a change in the status of its financial condition may, at the discretion of the Postal Service, have its authorization under § 501.2 modified or terminated.

§ 501.5 Burden of proof standard.

The burden of proof is on the Postal Service in administrative determinations of suspension and revocation under § 501.6 and administrative sanctions under § 501.12. Except as otherwise indicated in those sections, the standard of proof shall be the preponderance-of-evidence standard.

§ 501.6 Suspension and revocation of authorization.

(a) The Postal Service may suspend and/or revoke authorization to manufacture and/or distribute any or all of a provider's approved Postage Evidencing System(s) if the provider engages in any unlawful scheme or enterprise, fails to comply with any provision in this Part 501, fails to implement instructions issued in accordance with any final decision issued by the Postal Service within its authority over Postage Evidencing Systems or if the Postage Evidencing System or infrastructure of the provider is determined to constitute an unacceptable risk to Postal Service revenues.

(b) The decision to suspend or revoke pursuant to paragraph (a) of this section shall be based upon the nature and circumstances of the violation (*e.g.* whether the violation was willful, whether the provider voluntarily admitted to the violation, or cooperated with the Postal Service, whether the provider implemented successful remedial measures) and on the provider's performance history. Before determining that a provider's authorization to manufacture and/or distribute Postage Evidencing Systems should be suspended or revoked, the procedures in paragraph (c) of this section shall be followed.

(c) Suspension or revocation procedures:

(1) Upon determination by the Postal Service that a provider is in violation of provisions of this Part 501, or that its Postal Evidencing System poses an unreasonable risk to postal revenue, PTM, acting on behalf of the Postal Service shall issue a written notice of proposed suspension citing the specific conditions or deficiencies for which suspension of authorization to manufacture and/or distribute a specific Postage Evidencing System or class of Postage Evidencing Systems may be imposed. Except in cases of willful violation, the provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential revenue risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the provider has failed to correct cited deficiencies within the specified time limit, PTM shall issue a written notice of suspension setting forth the facts and reasons for the decision to suspend and the effective date if a written defense is not presented as provided in paragraph (d) of this section.

(3) The notice shall also advise the provider of its right to file a response under paragraph (d) of this section. If a written response is not presented in a timely manner the suspension may go into effect. The suspension shall remain in effect for ninety (90) calendar days unless revoked or modified by PTM.

(4) If, upon consideration of the defense as provided in paragraph (d) of this section, the Postal Service deems that the suspension is warranted, the suspension shall remain in effect for up to 90 days unless withdrawn by the Postal Service, as provided in paragraph (c)(5)(iii) of this section.

(5) At the end of the ninety (90) day suspension, the Postal Service may:

(i) Extend the suspension in order to allow more time for investigation or to allow the provider time to correct the problem.

(ii) Make a determination to revoke authorization to manufacture and/or distribute a Postage Evidencing System in part or in whole.

(iii) Withdraw the suspension based on identification and implementation of a satisfactory solution to the problem.

(d) The provider may present the Postal Service with a written defense to any suspension or revocation determination within thirty (30) calendar days of receiving the written notice (unless a shorter period is deemed necessary). The defense must include all supporting evidence and state with specificity the reasons why the order should not be imposed.

(e) After receipt and consideration of the defense, PTM shall advise the provider of its decision and the facts and reasons for it. The decision shall be effective on receipt unless provided otherwise. The decision shall also advise the provider that it may be appealed within thirty (30) calendar days of receipt (unless a shorter time frame is deemed necessary). If an appeal is not filed in a timely manner, the decision of PTM shall become a final decision of the Postal Service. The appeal may be filed with the Chief Marketing Officer of the Postal Service and must include all supporting evidence and state with specificity the reasons the provider believes that the decision is erroneous. The decision of the Chief Marketing Officer shall constitute a final decision of the Postal Service.

(f) An order or final decision under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal

Service, the United States, or any other person or entity.

§ 501.7 Postage Evidencing System requirements.

(a) A Postage Evidencing System submitted to the Postal Service for approval must meet the requirements of the Performance Criteria for Information-Based Indicia and Security Architecture for Open IBI Postage Evidencing Systems or Performance Criteria for Information-Based Indicia and Security Architecture for Closed IBI Postage Metering Systems published by PTM. The current versions of the Performance Criteria may be found on the Postal Service Web site at *http://www.usps.com/postagesolutions/programdoc.html* or requests for copies may be submitted via mail to the address in § 501.2(g).

(b) The provider must affix to all meters a cautionary message providing the meter user with basic reminders on leasing and meter movement.

(1) The cautionary message must be placed on all meters in a conspicuous and highly visible location. PROPERTY OF [NAME OF PROVIDER] as well as the provider's toll-free number must be emphasized by capitalized bold type and preferably printed in red. The minimum width of the message should be 3.25 inches, and the minimum height should be 1.75 inches. The message should read as follows:

RENTED POSTAGE METER-NOT FOR SALE
PROPERTY OF [NAME OF PROVIDER]
(800) ###–####

Use of this meter is permissible only under U.S. Postal Service authorization. Call [Name of Provider] at (800) ###–#### to relocate/return this meter.

WARNING! METER TAMPERING IS A FEDERAL OFFENSE.
IF YOU SUSPECT METER TAMPERING, CALL POSTAL INSPECTORS AT (800) 372–8347

REWARD UP TO $50,000 for information leading to the conviction of any person who misuses postage meters resulting in the Postal Service not receiving correct postage payments.

(2) Exceptions to the formatting of the required message are determined on a case-by-case basis. Any deviation from standardized meter message requirements must be approved in writing by the Postal Service.

(c) The provider must ensure that any matter printed by a postage evidencing system, whether within the boundaries of the indicia or outside the clear zone as defined in DMM 604.4.0 and the Performance Criteria for Information-Based Indicia and Security Architecture for Open IBI Postage Evidencing Systems or Performance Criteria for Information-Based Indicia and Security Architecture for Closed IBI Postage Metering Systems, is:

(1) Consistent with the Postal Service's intent to maintain neutrality on religious, social, political, legal, moral, or other public issues;

(2) Is not obscene, deceptive, or defamatory of any person, entity, or group, and does not advocate unlawful action;

(3) Does not emulate any form of valid postage, government, or other official indicia, or payment of postage; and

(4) Does not harm the public image, reputation, or good will of the Postal Service and is not otherwise derogatory or detrimental to the interests of the Postal Service.

(d) Providers must also ensure that customers acknowledge, agree, and warrant in writing that:

(1) The customer bears full responsibility and liability for obtaining authorization to reproduce and otherwise use the matter as proposed (including, without limitation, any trademarks, slogans, likenesses or copyrighted material contained in the image);

(2) The customer in fact has the legal authority to reproduce and otherwise use the matter as proposed; and

(3) The customer understands that images or other matter is not provided, approved, or endorsed in any way by the Postal Service.

§ 501.8 Postage Evidencing System test and approval.

(a) To receive Postal Service approval, each Postage Evidencing System must be submitted by the provider and evaluated by the Postal Service in accordance with the Postage Evidencing Product Submission Procedures published by PTM. The current version of the Product Submission Procedures

may be found on the Postal Service Web site at *http://www.usps.com/postagesolutions/programdoc.html* or requests for copies may be submitted via mail to the address in 501.2(g). These procedures apply to all proposed Postage Evidencing Systems regardless of whether the provider is currently authorized by the Postal Service to distribute Postage Evidencing Systems. All testing required by the Postal Service will be an expense of the provider.

(b) As provided in § 501.11, the provider has a duty to report security weaknesses to the Postal Service to ensure that each approved Postage Evidencing System protects the Postal Service against loss of revenue at all times. A grant of approval of a system does not constitute an irrevocable determination that the Postal Service is satisfied with the revenue-protection capabilities of the system. After approval is granted to manufacture and/or distribute a Postage Evidencing System, no change affecting its basic features or safeguards may be made except as authorized or ordered by the Postal Service in writing.

§ 501.9 Demonstration or test Postage Evidencing Systems.

(a) A demonstration or test postage evidencing system is any system that produces an image that replicates a postage indicium for which the Postal Service has not received payment for postage. The following procedures must be followed to implement controls over demonstration or test Postage Evidencing Systems:

(1) A demonstration or test Postage Evidencing System may print only specimen or test indicia. A specimen or test indicia must clearly indicate that the indicia does not represent valid postage.

(2) A demonstration or test Postage Evidencing System must be recorded as such on internal provider inventory records and must be tracked by model number, serial number, and physical location.

(3) A demonstration or test Postage Evidencing System must remain under the provider's direct control. A demonstration or test Postage Evidencing System may not be left in the possession of a customer under any circumstance.

(b) All indicia printed by a demonstration or test Postage Evidencing System must be collected and destroyed daily.

§ 501.10 Postage Evidencing System modifications.

(a) An authorized provider must receive prior written approval from the manager, PTM, of any and all changes made to a previously approved Postage Evidencing System. The notification must include a summary of all changes made and the provider's assessment as to the impact of those changes on the security of the Postage Evidencing System and postage funds. Upon receipt of the notification, PTM will review the summary of changes and make a decision regarding the need for the following:

(1) Additional documentation.

(2) Level of test and evaluation required.

(3) Necessity for evaluation by a laboratory accredited by the National Institutes of Standards and Technology (NIST) under the National Voluntary Laboratory Accreditation Program (NVLAP).

(b) Upon receipt and review of additional documentation and/or test results, PTM will issue a written acknowledgement and/or approval of the change to the provider.

§ 501.11 Reporting Postage Evidencing System security weaknesses.

(a) For purposes of this section, provider refers to the Postage Evidencing System provider authorized under § 501.2 and its foreign affiliates, if any, subsidiaries, assigns, dealers, independent dealers, employees, and parent corporations.

(b) Each authorized provider of a Postage Evidencing System must notify the Postal Service within twenty-four (24) hours, upon discovery of the following:

(1) All findings or results of any testing known to the provider concerning the security or revenue protection features, capabilities, or failings of any Postage Evidencing System sold, leased, or distributed by it that has

been approved for sale, lease, or distribution by the Postal Service or any foreign postal administration; or has been submitted for approval by the provider to the Postal Service or other foreign postal administration(s).

(2) All potential security weaknesses or methods of tampering with the Postage Evidencing Systems that the provider distributes of which it knows or should know and the Postage Evidencing System model subject to each such method. Potential security weaknesses include but are not limited to suspected equipment defects, suspected abuse by a customer or provider employee, suspected security breaches of the Computerized Meter Resetting System (CMRS) or databases housing confidential customer data relating to the use of Postage Evidencing Systems, occurrences outside normal performance, or any repeatable deviation from normal Postage Evidencing System performance.

(c) Within a time limit corresponding to the potential revenue risk to postal revenue as determined by the Postal Service, the provider must submit a written report to the Postal Service. The report must include the circumstances, proposed investigative procedure, and the anticipated completion date of the investigation. The provider must also provide periodic status reports to the Postal Service during subsequent investigation and, on completion, must submit a summary of the investigative findings.

(d) The provider must establish and adhere to timely and efficient procedures for internal reporting of potential security weaknesses and shall provide a copy of such internal reporting procedures and instructions to the Postal Service for review.

(e) Failure to comply with this section may result in suspension of approval under § 501.6 or the imposition of sanctions under § 501.12.

§ 501.12 Administrative sanctions.

(a) An authorized Postage Evidencing System provider may be responsible to the Postal Service for revenue losses caused by failure to comply with § 501.11.

(b) The Postal Service shall determine all costs and revenue losses measured from the date that the provider knew, or should have known, of a potential security weakness, including, but not limited to, administrative and investigative costs and documented revenue losses that result from any Postage Evidencing System for which the provider failed to comply with any provision in § 501.11. The Postal Service issues a written demand for reimbursement of any and all such costs and losses (net of any amount collected by the Postal Service from the customers) with interest. The demand shall set forth the facts and reasons on which it is based.

(c) The provider may present the Postal Service with a written defense to the proposed action within thirty (30) calendar days of receipt. The defense must include all supporting evidence and state with specificity the reasons for which the sanction should not be imposed.

(d) After receipt and consideration of the defense, the Postal Service shall advise the provider of the decision and the facts and reasons for it; the decision shall be effective on receipt unless it provides otherwise. The decision shall also advise the provider that it may, within thirty (30) calendar days of receiving written notice, appeal that determination to the Chief Marketing Officer of the Postal Service who shall issue a written decision upon the appeal which will constitute the final Postal Service decision.

(e) The imposition of an administrative sanction under this section does not preclude any other criminal or civil statutory, common law, or administrative remedy that is available by law to the Postal Service, the United States, or any other person or entity.

(f) An authorized Postage Evidencing System provider, who without just cause fails to follow any Postal Service approved procedures, perform adequately any of the Postal Service approved controls, or fails to obtain approval of a required process in § 501.14 in a timely fashion, is subject to an administrative sanction under this provision § 501.12.

§ 501.13 False representations of Postal Service actions.

Providers, their agents, and employees must not intentionally misrepresent to customers of the Postal Service decisions, actions, or proposed actions of the Postal Service respecting its regulation of Postage Evidencing Systems. The Postal Service reserves the right to suspend and/or revoke the authorization to manufacture or distribute Postage Evidencing Systems throughout the United States or any part thereof pursuant to § 501.6 when it determines that the provider, its agents, or employees failed to comply with this section.

§ 501.14 Postage Evidencing System inventory control processes.

(a) Each authorized provider of Postage Evidencing Systems must permanently hold title to all Postage Evidencing Systems which it manufactures or distributes except those purchased by the Postal Service or distributed outside the United States.

(b) An authorized provider must maintain sufficient facilities for and records of the distribution, control, storage, maintenance, repair, replacement, and destruction or disposal of all Postage Evidencing Systems and their components to enable accurate accounting and location thereof throughout the entire life cycle of each Postage Evidencing System. A complete record shall entail a list by serial number of all Postage Evidencing Systems manufactured or distributed showing all movements of each system from the time that it is produced until it is scrapped, and the reading of the ascending register each time the system is checked into or out of service. These records must be available for inspection by Postal Service officials at any time during business hours.

(c) To ensure adequate control over Postage Evidencing Systems, plans for the following processes must be submitted for prior approval, in writing, to PTM:

(1) Check in to service procedures for all Postage Evidencing Systems—the procedures are to address the process to be used for new Postage Evidencing Systems as well as those previously leased to another customer.

(2) Transportation and storage of meters—procedures that provide reasonable precautions to prevent use by unauthorized individuals. Providers must ship all meters by Postal Service Registered Mail unless given written permission by the Postal Service to use another carrier. The provider must demonstrate that the alternative delivery carrier employs security procedures equivalent to those for Registered Mail.

(3) Postage meter examination/inspection procedures and schedule—The provider is required to perform postage meter examinations or inspections based on an approved schedule. Failure to complete the meter examination or inspections by the due date may result in the Postal Service requiring the provider to disable the meter's resetting capability. If necessary, the Postal Service shall notify the customer that the meter is to be removed from service and the authorization to use a meter revoked, following the procedures for revocation specified by regulation. The Postal Service shall notify the provider to remove the meter from the customer's location.

(4) Check out of service procedures for a non-faulty Postage Evidencing System when the system is to be removed from service for any reason.

(5) Postage meter repair process—any physical or electronic access to the internal components of a postage meter, as well as any access to software or security parameters, must be conducted within an approved facility under the provider's direct control and active supervision. To prevent unauthorized use, the provider or any third party acting on its behalf must keep secure any equipment or other component that can be used to open or access the internal, electronic, or secure components of a meter.

(6) Faulty meter handling procedures, including those that are inoperable, mis-registering, have unreadable registers, inaccurately reflect their current status, show any evidence of possible tampering or abuse, and those for which there is any indication that the meter has some mechanical or electrical malfunction of any critical security component, such as any component the improper operation of which

could adversely affect Postal Service revenues, or of any memory component, or that affects the accuracy of the registers or the accuracy of the value printed.

(7) Lost or stolen meter procedures—the provider must promptly report to the Postal Service the loss or theft of any meter or the recovery of any lost or stolen meter. Such notification to the Postal Service will be made by completing and filing a standardized lost and stolen meter incident report within ten (10) calendar days of the provider's determination of a meter loss, theft, or recovery.

(8) Postage meter destruction, when required-the postage meter must be rendered completely inoperable by the destruction process and associated postage—printing dies and components must be destroyed. Manufacturers/distributors of meters must submit the proposed destruction method; a schedule listing the postage meters to be destroyed, by serial number and model; and the proposed time and place of destruction to PTM for approval prior to any meter destruction. Providers must record and retain the serial numbers of the meters to be destroyed and provide a list of such serial numbers in electronic form in accordance with Postal Service requirements for meter accounting and tracking systems. Providers must give sufficient advance notice of the destruction to allow PTM to schedule observation by its designated representative who shall verify that the destruction is performed in accordance with a Postal Service—approved method or process. To the extent that the Postal Service elects not to observe a particular destruction, the provider must submit a certification of destruction, including the serial number(s) to the Postal Service within five (5) calendar days of destruction. These requirements for meter destruction apply to all postage meters, Postage Evidencing Systems, and postal security devices included as a component of a Postage Evidencing System.

(d) If the provider uses a third party to perform functions that may affect Postage Evidencing System security, including, but not limited to repair, maintenance, and disposal of Postage Evidencing Systems, PTM must be advised in advance of all aspects of the relationship, as they relate to the custody and control of Postage Evidencing Systems, and must specifically authorize in writing the proposed arrangement between the parties.

(1) Postal Service authorization of a third party relationship to perform specific functions applies only to the functions stated in the written authorization but may be amended to embrace additional functions.

(2) No third-party relationship shall compromise the security of the Postage Evidencing System, or its components, including, but not limited to, the hardware, software, communications, and security components, or of any security-related system with which it interfaces, including, but not limited to, the resetting system, reporting systems, and Postal Service support systems. The functions of the third party with respect to a Postage Evidencing System, its components, and the systems with which it interfaces are subject to the same scrutiny as the equivalent functions of the provider.

(3) Any authorized third party must keep adequate facilities for and records of Postage Evidencing Systems and their components in accordance with paragraph (b) of this section. All such facilities and records are subject to inspection by Postal Service representatives, insofar as they are used to distribute, control, store, maintain, repair, replace, destroy, or dispose of Postage Evidencing Systems.

(4) The provider must ensure that any party acting on its behalf in any of the functions described in paragraph (b) of this section maintains adequate facilities, records, and procedures for the security of the Postage Evidencing Systems. Deficiencies in the operations of a third party relating to the custody and control of Postage Evidencing Systems, unless corrected in a timely manner, can place at risk a provider's approval to manufacture and/or distribute Postage Evidencing Systems.

(5) The Postal Service reserves the right to review all aspects of any third party relationship if it appears that the relationship poses a threat to Postage Evidencing System security and

may require the provider to take appropriate corrective action.

§ 501.15 Computerized Meter Resetting System.

(a) *Description*. The Computerized Meter Resetting System (CMRS) permits customers to reset their postage meters at their places of business. Authorized providers, who operate CMRS services, are known as resetting companies (RCs).

(b) A customer is required to have funds available on deposit with the Postal Service before resetting a Postage Evidencing System or the provider may opt to provide a funds advance in accordance with paragraph (c) of this section.

(c) If the RC chooses to offer advancement of funds to customers, the RC is required to maintain a deposit with the Postal Service equal to at least one (1) day's average funds advanced. The total amount of funds advanced to customers on any given day shall not exceed the amount the provider has on deposit with the Postal Service. The Postal Service shall not be liable for any payment made by the RC on behalf of a customer that is not reimbursed by the customer, since the RC is solely responsible for the collection of advances made by the RC.

(d) The CMRS customer is permitted to make deposits in one of three ways: check, electronic funds transfer (or wire transfer), or automated clearinghouse (ACH) transfer. These deposits must be remitted to the Postal Service's designated bank account.

(e) The RC must require each CMRS customer that requests a meter resetting to provide the meter serial number, the CMRS account number, and the meter's ascending and descending register readings. The RC must verify that there are sufficient funds in the customer's CMRS account to cover the postage setting requested before proceeding with the setting transaction (unless the RC opts to provide the customer a funds advance).

(f) The Postal Service requires that the RC publicize to all CMRS customers the following payment options (listed in order of preference):

(1) Automated clearinghouse (ACH) debits/credits.

(2) Electronic funds transfers (wire transfers).

(3) Checks.

(g) Returned checks and ACH debits are the responsibility of the Postal Service. Upon notice from the Postal Service's designated bank, the provider will be required to immediately lock the customer account to prevent a meter reset until the Postal Service receives payment for the returned check or the provider is provided with valid ACH credit or wire information.

(h) *Refunds.* The Postal Service will issue a refund in the amount remaining in a customer's Computerized Meter Resetting System account, after such time as the customer provides a written request to the provider, as long as the request meets the Postal Service approved minimum and time frame.

(i) *Security and Revenue Protection.* To receive Postal Service approval to continue to operate systems in the CMRS environment, the RC must submit to a periodic audit of its system, to be conducted by an independent systems auditor, the frequency and scope of which shall be determined by the Postal Service. The provider will be responsible for all reasonable costs to conduct these audits.

(j) *Inspection of records and facilities.* The RC must make its facilities that handle the operation of the computerized resetting system and all records about the operation of the system available for inspection by representatives of the Postal Service at all reasonable times. At its discretion, the Postal Service may continue to fund inspections as it has in the past, provided the costs are not associated with a particular security issue related to the provider's CMRS or supporting infrastructure.

(k) The RC is required to incorporate the following language into its meter rental agreements:

ACKNOWLEDGMENT OF DEPOSIT REQUIREMENT—METERS

By signing this meter rental agreement, you the customer represent that you have read the *Acknowledgment of Deposit Requirement—Meters* and are familiar with its terms. You agree that, upon execution of this agreement with the RC, you will also be bound by

all terms and conditions of the Acknowledgment of Deposit Requirement—Meters, as it may be amended from time to time.

§ 501.16 PC Postage payment methodology.

(a) The PC Postage customer is permitted to make payments for postage in one of two ways: automated clearinghouse (ACH) transfer or credit card.

(b) The provider must make payments on behalf of the customer to the Postal Service in accordance with contractual and/or regulatory responsibilities.

(c) The Postal Service requires that the provider publicize to all PC Postage customers the following payment options (listed in order of preference):

(1) Automated clearinghouse (ACH) debits/credits.

(2) Credit cards.

(d) Returned ACH debits and credit card returns are the responsibility of the Postal Service. The RC must lock the customer account immediately so that the customer is unable to reset the account until the Postal Service receives payment in full.

(e) *Refunds.* The provider issues a refund to a customer for any unused postage in a Postage Evidencing System. After verification by the Postal Service, the provider will be reimbursed by the Postal Service for the individual refunds provided to customers by the provider, as long as the individual customer requests meet the Postal Service approved minimum and time frame.

(f) *Security and revenue protection.* To receive Postal Service approval to continue to operate PC Postage systems, the provider must submit to a periodic audit of its system, to be conducted by an independent systems auditor, the frequency and scope of which shall be determined by the Postal Service. The provider will be responsible for all reasonable costs to conduct these audits.

(g) *Inspection of records and facilities.* The provider must make its facilities, which handle the operation of the PC Postage system and all records about the operation of the system, available for inspection by representatives of the Postal Service at all reasonable times. At its discretion, the Postal Service may continue to fund inspections as it has in the past, provided the costs are not associated with a particular security issue related to the provider's CMRS or supporting infrastructure.

(h) To the extent that the customer maintains funds on deposit for the payment of postage, the provider is required to incorporate the following language into its agreements with PC Postage customers:

ACKNOWLEDGMENT OF DEPOSIT REQUIREMENT—PC POSTAGE

By signing this agreement with the provider, you represent that you have read the *Acknowledgment of Deposit Requirement—PC Postage* and are familiar with its terms. You agree that, upon execution of this agreement with the provider, you will also be bound by all terms and conditions of the Acknowledgment of Deposit Requirement—PC Postage, as it may be amended from time to time.

EFFECTIVE DATE NOTE: At 72 FR 33163, June 15, 2007, § 501.16 was revised, effective July 16, 2007. For the convenience of the user, the revised text is set forth as follows:

§ 501.16 PC postage payment methodology.

(a) The PC Postage customer is permitted to make payments for postage in one of two ways: Automated clearinghouse (ACH) transfer or credit card.

(b) The provider must make payments on behalf of the customer to the Postal Service in accordance with contractual and/or regulatory responsibilities.

(c) The Postal Service requires that the provider publicize to all PC Postage customers the following payment options (listed in order of preference):

(1) Automated clearinghouse (ACH) debits/credits.

(2) Credit cards.

(d) Returned ACH debits are the responsibility of the Postal Service. The RC must lock the customer account immediately so that the customer is unable to reset the account until the Postal Service receives payment in full.

(e) *Refunds.* The provider issues a refund to a customer for any unused postage in a Postage Evidencing System. After verification by the Postal Service, the provider will be reimbursed by the Postal Service for the individual refunds provided to customers by the provider.

(f) *Security and revenue protection.* To receive Postal Service approval to continue to operate PC Postage systems, the provider must submit to a periodic audit of its system, to be conducted by an independent systems auditor, the frequency and scope of which shall be determined by PTM. All such audits will be an expense of the provider.

(g) *Inspection of records and facilities.* The provider must make its facilities, which handle the operation of the PC Postage system and all records about the operation of the system, available for inspection by representatives of the Postal Service at all reasonable times.

(h) To the extent that the customer maintains funds on deposit for the payment of postage, the provider is required to incorporate the following language into its agreements with PC Postage customers:

ACKNOWLEDGMENT OF DEPOSIT REQUIREMENT—PC POSTAGE

By signing this agreement with the provider, you represent that you have read the Acknowledgment of Deposit Requirement—PC Postage and are familiar with its terms. You agree that, upon execution of this agreement with the provider, you will also be bound by all terms and conditions of the Acknowledgment of Deposit Requirement—PC Postage, as it may be amended from time to time.

§ 501.17 Decertified Postage Evidencing Systems.

(a) A Decertified Postage Evidencing System is a device for which the provider's authority to distribute has been withdrawn by the Postal Service as a result of any retirement plan for a given class of meters published by the Postal Service in the FEDERAL REGISTER; a suspension or revocation under § 501.6; or a voluntary withdrawal undertaken by the provider.

(b) A Decertified Postage Evidencing System must be withdrawn from service by the date agreed to by the Postal Service and provider.

(c) To the extent postage meters are involved, the provider must utilize the approved procedures for lost and stolen meters under § 501.14(c)(7) to locate the meter and remove it from service by the agreed upon date.

(d) Decertified Postage Evidencing Systems that are not submitted to the Postal Service for refund within one hundred and eighty (180) days of the agreed upon withdrawal from service date will not be eligible for refund of unused postage.

(e) Postage indicia printed by Decertified Postage Evidencing Systems may no longer be considered valid postage one hundred and eighty (180) days from the agreed upon withdrawal from service date.

§ 501.18 Customer information and authorization.

(a) Authorized providers must electronically transmit the necessary customer information to the designated Postal Service central data processing facility, in Postal Service-specified format, in order for the Postal Service to authorize a customer to use a Postage Evidencing System. Postal Service receipt and acceptance of the customer information provides the customer with the authorization to possess or use a Postage Evidencing System in accordance with DMM 604 Postage Payment Methods, 4.0 Postage Meters and PC Postage Products (Postage Evidencing Systems).

(b) The Postal Service may refuse to issue a customer authorization to use a Postage Evidencing System for the following reasons:

(1) The customer submitted false or fictitious information.

(2) Within five years preceding submission of the information, the customer violated any standard for the care or use of the Postage Evidencing System that resulted in revocation of that customer's authorization.

(3) Or there is sufficient reason to believe that the Postage Evidencing System is to be used in violation of the applicable standards.

(c) The Postal Service will notify the provider of the revocation of a customer's authorization to use a Postage Evidencing System. Within ten (10) days of receipt of the notice of revocation, the provider must cancel any lease or other agreement and remove the Postage Evidencing System from service. A customer's authorization to use a Postage Evidencing system is subject to revocation for any of the following reasons:

(1) A Postage Evidencing System is used for any illegal scheme or enterprise.

(2) The customer's Postage Evidencing System is not used for twelve (12) consecutive months.

(3) Sufficient control of a Postage Evidencing System is not exercised or the standards for its care or use are not followed.

(4) The Postage Evidencing System is kept or used outside the customs territory of the United States or those U.S.

territories and possessions where the Postal Service operates.

(5) The customer is in possession of a Decertified Postage Evidencing System.

(d) The provider must electronically transmit any updates to the necessary customer information to the designated Postal Service central data processing facility, in Postal Service-specified format.

(e) No one other than an authorized provider may possess a Postage Evidencing System without a valid rental or other agreement with the provider. Other parties in possession of a Postage Evidencing System must immediately surrender it to the provider or the Postal Service.

(f) The Postal Service may use customer information consistent with the Privacy Act and the Postal Service's privacy policies posted on *http://www.usps.com*. Examples include the following:

(1) Communication with customers who may no longer be visiting a traditional Postal Service retail outlet or communication with customers through any new retail channels.

(2) Issuance (including re-authorization, renewal, transfer, revocation or denial, as applicable) of authorization to use a Postage Evidencing System to a postal patron that uses a Postage Evidencing System, and communications with respect to the status of such authorization.

(3) Disclosure to a meter provider of the identity of any meter required to be removed from service by that meter provider, and any related customer data, as the result of revocation of an authorization to use a Postage Evidencing System, questioned accurate registration of that meter, or de-certification by the Postal Service of any particular class or model of postage meter.

(4) Tracking the movement of meters between a meter provider and its customers and communications to a meter provider (but not to any third party other than the customer) concerning such movement. The term meter provider includes a meter provider's dealers and agents.

(5) To transmit general information to all Postage Evidencing System customers concerning rate and rate category changes implemented or proposed for implementation by the Postal Service.

(6) To advertise Postal Service services relating to the acceptance, processing, and delivery of, or postage payment for, metered mail.

(7) To allow the Postal Service to communicate with Postal Service customers on products, services, and other information otherwise available to Postal Service customers through traditional retail outlets.

(8) Any internal use by Postal Service personnel, including identification and monitoring activities relating to Postage Evidencing Systems, provided that such use does not result in the disclosure of applicant information to any third party or will not enable any third party to use applicant information for its own purposes; except that the applicant information may be disclosed to other governmental agencies for law enforcement purposes as provided by law.

(9) Identification of authorized Postage Evidencing System providers or announcement of the de-authorization of an authorized provider, or provision of currently available public information, where an authorized provider is identified.

(10) To promote and encourage the use of Postage Evidencing Systems as a form of postage payment, provided that the same information is provided to all Postage Evidencing System customers and no particular Postage Evidencing System provider will be recommended by the Postal Service.

(11) To contact customers in cases of revenue fraud or revenue security.

(12) Disclosure to a Postage Evidencing System provider of applicant information pertaining to that provider's customers that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes.

(13) To transmit to a Postage Evidencing System provider all applicant and system information pertaining to that provider's customers and systems that may be necessary to permit such provider to synchronize its computer databases with information contained

in the computer files of the Postal Service.

(14) Subject to the conditions stated herein, to communicate in oral or written form with any or all applicants any information that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes under part 501.

§ 501.19 Intellectual property.

Providers submitting Postage Evidencing Systems to the Postal Service for approval are responsible for obtaining all intellectual property licenses that may be required to distribute their product in commerce and to allow the Postal Service to process mail bearing the indicia produced by the Postage Evidencing System. To the extent approval is granted and the Postage Evidencing System is capable of being used in commerce, the provider shall indemnify the Postal Service for use of such intellectual property in both the use of the Postage Evidencing System and the processing of mail bearing indicia produced by the Postage Evidencing System.

PART 551—SEMIPOSTAL STAMP PROGRAM

Sec.

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AUTHORITY: 39 U.S.C. 101, 201, 203, 401, 403, 404, 410, 414, 416.

SOURCE: 66 FR 31826, June 12, 2001, unless otherwise noted.

§ 551.1 Semipostal Stamp Program.

The Semipostal Stamp Program is established under the Semipostal Authorization Act, Public Law 106–253, 114 Stat. 634 (2000), as amended by Public Law 107–67, section 652, 115 Stat. 514 (2001). The Office of Stamp Services has primary responsibility for administering the Semipostal Stamp Program. The Office of Accounting, Finance, Controller has primary responsibility for the financial aspects of the Semipostal Stamp Program.

[67 FR 5215, Feb. 5, 2002]

§ 551.2 Semipostal stamps.

Semipostal stamps are stamps that are sold for a price that exceeds the postage value of the stamp. The difference between the price and postage value of semipostal stamps, also known as the differential, less an offset for reasonable costs, as determined by the Postal Service, consists of a contribution to fund causes determined by the Postal Service to be in the national public interest and appropriate. Funds are to be transferred to selected recipient executive agencies, as defined under 5 U.S.C. 105. The office of Stamp Services determines the print quantities of semipostal stamps. The use of semipostal stamps shall be voluntary on the part of postal patrons.

§ 551.3 Procedure for selection of causes and recipient executive agencies.

The Postal Service is authorized to select causes and recipient executive agencies to receive funds raised through the sale of semipostal stamps. The procedure for selection of causes and recipient executive agencies is as follows:

(a) In advance of the issuance of a semipostal stamp, the office of Stamp Services will publish a request for proposals in the FEDERAL REGISTER inviting interested persons to submit proposals for a cause and recipient executive agencies for a future semipostal stamp. The notice will specify the beginning and ending dates of the period during which proposals may be submitted. The notice will also specify the approximate period in which the semipostal stamp for which proposals are solicited is to be sold. The office of Stamp Services may publicize the request for proposals through other means, as it determines in its discretion.

(b) Proposals will be received by the office of Stamp Services, which will review each proposal under § 551.4.

(c) Those proposals that the office of Stamp Services determines satisfy the

requirements of § 551.4 will be forwarded for consideration by the Citizens' Stamp Advisory Committee, which is described in Administrative Support Manual (ASM) section 644.5. For availability of ASM 644.5, contact the Office of Stamp Services (202) 268–2319.

(d) The Citizens' Stamp Advisory Committee will review eligible proposals forwarded by the office of Stamp Services. Based on the proposals submitted, the Citizens' Stamp Advisory Committee will make recommendations on a cause and eligible recipient executive agency(ies) to the postmaster general. If no eligible proposals are recommended, the Postal Service will solicit additional proposals through publication of a notice in the FEDERAL REGISTER and through other means as it determines in its discretion.

(e) Meetings of the Citizens' Stamp Advisory Committee are closed, and deliberations of the Citizens' Stamp Advisory Committee are predecisional in nature.

(f) The postmaster general will act on the recommendations of the Citizens' Stamp Advisory Committee. The decision of the postmaster general shall consist of the final agency decision.

(g) The office of Stamp Services will notify the executive agency(ies) in writing of a decision designating the agency(ies) as recipients of funds from a semipostal stamp.

(h)(1) A proposal submission may designate one or two recipient executive agencies to receive funds, but if more than one executive agency is proposed, the proposal must specify the percentage shares of differential revenue, net of the Postal Service's reasonable costs, to be given to each agency. If percentage shares are not specified, it is presumed that the proposal intends that the funds be split evenly between the agencies. If more than two recipient executive agencies are proposed to receive funds and the proposal is selected, the proposal is treated as prescribed by paragraph (h)(3) of this section.

(2) If more than one proposal is submitted for the same cause, and the proposals would have different executive agencies receiving funds, the funds would be evenly divided among the executive agencies, with no more than two agencies being designated to receive funds, as determined by the vice president and consumer advocate.

(3) Within 10 days of receipt of a notice indicating that it has been selected to receive funds, a selected agency could request a proportionately larger share if it can demonstrate that its share of total funding of the cause from other sources (excluding any additional funds available as a result of the semipostal stamp) exceeds that of the other recipient executive agency. The request must be in writing and must be sent to the manager of Stamp Services. In those cases, the determination regarding the proportional share to be divided among the recipient executive agencies is made by the Postal Service's vice president and consumer advocate.

(i) As either a separate matter, or in combination with recommendations on a cause and a recipient executive agency(ies), the Citizens' Stamp Advisory Committee will recommend to the postmaster general a design (i.e., artwork) for the semipostal stamp. The postmaster general will make a final determination on the design to be featured.

§ 551.4 Submission requirements and selection criteria.

(a) Proposals on recipient executive agencies and causes must satisfy the following requirements:

(1) Interested persons must timely submit an original and 20 copies of the proposal. For purposes of this section, interested persons include, but are not limited to, individuals, corporations, associations, and executive agencies under 5 U.S.C. 105. Interested persons submitting proposals are also encouraged to submit an Adobe Acrobat (.pdf) file saved on a 3.5 inch diskette or CD-ROM diskette containing the entire contents of the submission. In extraordinary circumstances, the office of Stamp Services may, in its discretion, consider a late-filed proposal.

(2) The proposal submission must be signed by the individual or a duly authorized representative and must provide the mailing address, phone number, fax number (if available), and E-

mail address (if available) of a designated point of contact.

(3) The submission must describe the cause and the purposes for which the funds would be spent.

(4) The submission must demonstrate that the cause to be funded has broad national appeal, and that the cause is in the national public interest and furthers human welfare. Respondents are encouraged to submit supporting documentation demonstrating that funding the cause would benefit the national public interest.

(5) The submission must be accompanied by a letter from an executive agency or agencies on agency letterhead representing that:

(i) it is an executive agency as defined under 5 U.S.C. 105,

(ii) it is willing and able to implement the proposal, and

(iii) it is willing and able to meet the requirements of the Semipostal Authorization Act, if it is selected. The letter must be signed by a duly authorized representative of the agency.

(b) Proposal submissions become the property of the Postal Service and are not returned to interested persons who submit them. Interested persons who submit proposals are not entitled to any remuneration, compensation, or any other form of payment, whether their proposal submissions are selected or not, for any reason.

(c) The following persons are disqualified from submitting proposals:

(1) Any contractor of the Postal Service that may stand to benefit financially from the Semipostal Stamp Program; or

(2) Members of the Citizens' Stamp Advisory Committee and their immediate families, and employees or contractors of the Postal Service, and their immediate families, who are involved in any decision-making related to causes, recipient agencies, or artwork for the Semipostal Stamp Program.

(d) Consideration for evaluation will not be given to proposals that request support for the following: Anniversaries; public works; people; specific organizations or associations; commercial enterprises or products; cities, towns, municipalities, counties, or secondary schools; hospitals, libraries, or similar institutions; religious institutions; causes that do not further human welfare; or causes determined by the Postal Service or the Citizens' Stamp Advisory Committee to be inconsistent with the spirit, intent, or history of the Semipostal Authorization Act.

(e) Artwork and stamp designs should not be submitted with proposals.

§551.5 Frequency and other limitations.

(a) The Postal Service is authorized to issue semipostal stamps for a 10-year period beginning on the date on which semipostal stamps are first sold to the public under 39 U.S.C. 416. The 10-year period will commence after the sales period of the *Breast Cancer Research* stamp is concluded in accordance with the Stamp Out Breast Cancer Act, and as amended by the Semipostal Authorization Act, the Breast Cancer Research Stamp Act of 2001, and Public Law 107–67, section 650, 115 Stat. 514. The Office of Stamp Services will determine the date of commencement of the 10-year period.

(b) The Postal Service will offer only one semipostal stamp for sale at any given time during the 10-year period.

(c) The sales period for any given semipostal stamp is limited to no more than 2 years, as determined by the office of Stamp Services.

(d) Prior to or after the issuance of a given semipostal stamp, the Postal Service reserves the right to withdraw the semipostal stamp from sale, or to reduce the sales period, if, *inter alia:*

(1) Its sales or revenue statistics are lower than expected,

(2) The sales or revenue projections are lower than previously expected, or

(3) The cause or recipient executive agency does not further, or comply with, the statutory purposes or requirements of the Semipostal Authorization Act. The decision to withdraw a semipostal stamp is to be made by the postmaster general, after review of supporting documentation prepared by the office of Stamp Services.

[66 FR 31826, June 12, 2001, as amended at 67 FR 5215, Feb. 5, 2002]

§ 551.6 Pricing.

(a) The Semipostal Authorization Act, as amended by Public Law 107–67, section 652, 115 Stat. 514 (2001), prescribes that the price of a semipostal stamp is the rate of postage that would otherwise regularly apply, plus a differential of not less than 15 percent. The price of a semipostal stamp shall be an amount that is evenly divisible by five. For purposes of this provision, the First-Class Mail® single-piece first-ounce rate of postage will be considered the rate of postage that would otherwise regularly apply.

(b) The prices of semipostal stamps are determined by the Governors of the United States Postal Service in accordance with the requirements of 39 U.S.C. 416.

[66 FR 31826, June 12, 2001, as amended at 67 FR 5216, Feb. 5, 2002]

§ 551.7 Calculation of funds for recipient executive agencies.

(a) The Postal Service is to determine its reasonable costs in executing its responsibilities pursuant to the Semipostal Authorization Act, as specified in § 551.8. These costs are offset against the revenue received through sale of each semipostal stamp in excess of the First-Class Mail single-piece first-ounce rate in effect at the time of purchase.

(b) Any reasonable costs offset by the Postal Service shall be retained by it, along with revenue from the sale of the semipostal stamps, as recorded by sales units through the use of a specially designated account.

(c) The Postal Service is to pay designated recipient executive agency(ies) the remainder of the differential revenue less an amount to recover the reasonable costs of the Postal Service, as determined under § 551.8.

(d) The amounts for recipient executive agencies are transferred in a manner and frequency determined by mutual agreement, consistent with the requirements of 39 U.S.C. 416.

§ 551.8 Cost offset policy.

(a) Postal Service policy is to recover from the differential revenue for each semipostal stamp those costs that are determined to be attributable to the semipostal stamp and that would not normally be incurred for stamps having similar sales; physical characteristics; and marketing, promotional, and public relations activities (hereinafter ''comparable stamps'').

(b) Overall responsibility for tracking costs associated with semipostal stamps will rest with the Office of Accounting, Finance, Controller. Individual organizational units incurring costs will provide supporting documentation to the Office of Accounting, Finance, Controller.

(c) For each semipostal stamp, the Office of Stamp Services, in coordination with the Office of Accounting, Finance, Controller, shall, based on judgment and available information, identify the comparable stamp(s) and create a profile of the typical cost characteristics of the comparable stamp(s) (*e.g.*, manufacturing process, gum type), thereby establishing a baseline for cost comparison purposes. The determination of comparable stamps may change during or after the sales period, and different comparable stamp(s) may be used for specific cost comparisons.

(d) Except as specified, all costs associated with semipostal stamps will be tracked by the Office of Accounting, Finance, Controller. Costs that will not be tracked include:

(1) Costs that the Postal Service determines to be inconsequentially small, which include those cost items which are less than $3,000 per invoice and are not specifically charged to a semipostal finance number.

(2) Costs for which the cost of tracking or estimation would be burdensome (*e.g.*, costs for which the cost of tracking exceeds the cost to be tracked);

(3) Costs attributable to mail to which semipostal stamps are affixed (which are attributable to the appropriate class and/or subclass of mail); and

(4) Administrative and support costs that the Postal Service would have incurred whether or not the Semipostal Stamp Program had been established.

(e) Cost items recoverable from the differential revenue include, but are not limited to, the following:

(1) Packaging costs in excess of the cost to package comparable stamps;

(2) Printing costs of flyers and special receipts;

(3) Costs of changes to equipment;

(4) Costs of developing and executing marketing and promotional plans in excess of the cost for comparable stamps;

(5) Other costs specific to the semipostal stamp that would not normally have been incurred for comparable stamps; and

(6) Costs in paragraph (g) of this section that materially exceed those that would normally have been incurred for comparable stamps.

(f) The Semipostal Stamp Program incorporates the following provisions that are intended to maximize differential revenues available to the selected causes. These include, but are not limited to, the following:

(1) Avoiding, to the extent practicable, promotional costs that exceed those of comparable stamps;

(2) Establishing restrictions on the number of concurrently issued semipostal stamps; and

(3) Making financial and retail system changes in conjunction with regularly scheduled revisions.

(g) Other costs attributable to semipostals but which would normally be incurred for comparable stamps would be recovered through the postage component of the semipostal stamp price. Such costs are not recovered, unless they materially exceed the costs of comparable stamps. These include, but are not limited to, the following:

(1) Costs of stamp design (including market research);

(2) Costs of stamp production and printing;

(3) Costs of stamp shipping and distribution;

(4) Estimated training costs for field staff, except for special training associated with semipostal stamps;

(5) Costs of stamp sales (including employee salaries and benefits);

(6) Costs associated with the withdrawal of the stamp issue from sale;

(7) Costs associated with the destruction of unsold stamps; and

(8) Costs associated with the incorporation of semipostal stamp images into advertising for the Postal Service as an entity.

[66 FR 31826, June 12, 2001, as amended at 67 FR 5216, Feb. 5, 2002; 69 FR 7689, Feb. 19, 2004; 70 FR 6765, Feb. 9, 2005]

SUBCHAPTER H—PROCUREMENT SYSTEM FOR THE U.S. POSTAL SERVICE: INTELLECTUAL PROPERTY RIGHTS OTHER THAN PATENTS

PART 601—PURCHASING OF PROPERTY AND SERVICES

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601.100 Purchasing policy.
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AUTHORITY: 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

SOURCE: 70 FR 20293, Apr. 19, 2005, unless otherwise noted.

§ 601.100 Purchasing policy.

It is the policy of the Postal Service to acquire property and services in accordance with 39 U.S.C. 410 and all other applicable public laws enacted by Congress.

§ 601.101 Effective date.

These regulations are effective May 19, 2005.

§ 601.102 Revocation of prior purchasing regulations.

All previous Postal Service purchasing regulations, including the *Postal Contracting Manual*, *Procurement Manual*, the *Purchasing Manual* (Issues 1, 2 and 3), and procurement handbooks, circulars, and instructions, are revoked and are superseded by the regulations contained in this part, except as provided in § 601.103.

§ 601.103 Applicability and coverage.

The regulations contained in this part apply to all Postal Service acquisition of property (except real property) and services. Solicitations issued and contracts entered into prior to the effective date of the regulations in this part will be governed by the regulations in effect at the time the contract was signed.

§ 601.104 Postal purchasing authority.

Only the Postmaster General/CEO; the Postal Service's vice president of Supply Management; contracting officers with written statements of specific authority; and others designated in writing or listed in this part have the authority to bind the Postal Service with respect to entering into, modifying, or terminating any contract regarding the acquisition of property, services, and related purchasing matters. The Postal Service's vice president of Supply Management, or his or her designee, may also delegate in writing local buying authority throughout the Postal Service.

§ 601.105 Business relationships.

A person or organization wishing to enjoy a continuing business relationship with the Postal Service in purchasing matters is expected to treat the Postal Service in the same manner as it would other valued customers of similar size and importance. The Postal Service reserves the right to cease accepting or considering proposals from a person or organization when that person or organization fails to meet reasonable business expectations of high quality, prompt service, and overall professionalism.

§ 601.106 Declining to accept or consider proposals.

(a) *General.* The Postal Service may decline to accept or consider proposals from a person or organization that does not meet reasonable business expectations or does not provide a high level of confidence about current or future business relations. Typically, these sorts of unacceptable conduct and business practices will not rise to the level of unethical or criminal activities that

could lead to the debarment, suspension, or ineligibility of a supplier. Unacceptable conduct or business practices include, but are not limited to:

(1) Marginal or dilatory contract performance;

(2) Failure to deliver on promises made in the course of dealings with the Postal Service;

(3) Providing false or misleading information as to financial condition, ability to perform, or other material matters, including any aspect of performance on a contract; and

(4) Engaging in other questionable or unprofessional conduct or business practices.

(b) *Notice.* If the Postal Service elects to decline to accept or consider proposals from a person or organization, the vice president of Supply Management, or his or her designee, will provide a written notice to the person or organization explaining:

(1) The reasons for the decision;

(2) The effective date of the decision;

(3) The scope of the decision;

(4) The duration of the decision (this may be limited to a specified length of time or may extend indefinitely); and

(5) The supplier's right to contest the decision.

(c) *Contesting Decisions.* If a person or organization believes the decision not to accept or consider proposals is not merited, it may contest the matter in accordance with the ombudsman and disagreement-resolution procedures contained in this part, seek to resolve the matter by agreement through alternative dispute resolution, or both. The Postal Service may reconsider the matter and, if warranted, rescind or modify the decision to decline to accept or consider proposals.

§601.107 Initial disagreement resolution.

It is the policy of the Postal Service and in the interest of suppliers to resolve potential disagreements by mutual agreement at the contracting officer or appropriate management level. Therefore, all disputes, protests, claims, disagreements, or demands of whatsoever nature (hereinafter ''disagreements'') against the Postal Service arising in connection with the purchasing process, except claims that arise pursuant to a contract under the Contract Disputes Act or claims concerning debarment, suspension, or ineligibility under §601.113, must be lodged with the responsible contracting officer for resolution within 10 days of the date the disagreement arose. If the matter is not resolved within 10 days following the lodging of the dispute, the disagreement may be lodged with the Ombudsman as described in §601.108. Alternative dispute resolution (ADR) procedures may be used, if agreed to by both parties. The Postal Service supports and encourages the use of ADR as an effective way to understand, address, and resolve disagreements and conflicts. A person or organization disagreeing with a Postal Service decision and the Postal Service contracting officer must consider the use of ADR to resolve a particular purchasing disagreement, regardless of the nature of the disagreement or when it occurs during the purchasing process. ADR methods include informal negotiation, mediation by a neutral third party, and any other agreed-upon method.

§601.108 Ombudsman disagreement resolution.

(a) *Policy.* From time to time, disagreements may arise between suppliers, potential suppliers, and the Postal Service regarding awards of contracts and related matters that are not resolved as set forth in §601.107. When a disagreement under §601.107 is not resolved within ten calendar days of when it was lodged with the contracting officer, then the disagreement may be lodged with the ombudsman established in this part for final resolution. The Postal Service desires to resolve all such disagreements quickly and inexpensively in keeping with the regulations in this part, 39 U.S.C. 410, and all other applicable public laws enacted by Congress. In resolving disagreements, non-Postal Service procurement rules or regulations will not govern.

(b) *Scope and Applicability.* In order to expeditiously resolve disagreements that are not resolved at the contracting officer or appropriate management level, to reduce litigation expenses, inconvenience, and other costs

for all parties, and to facilitate successful business relationships with Postal Service suppliers, the supplier community, and other persons, the following procedure is established as the sole and exclusive means to resolve disagreements arising in connection with awards of contracts for the purchase of property (excluding real property) or services and all related matters. All disputes, protests, claims, disagreements, or demands of whatsoever nature (hereinafter ''disagreements'') against the Postal Service arising in connection with the purchasing process, except claims that arise pursuant to a contract under the Contract Disputes Act or claims concerning debarment, suspension, or ineligibility under § 601.113, will be lodged with and resolved, with finality, by the ombudsman under and in accordance with the sole and exclusive procedure established in this section.

(c) A disagreement may be lodged with the ombudsman by an organization or a person with respect to the Postal Service's decision not to accept or consider business proposals or the award of a contract.

(d) The disagreement must be lodged in writing and must state the factual circumstances relating to it, the remedy sought, and the rationale for the disagreement. Counsel is not required, but may be retained to assist in the disagreement process. The person or organization lodging the disagreement must indicate in the disagreement whether it is willing to attempt to resolve the matter through informal discussions, mediation, or another means of ADR.

(e) A disagreement must be lodged with the ombudsman within twenty calendar days after the time it was presented in § 601.107. The ombudsman may grant an extension of time to lodge a disagreement or to provide supporting information when warranted. Any request for an extension must set forth the reasons for the request, be made in writing, and be delivered to the ombudsman on or before the time to lodge a disagreement lapses. The address of the ombudsman is: Attn: Ombudsman, United States Postal Service Headquarters, 475 L'Enfant Plaza, SW., Room 4110, Washington, DC 20260–6200.

(f) The ombudsman will promptly provide a copy of a disagreement to the contracting officer, who will promptly notify other interested persons (i.e., actual or prospective offerors whose direct economic interests would be affected by the award of, or failure to award, the contract). The ombudsman will consider a disagreement and any response by other interested persons and appropriate Postal Service officials within a time frame established by the ombudsman. The ombudsman may also meet individually or jointly with the person or organization lodging the disagreement, other interested persons, and/or Postal Service officials, and may undertake other activities in order to obtain materials, information, or advice that may help to resolve the disagreement. The person or organization lodging the disagreement, other interested persons, or Postal Service officials must promptly provide all relevant, nonprivileged materials and other information requested by the ombudsman. After obtaining such information, materials, and advice as may be needed, the ombudsman will promptly issue a decision in writing resolving a disagreement and will deliver the decision to the person or organization lodging the disagreement, other interested persons, and appropriate Postal Service officials. If confidential or privileged material is needed in order to reach a decision, the ombudsman will notify the appropriate party to provide such material to the ombudsman only. The confidential material will be held in confidence by the ombudsman and will be returned to the party upon request at the conclusion of the matter.

(g) In considering and in resolving a disagreement, the ombudsman will be guided by the regulations contained in this part and all applicable public laws enacted by Congress. Non-Postal Service procurement rules or regulations and revoked Postal Service regulations will not apply or be taken into account in resolving disagreements. Failure of any party to provide promptly requested information may be taken into account by the ombudsman in the decision.

(h) A decision of the ombudsman will be final and binding on the person or

organization lodging the disagreement, other interested persons, and the Postal Service. However, the person or organization that lodged the disagreement or another interested person may appeal the decision to a federal court with jurisdiction over such claims, but only on the grounds that the decision:

(1) Was procured by fraud or other criminal misconduct; or

(2) Was obtained in violation of the regulations contained in this part or an applicable public law enacted by Congress.

(i) It is intended that this procedure generally will resolve disagreements within approximately 30 days after the ombudsman receives the disagreement. The time may be shortened or lengthened depending on the complexity of the issues and other relevant considerations.

§ 601.109 Contract claims and disputes.

(a) *General.* This section implements the Contract Disputes Act of 1978, as amended (41 U.S.C. 601–613).

(b) *Policy.* It is Postal Service policy to resolve contractual claims and disputes by mutual agreement at the level of an authorized contracting officer whenever possible. In addition, the Postal Service supports and encourages the use of alternative dispute resolution as an effective way to understand, address, and resolve conflicts with suppliers. Efforts to resolve differences should be made before the issuance of a final decision on a claim, and even when the supplier does not agree to use ADR, the contracting officer should consider holding informal discussions between the parties in order to resolve the conflict before the issuance of a final decision.

(c) *Contractor Claim Initiation.* Supplier claims must be submitted in writing to the contracting officer for final decision. The contracting officer must document the contract file with evidence of the date of receipt of any submission that the contracting officer determines is a claim. Supplier claims must be submitted within 6 years after accrual of a claim unless the parties agreed to a shorter time period. The 6-year time period does not apply to contracts awarded prior to October 1, 1995.

(d) *Postal Service Claim Initiation.* The contracting officer must issue a written decision on any Postal Service claim against a supplier, within 6 years after accrual of a claim, unless the parties agreed in writing to a shorter time period. The 6-year time period does not apply to contracts awarded prior to October 1, 1995, or to a Postal Service claim based on a supplier claim involving fraud.

(e) *Certified Claims.* Each supplier claim exceeding $100,000 must be accompanied by a certification in accordance with the supplier's contract.

(f) When the contracting officer determines that the supplier is unable to support any part of the claim and there is evidence or reason to believe the inability is attributable to either misrepresentation of fact or fraud on the supplier's part, the contracting officer must deny that part of the claim and refer the matter to the Office of Inspector General.

(g) *Decision and Appeal*—(1) *Contracting Officer's Authority.* A contracting officer is authorized to decide or settle all claims arising under or relating to a contract subject to the Contract Disputes Act, except for:

(i) Claims or disputes for penalties or forfeitures prescribed by statutes or regulation that a Federal agency administers; or

(ii) Claims involving fraud.

(2) *Contracting Officer's Decision.* The contracting officer must review the facts pertinent to the claim, obtain assistance from assigned counsel and other advisors, and issue a final decision in writing. The decision must include a description of the claim or dispute with references to the pertinent contract provisions, a statement of the factual areas of agreement and disagreement, and a statement of the contracting officer's decision with supporting rationale.

(3) *Insufficient Information.* When the contracting officer cannot issue a decision because the supplier has not provided sufficient information, the contracting officer must promptly request the required information. Further failure to provide the requested information is an adequate reason to deny the claim.

(4) *Furnishing Decisions.* The contracting officer must furnish a copy of the decision to the supplier by Certified Mail, return receipt requested, or by any other method that provides evidence of receipt.

(5) *Decisions on Claims for $100,000 or Less.* If the supplier has asked for a decision within 60 days, the contracting officer must issue a final decision on a claim of $100,000 or less within 60 calendar days of its receipt. The supplier may consider the contracting officer's failure to issue a decision within the applicable time period as a denial of its claim, and may file a suit or appeal on the claim.

(6) *Decisions on Certified Claims.* For certified claims over $100,000, the contracting officer must either issue a final decision within 60 calendar days of their receipt or notify the supplier within the 60-day period of the time when a decision will be issued. The time period established must be reasonable, taking into account the size and complexity of the claim, the adequacy of the supplier's supporting data, and any other relevant factors.

(7) *Wording of Decisions.* The contracting officer's final decision must contain the following paragraph: ''This is the final decision of the contracting officer pursuant to the Contract Disputes Act of 1978 and the clause of your contract entitled Claims and Disputes. You may appeal this decision to the Postal Service Board of Contract Appeals by mailing or otherwise furnishing written notice (preferably in triplicate) to the contracting officer within 90 days from the date you receive this decision. The notice should identify the contract by number, reference this decision, and indicate that an appeal is intended. Alternatively, you may bring an action directly in the United States Court of Federal Claims within 12 months from the date you receive this decision.

(8) *Additional Wording for Decisions of $50,000 or Less.* When the claim or claims denied total $50,000 or less, the contracting officer must add the following to the paragraph: ''In taking an appeal to the Board of Contract Appeals, you may include in your notice of appeal an election to proceed under the Board's small claims (expedited) procedure, which provides for a decision within approximately 120 days, or an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter.''

(9) *Additional Wording for Decisions Over $50,000 Up to $100,000.* When the claim or claims denied total $100,000 or less, but more than $50,000, the contracting officer must add the following to the paragraph: ''In taking an appeal to the Board of Contract Appeals, you may include in your notice of appeal an election to proceed under the Board's accelerated procedure, which provides for a decision within approximately 180 days. If you do not make an election in the notice of appeal, you may do so by written notice anytime thereafter.''

(10) Contracting officers must have sufficient information available at the time a final decision is issued on a claim so resolution of an appeal within the period set for an expedited disposition will not be delayed. Once an appeal is docketed, and expedited disposition is elected, contracting officers must devote sufficient resources to the appeal to ensure the schedule for resolution is met. Nothing in this part precludes an effort by the parties to settle a controversy after an appeal has been filed, although such efforts to settle the controversy will not suspend processing the appeal, unless the Board of Contract Appeals so directs.

§ 601.110 Payment of claims.

Any claim amount determined in a final decision to be payable, less any portion previously paid, should be promptly paid to the supplier without prejudice to either party in the event of appeal or action on the claim. In the absence of appeal by the Postal Service, a board or court decision favorable in whole or in part to the supplier must be implemented promptly. In cases when only the question of entitlement has been decided and the matter of amount has been remanded to the parties for negotiation, a final decision of the contracting officer must be issued if agreement is not reached promptly.

§ 601.111 Interest on claim amounts.

Interest on the amount found due on the supplier's claim must be paid from the date the contracting officer received the claim (properly certified, if required) or from the date payment would otherwise be due, if that date is later, until the date of payment. Simple interest will be paid at the rate established by the Secretary of the Treasury for each 6-month period in which the claim is pending. Information on the rate at which interest is payable is announced periodically in the *Postal Bulletin*.

§ 601.112 Review of adverse decisions.

Any party may seek review of an adverse decision of the Board of Contract Appeals in the Court of Appeals for the Federal Circuit or in any other appropriate forum.

§ 601.113 Debarment, suspension, and ineligibility.

(a) *General.* Except as provided otherwise in this part, contracting officers may not solicit proposals from, award contracts to, or consent to subcontracts with debarred, suspended, or ineligible suppliers.

(b) *Definitions*—(1) *Affiliate.* A business, organization, person, or individual connected by the fact that one controls or has the power to control the other or by the fact that a third party controls or has the power to control both. Factors such as common ownership, common management, and contractual relationships may be considered. Franchise agreements are not conclusive evidence of affiliation if the franchisee has a right to profit in proportion to its ownership and bears the risk of loss or failure.

(2) *Debarment.* An exclusion from contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense, failure, or inadequacy of performance.

(3) *General Counsel.* This includes the General Counsel's authorized representative.

(4) *Indictment.* Indictment for a criminal offense. An information or other filing by competent authority charging a criminal offense is given the same effect as an indictment.

(5) *Ineligible.* An exclusion from contracting and subcontracting by an entity other than the Postal Service under statutes, executive orders, or regulations, such as the Davis Bacon Act, the Service Contract Act, the Equal Employment Opportunity Acts, the Walsh-Healy Public Contracts Act, or the Environmental Protection Acts and related regulations or executive orders, to which the Postal Service is subject or has adopted as a matter of policy.

(6) *Judicial Officer.* This includes the acting Judicial Officer.

(7) *Suspension.* An exclusion from contracting and subcontracting for a reasonable period of time due to specified reasons or the pendency of a debarment proceeding.

(8) *Supplier.* For the purposes of this part, a supplier is any individual, person, or other legal entity that:

(i) Directly or indirectly (*e.g.*, through an affiliate) submits offers for, is awarded, or reasonably may be expected to submit offers for or be awarded, a Postal Service contract, including a contract for carriage under Postal Service or commercial bills of lading, or a subcontract under a Postal Service contract; or

(ii) Conducts business or reasonably may be expected to conduct business with the Postal Service as a subcontractor, an agent, or as a representative of another supplier.

(c) *Establishment and Maintenance of Lists.* (1) The vice president of Supply Management will establish, maintain, and distribute to purchasing offices a list of suppliers debarred or suspended by the Postal Service.

(2) The General Services Administration (GSA) compiles and maintains a consolidated list of all persons and entities debarred, suspended, proposed for debarment, or declared ineligible by Federal agencies or the Government Accountability Office. GSA posts the list on the Internet and publishes a hardcopy of the list.

(3) The vice president of Supply Management will notify the GSA of any Postal Service debarment, suspension, and change in the status of suppliers, including any of their affiliates, on the Postal Service list.

(d) *Treatment of Suppliers on Postal Service or GSA Lists.* (1) Contracting officers will review the Postal Service and GSA lists before making a contract award.

(2) Suppliers on the Postal Service list are excluded from receiving contracts and subcontracts, and contracting officers may not solicit proposals or quotations from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with such suppliers, unless the vice president of Supply Management, or his or her designee, after consultation with the General Counsel, has approved such action. Suppliers on the Postal Service list may not provide goods or services to other persons or entities for resale, in whole or part, to the Postal Service and such other persons or entities are obligated to obtain and review the Postal Service list in order to exclude debarred or suspended suppliers from performing any part of a Postal Service contract.

(3) Suppliers on the GSA list are assigned a code by GSA which is related to the basis of ineligibility. The vice president of Supply Management maintains a table describing the Postal Service treatment assigned to each code. Suppliers on the GSA list who are coded as ineligible are excluded from receiving contracts and subcontracts, and contracting officers may not solicit proposals or quotations from, award contracts to, or, when the contract provides for such consent, consent to subcontracts with such suppliers, unless the vice president of Supply Management, or designee, after consultation with the General Counsel, has approved such action. Suppliers on the GSA list may not provide goods or services to other persons or entities for resale, in whole or part, to the Postal Service and such other persons or entities are obligated to obtain and review the GSA list in order to exclude debarred or suspended suppliers from performing any part of a Postal Service contract.

(4) Suppliers on the GSA list are assigned codes for which the table provides other Postal Service guidance, and are considered according to that guidance. When so indicated on the table, contracting officers must obtain additional information from the entity responsible for establishing the supplier's ineligibility, if such information is available.

(5) The debarment, suspension, or ineligibility of a supplier does not, of itself, affect the rights and obligations of the parties to any valid, pre-existing contract. The Postal Service may terminate for default a contract with a supplier that is debarred, suspended, or determined to be ineligible. Except for service changes under mail transportation contracts, contracting officers may not add new work to the contract by supplemental agreement, by exercise of an option, or otherwise, except with the approval of the vice president of Supply Management or designee.

(e) *Causes for Debarment.* (1) The vice president of Supply Management, with the concurrence of the General Counsel, may debar a supplier, including its affiliates, for cause such as the following:

(i) Conviction of a criminal offense incidental to obtaining or attempting to obtain contracts or subcontracts, or in the performance of a contract or subcontract.

(ii) Conviction under a Federal antitrust statute arising out of the submission of bids or proposals.

(iii) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property.

(iv) Violation of a Postal Service contract so serious as to justify debarment, such as willful failure to perform a Postal Service contract in accordance with the specifications or within the time limit(s) provided in the contract; a record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more Postal Service contracts occurring within a reasonable period of time preceding the determination to debar (except that failure to perform or unsatisfactory performance caused by acts beyond the control of the supplier may not be considered a basis for debarment); violation of a contractual provision against contingent fees; or acceptance of a contingent fee paid in violation of a contractual provision against contingent fees.

(v) Any other offense indicating a lack of business integrity or business honesty.

(vi) Any other cause of a serious and compelling nature that debarment is warranted.

(2) The existence of a conviction in paragraph (e)(1)(i) or (ii) of this section can be established by proof of a conviction in a court of competent jurisdiction. If appeal taken from such conviction results in a reversal of the conviction, the debarment may be removed upon the request of the supplier, unless another cause or another basis for debarment exists.

(3) The existence of any of the other causes in paragraphs (e)(1)(iii), (iv), (v), or (vi) of this section can be established by a preponderance of the evidence, either direct or indirect, in the judgment of the debarring official.

(4) The criminal, fraudulent, or improper conduct of an individual may be imputed to the firm with which he or she is or has been connected when an impropriety was committed. Likewise, when a firm is involved in criminal, fraudulent, or other improper conduct, any person who participated in, knew of, or had reason to know of the impropriety may be debarred.

(5) The fraudulent, criminal, or other improper conduct of one supplier participating in a joint venture or similar arrangement may be imputed to other participating suppliers if the conduct occurred for or on behalf of the joint venture or similar arrangement, or with the knowledge, approval, or acquiescence of the supplier. Acceptance of the benefits derived from the conduct will be evidence of such knowledge, approval, or acquiescence.

(f) *Mitigating Factors.* (1) The existence of any cause for debarment does not necessarily require that a supplier be debarred. The decision to debar is within the discretion of the vice president of Supply Management, with the concurrence of the General Counsel, and must be made in the best interest of the Postal Service. The following factors may be assessed in determining the seriousness of the offense, failure, or inadequacy of performance, and may be taken into account in deciding whether debarment is warranted:

(i) Whether the supplier had established written standards of conduct and had published internal control systems at the time of the activity that constitutes cause for debarment or had adopted such procedures prior to any Postal Service investigation of the activity cited as a cause for debarment.

(ii) Whether the supplier brought the activity cited as a cause for debarment to the attention of the Postal Service in a prompt, timely manner.

(iii) Whether the supplier promptly and fully investigated the circumstances involving debarment and, if so, made the full results of the investigation available to appropriate officials of the Postal Service.

(iv) Whether the supplier cooperated fully with the Postal Service during its investigation into the matter.

(v) Whether the supplier paid or agreed to pay all criminal, civil, and administrative liability and other costs arising out of the improper activity, including any investigative or administrative costs incurred by the Postal Service, and made or agreed to make full restitution.

(vi) Whether the supplier took appropriate disciplinary action against the individual(s) responsible for the activity that could cause debarment.

(vii) Whether the supplier implemented and/or agreed to implement remedial measures, including those identified by the Postal Service.

(viii) Whether the supplier instituted and/or agreed to institute new and/or revised review and control procedures and ethics programs.

(ix) Whether the supplier had adequate time to eliminate circumstances within the supplier's organization that could lead to debarment.

(x) Whether the supplier's senior officers and mid-level management recognize and understand the seriousness of the misconduct giving rise to debarment.

(2) The existence or nonexistence of mitigating factors or remedial measures such as those above is not determinative whether or not a supplier should be debarred. If a cause for debarment exists, the supplier has the burden of demonstrating, to the satisfaction of the vice president of Supply

Management that debarment is not warranted or necessary.

(g) *Period of Debarment.* (1) When an applicable statute, executive order, or controlling regulation of other agencies provides a specific period of debarment, that period applies. In other cases, debarment by the Postal Service should be for a reasonable, definite, stated period of time, commensurate with the seriousness of the offense or the failure or inadequacy of performance. Generally, a period of debarment should not exceed 3 years. When debarment for an additional period is deemed necessary, notice of the proposed additional period of debarment must be furnished to the supplier as in the case of original debarment.

(2) Except as precluded by an applicable statute, executive order, or controlling regulation of another agency, debarment may be removed or the period may be reduced by the vice president of Supply Management when requested by the debarred supplier and when the request is supported by a reasonable justification, such as newly discovered material evidence, reversal of a conviction, bona fide change of ownership or management, or the elimination of the causes for which debarment was imposed. The vice president of Supply Management may, at his or her discretion, deny any request or refer it to the Judicial Officer for a hearing and for findings of fact, which the vice president of Supply Management will consider when deciding the matter. When a debarment is removed or the debarment period is reduced, the vice president of Supply Management must state in writing the reason(s) for the removal of the debarment or the reduction of the period of debarment.

(h) *Procedural Requirements for Debarment.* (1) After securing the concurrence of the General Counsel, the vice president of Supply Management will initiate a debarment proceeding by sending the supplier a written notice of proposed debarment. The notice will be served by sending it to the last known address of the supplier by Certified Mail, return receipt requested. A copy of the notice will be furnished to the Office of Inspector General. The notice will state that debarment is being considered; the reason(s) for the proposed debarment; the anticipated period of debarment and the proposed effective date; and, within 30 days of the notice, the supplier may submit, in person or in writing, or through a representative, information and argument in opposition to the proposed debarment. In the event a supplier does not submit information or argument in opposition to the proposed debarment to the vice president of Supply Management within the time allowed, the debarment will become final with no further review or appeal.

(2) If the proposed debarment is based on a conviction or civil judgment, the vice president of Supply Management with the concurrence of the General Counsel, may decide whether debarment is merited based on the conviction or judgment, including any information received from the supplier. If the debarment is based on other circumstances or if there are questions regarding material facts, the vice president of, Supply Management may seek additional information from the supplier and/or other persons, and may request the Judicial Officer to hold a fact-finding hearing on such matters. The hearing will be governed by rules of procedure promulgated by the Judicial Officer. The vice president of Supply Management may reject any findings of fact, in whole or in part, when they are clearly erroneous.

(3) When the vice president of Supply Management proposes to debar a supplier already debarred by another government agency for a period concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of evidence, facts, and proceedings before the other agency, upon any additional facts the Postal Service deems relevant, or on the decision of another government agency. In such cases, the findings of facts by another government agency may be considered as established, but, within 30 days of the notice of proposed debarment, the supplier may submit, in person or in writing, or through a representative, any additional facts, information, or argument to the vice president of Supply Management, and to explain why debarment by the Postal Service should not be imposed.

(4) Questions of fact to be resolved by a hearing before the Judicial Office will be based on the preponderance of the evidence.

(5) After consideration of the circumstances and any information and argument submitted by the supplier, the vice president of Supply Management, with the concurrence of the General Counsel, will issue a written decision regarding whether the supplier is debarred, and, if so, for the period of debarment. The decision will be mailed to the supplier by Certified Mail, return receipt requested. A copy of the decision will be furnished to the Office of the Inspector General. The decision will be final and binding, unless:

(i) The decision was procured by fraud or other criminal misconduct or

(ii) The decision was obtained in violation of the regulations contained in this part or an applicable public law enacted by Congress.

(i) *Causes for Suspension.* The vice president of Supply Management may suspend any supplier, including any of its affiliates, if:

(1) The supplier commits, is indicted for, or is convicted of fraud or a criminal offense incidental to obtaining, attempting to obtain, or performing a government contract, violates a Federal antitrust statute arising out of the submission of bids and proposals, or commits or engages in embezzlement, theft, forgery, bribery, falsification or destruction of records, receipt of stolen property, or any other offense indicating a lack of business integrity or business honesty; or

(2) If the Postal Service has notified a supplier of its proposed debarment under this Part.

(j) *Period of Suspension.* A suspension will not exceed 1 year in duration, except a suspension may be extended for reasonable periods of time beyond 1 year by the vice president of Supply Management. The termination of a suspension will not prejudice the Postal Service's position in any debarment proceeding. A suspension will be superseded by a decision rendered by the vice president of Supply Management, under paragraph (h)(5) of this section.

(k) *Procedural Requirements for Suspension.* (1) The vice president of Supply Management will notify a supplier of a suspension or an extension of a suspension and the reason(s) for the suspension or extension in writing sent to the supplier by Certified Mail, return receipt requested, within 10 days after the effective date of the suspension or extension. A copy of the notice will be furnished to the Office of the Inspector General.

(2) The notice will state the cause(s) for the suspension or extension.

(3) Within 30 days of notice of suspension or an extension, a supplier may submit to the vice president of Supply Management in writing, any information or reason(s) the supplier believes makes a suspension or an extension inappropriate, and the vice president of Supply Management in consultation with the General Counsel, will consider the supplier's submission, and, in their discretion, may revoke a suspension or an extension of a suspension. If a suspension or extension is revoked, the revocation will be in writing and a copy of the revocation will be sent to the supplier by Certified Mail, return receipt requested. A copy of the revocation will be furnished to the Office of the Inspector General.

PART 602—INTELLECTUAL PROPERTY RIGHTS OTHER THAN PATENTS

Sec.

602.1 General principles.
602.2 Office of Licensing, Philatelic and Retail Services Department.
602.3 Requests for use.

AUTHORITY: 39 U.S.C. 401(5).

SOURCE: 43 FR 42250, Sept. 20, 1978, unless otherwise noted.

§ 602.1 General principles.

It is the policy of the Postal Service to secure full ownership rights for its intellectual properties other than patents (hereinafter, intellectual properties) having significant economic or other business value, except when to do so would be contrary to the best interest of the Postal Service. Intellectual property rights shall be acquired and managed so as to:

(a) Promote the economic, operational, and competitive well-being of the Postal Service;

(b) Limit restrictions on the use of Postal Service intellectual property to

a minimum consistent with its statutory obligations;

(c) Assure that all potential users are treated fairly;

(d) Give due regard to other relevant considerations.

§ 602.2 Office of Licensing, Philatelic and Retail Services Department.

In accordance with the foregoing policy, the Postal Service Office of Licensing, Philatelic and Retail Services Department, formulates the program for the management of the Postal Service's rights in intellectual property (except patents and technical data rights in Postal Service contracts, which is the responsibility of Postal Service contracting officers). The Office of Licensing and the contracting officers identify intellectual properties in which the Postal Service should secure its rights. It receives and makes recommendations for the disposition of applications for use of Postal Service intellectual property. It periodically reviews the intellectual property rights portfolio to determine the extent of the utilization of protected properties and to recommend relinquishment of ownership when it considers ownership no longer desirable. It is advised by the Office of Procurement of performance under license agreements and makes recommendations for corrective measures when necessary. In consultation with the Law Department, it recommends appropriate action against unauthorized use of intellectual property.

[56 FR 58859, Nov. 22, 1991]

§ 602.3 Requests for use.

(a) Inquiries concerning licenses to use Postal Service trademarks or service marks, copyright materials and intellectual property other than patents and technical data rights in Postal Service contracts must be sent to: Office of Licensing, Philatelic and Retail Services Department, US Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–6700.

(b) Requests for the use of intellectual property should be submitted on the form provided by the Office of Licensing to the licensing advisor designated by that Office. Each request is considered in a timely fashion in accordance with the policy established in this section. Requests favorably considered are forwarded to the Office of Licensing for approval.

(c) Approved requests contemplating a permissive (no fee) use of the intellectual property are evidenced by a letter of permission furnished to the requester.

(d) Approved requests contemplating a contractual (fee) use of the intellectual property are forwarded to the Office of Licensing for the negotiation of a satisfactory license agreement.

(e) Each license agreement is subject to legal review.

(f) Requesters are promptly advised of unapproved requests.

A transmittal letter effecting the above changes to the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the FEDERAL REGISTER as provided by 39 CFR 111.3.

[56 FR 58859, Nov. 22, 1991]

SUBCHAPTER I [RESERVED]

SUBCHAPTER J—POSTAL SERVICE DEBT OBLIGATIONS; DISBURSEMENT POSTAL MONEY ORDERS

PART 760—APPLICABILITY OF TREASURY DEPARTMENT REGULATIONS

§ 760.1 Treasury Department regulations; applicability to Postal Service.

The provisions of Treasury Department Circular No. 300, 31 CFR part 306 (other than subpart O), as amended from time to time, shall apply insofar as appropriate to obligations of the U.S. Postal Service to the extent they are consistent with the Trust Indenture of the Postal Service and the agreement between the Postal Service and the Federal Reserve Bank of New York acting as Fiscal Agent of the United States on behalf of the Postal Service. Definitions and terms used in Treasury Department Circular 300 should be read as though modified to effectuate the application of the regulations to the U.S. Postal Service.

(39 U.S.C. Secs. 401, 402, 2005)

[37 FR 211, Jan. 7, 1972]

PART 761—BOOK-ENTRY PROCEDURES

Sec.
761.1 Definition of terms.
761.2 Authority of Reserve Banks.
761.3 Scope and effect of book-entry procedure.
761.4 Transfer or pledge.
761.5 Withdrawal of Postal Service securities.
761.6 Delivery of Postal Service securities.
761.7 Registered bonds and notes.
761.8 Servicing book-entry Postal Service securities; payment of interest, payment at maturity or upon call.

AUTHORITY: 39 U.S.C. 401, 402, 2005.

SOURCE: 37 FR 16801, Aug. 19, 1972, unless otherwise noted.

§ 761.1 Definition of terms.

In this part, unless the context otherwise requires or indicates:

(a) *Reserve Bank* means the Federal Reserve Bank of New York (and any other Federal Reserve Bank which agrees to issue Postal Service securities in book-entry form) as fiscal agent of the United States acting on behalf of the Postal Service and when indicated acting in its individual capacity.

(b) *Postal Service security* means any obligation of the Postal Service issued under 39 U.S.C. 2005, in the form of a definitive Postal Service security or a book-entry Postal Service security.

(c) *Definitive Postal Service security* means a Postal Service security in engraved or printed form.

(d) *Book-entry Postal Service security* means a Postal Service security in the form of an entry made as prescribed in these regulations on the records of a Reserve Bank.

(e) *Pledge* includes a pledge of, or any other security interest in, Postal Service securities as collateral for loans or advances or to secure deposits of public moneys or the performance of an obligation.

(f) *Date of call* is the date fixed in the authorizing resolution of the Board of Governors of the Postal Service on which the obligor will make payment of the security before maturity in accordance with its terms.

(g) *Member bank* means any national bank, State bank, or bank or trust company which is a member of a Reserve bank.

§ 761.2 Authority of Reserve Banks.

Each Reserve Bank is hereby authorized, in accordance with the provisions of this part, to (a) issue book-entry Postal Service securities by means of entries on its records which shall include the name of the depositor, the amount, the loan title (or series) and maturity date; (b) effect conversions between book-entry Postal Service securities and definitive Postal Service securities; (c) otherwise service and maintain book-entry Postal Service securities; and (d) issue a confirmation of transaction in the form of a written advice (serially numbered or otherwise) which specifies the amount and description of any securities; that is, loan title (or series) and maturity date, sold or transferred, and the date of the transaction.

§ 761.3 Scope and effect of book-entry procedure.

(a) A Reserve Bank as fiscal agent of the United States acting on behalf of the Postal Service may apply the book-entry procedure provided for in this part to any Postal Service securities which have been or are hereafter deposited for any purpose in accounts with it in its individual capacity under terms and conditions which indicate that the Reserve Bank will continue to maintain such deposit accounts in its individual capacity, notwithstanding application of the book-entry procedure to such securities. This paragraph is applicable, but not limited, to securities deposited:

(1) As collateral pledged to a Reserve Bank (in its individual capacity) for advances by it;

(2) By a member bank for its sole account;

(3) By a member bank held for the account of its customers;

(4) In connection with deposits in a member bank of funds of States, municipalities, or other political subdivisions; or,

(5) In connection with the performance of an obligation or duty under Federal, State, municipal, or local law, or judgments or decrees of courts.

The application of the book-entry procedure under this paragraph shall not derogate from or adversely affect the relationships that would otherwise exist between a Reserve Bank in its individual capacity and its depositors concerning any deposits under this paragraph. Whenever the book-entry procedure is applied to such Postal Service securities, the Reserve Bank is authorized to take all action necessary in respect of the book-entry procedure to enable such Reserve Bank in its individual capacity to perform its obligations as depository with respect to such Postal Service securities.

(b) A Reserve Bank as fiscal agent of the United States acting on behalf of the Postal Service may apply the book-entry procedure to Postal Service securities deposited as collateral pledged to the United States under Treasury Department Circulars Nos. 92 and 176, both as revised and amended, and may apply the book-entry procedure, with the approval of the Secretary of the Treasury, to any other Postal Service securities deposited with a Reserve Bank as fiscal agent of the United States.

(c) Any person having an interest in Postal Service securities which are deposited with a Reserve Bank (in either its individual capacity or as fiscal agent of the United States) for any purpose shall be deemed to have consented to their conversion to book-entry Postal Service securities pursuant to the provisions of this part, and in the manner and under the procedures prescribed by the Reserve Bank.

(d) No deposits shall be accepted under this section on or after the date of maturity or call of the securities.

§ 761.4 Transfer or pledge.

(a) A transfer or pledge of book-entry Postal Service securities to a Reserve bank (in its individual capacity or as fiscal agent of the United States) or to the United States, or to any transferee or pledgee eligible to maintain an appropriate book-entry account in its name with a Reserve bank under this part, is effected and perfected, notwithstanding any provision of law to the contrary, by a Reserve bank making an appropriate entry in its records of the securities transferred or pledged. The making of such an entry in the records of a Reserve bank shall (1) have the effect of a delivery in bearer form of definitive Postal Service securities; (2) have the effect of a taking of delivery by the transferee or pledgee; (3) constitute the transferee or pledgee a holder; and (4) if a pledge, effect a perfected security interest therein in favor of the pledgee. A transfer or pledge of book-entry Postal Service securities effected under this paragraph shall have priority over any transfer, pledge, or other interest, theretofore or thereafter effected or perfected under paragraph (b) of this section or in any other manner.

(b) A transfer or a pledge of transferable Postal Service securities, or any interest therein, which is maintained by a Reserve bank (in its individual capacity or as fiscal agent of the United States) in a book-entry account under this part, including securities in book-entry form under § 761.3(a)(3), is effected, and a pledge is perfected, by

any means that would be effective under applicable law to effect a transfer or to effect and perfect a pledge of the Postal Service securities, or any interest therein, if the securities were maintained by the Reserve bank in bearer definitive form. For purposes of transfer or pledge hereunder, book-entry Postal Service securities maintained by a Reserve bank shall, notwithstanding any provision of law to the contrary, be deemed to be maintained in bearer definitive form. A Reserve bank maintaining book-entry Postal Service securities either in its individual capacity or as fiscal agent of the United States is not a bailee for purposes of notification of pledges of those securities under this paragraph, or a third person in possession for purposes of acknowledgment of transfers thereof under this paragraph. Where transferable Postal Service securities are recorded on the books of a depositary (a bank, banking institution, financial firm, or similar party, which regularly accepts in the course of its business Postal Service securities as a custodial service for customers, and maintains accounts in the names of such customers reflecting ownership of or interest in such securities) for account of the pledgor or transferor thereof and such securities are on deposit with a Reserve bank in a book-entry account hereunder, such depositary shall, for purposes of perfecting a pledge of such securities or effecting delivery of such securities to a purchaser under applicable provisions of law, be the bailee to which notification of the pledge of the securities may be given or the third person in possession from which acknowledgment of the holding of the securities for the purchaser may be obtained. A Reserve bank will not accept notice or advice of a transfer or pledge effected or perfected under this paragraph, and any such notice or advice shall have no effect. A Reserve bank may continue to deal with its depositor in accordance with the provisions of this part, notwithstanding any transfer or pledge effected or perfected under this paragraph.

(c) No filing or recording with a public recording office or officer shall be necessary or effective with respect to any transfer or pledge of book-entry Postal Service securities or any interest therein.

(d) A Reserve Bank shall, upon receipt of appropriate instructions, convert book-entry Postal Service securities into definitive Postal Service securities and deliver them in accordance with such instructions; no such conversion shall effect existing interests in such Postal Service securities.

(e) A transfer of book-entry Postal Service securities within a Reserve Bank shall be made in accordance with procedures established by the Bank not inconsistent with this part.

(f) All requests for transfer or withdrawal must be made prior to the maturity or date of call of the securities.

[37 FR 16801, Aug. 19, 1972, as amended at 38 FR 12919, May 17, 1973]

§ 761.5 Withdrawal of Postal Service securities.

(a) A depositor of book-entry Postal Service securities may withdraw them from a Reserve Bank by requesting delivery of like definitive Postal Service securities to itself or on its order to a transferee.

(b) Postal Service securities which are actually to be delivered upon withdrawal may be issued either in registered or in bearer form.

§ 761.6 Delivery of Postal Service securities.

A Reserve Bank which has received Postal Service securities and effected pledges, made entries regarding them, or transferred or delivered them according to the instructions of its depositor is not liable for conversion or for participation in breach of fiduciary duty even though the depositor had no right to dispose of or take other action in respect of the securities. A Reserve Bank shall be fully discharged of its obligations under this part by the delivery of Postal Service securities in definitive form to its depositor or upon the order of such depositor. Customers of a member bank or other depositary (other than a Reserve Bank) may obtain Postal Service securities in definitive form only by causing the depositor of the Reserve Bank to order the withdrawal thereof from the Reserve Bank.

§ 761.7 Registered bonds and notes.

No formal assignment shall be required for the conversion to book-entry Postal Service securities of registered Postal Service securities held by a Reserve Bank (in either its individual capacity or as fiscal agent of the United States) on the effective date of this part for any purpose specified in § 761.3(a). Registered Postal Service securities deposited thereafter with a Reserve Bank for any purpose specified in § 761.3 shall be assigned for conversion to book-entry Postal Service securities. The assignment, which shall be executed in accordance with the provisions of part 760 of this subchapter and subpart F of 31 CFR part 306, so far as applicable, shall be to ''Federal Reserve Bank of _____ as fiscal agent of the United States acting on behalf of the Postal Service for conversion to book-entry Postal Service securities.''

§ 761.8 Servicing book-entry Postal Service securities; payment of interest, payment at maturity or upon call.

Interest becoming due on book-entry Postal Service securities shall be charged in the Postal Service Fund on the interest due date and remitted or credited in accordance with the depositor's instructions. Such securities shall be redeemed and charged in the Postal Service Fund on the date of maturity, call or advance refunding, and the redemption proceeds, principal and interest, shall be disposed of in accordance with the depositor's instructions.

PART 762—DISBURSEMENT POSTAL MONEY ORDERS

Subpart A—General, Definitions, Issuance

Sec.
762.11 General.
762.12 Definitions.
762.13 Issuance.
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Subpart B—Endorsements, Payment, Guaranties, Warranties and Processing of Disbursement Postal Money Orders

762.21 Scope.
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762.23 General rules.
762.24 Guaranty of endorsements.
762.25 Reclamation of amounts of paid disbursement postal money orders.
762.26 Postal facilities not to cash disbursement postal money orders.
762.27 Processing of disbursement postal money orders by Federal Reserve Banks.
762.28 Release of original disbursement postal money orders.
762.29 Endorsement of disbursement postal money orders by payees.
762.30 Disbursement postal money orders issued to incompetent payees.
762.31 Disbursement postal money orders issued to deceased payees.

Subpart C—Issuance of Substitutes for Lost, Destroyed, Mutilated, and Defaced Disbursement Postal Money Orders

762.41 Advice of non-receipt or loss, destruction, or mutilation.
762.42 Request for substitute disbursement postal money orders; requirements for undertaking of indemnity.
762.43 Issuance of substitute disbursement postal money order.
762.44 Receipt or recovery of original disbursement postal money order.
762.45 Removal of stoppage of payment.

AUTHORITY: 39 U.S.C. 401(2), 401(3), 401(4), 401(10), and 404(6).

SOURCE: 40 FR 52371, Nov. 10, 1975, unless otherwise noted.

Subpart A—General, Definitions, Issuance

§ 762.11 General.

The Postal Service, at its discretion, issues a specialized postal money order, designated a Disbursement Postal Money Order in payment of Postal Service obligations. Disbursement Postal Money Orders are distinguishable on their face from other postal money orders in the following ways:

(a) Disbursement Postal Money Orders have words of negotiability—''Pay to the order of''—printed on their face, while other postal money orders simply bear the words ''Pay to'' on their face;

(b) Disbursement Postal Money Orders, unlike other postal money orders, bear on their face the phrase, ''This special money order is drawn by the Postal Service to pay one of its own obligations.''; and

(c) The amounts of Disbursement Postal Money Orders are printed in

words as well as numbers, while the amounts of postal money orders available at post offices are printed in numbers only.

§ 762.12 Definitions.

As used in part 762 of this chapter, the term:

(a) *Disbursement Postal Money Order* means a money order (described in Part 762) issued by the Postal Service to pay one of its own obligations.

(b) *Federal Reserve Bank* means a Federal Reserve Bank or branch thereof.

(c) *Financial organization* means any bank, savings bank, savings and loan association or similar institution, or Federal or State chartered credit union.

(d) *Person* or *persons* means an individual or individuals, or an organization or organizations, whether incorporated or not, including all forms of banking institutions.

(e) *Presenting Bank* means a bank or other depositor of a Federal Reserve Bank which presents Disbursement Postal Money Orders to and receives credit therefor from a Federal Reserve Bank.

(f) *Reclamation* means the action taken by the Postal Service to obtain refund of the amounts of paid Disbursement Postal Money Orders.

(g) *Postal Service* means the U.S. Postal Service.

§ 762.13 Issuance.

Disbursement Postal Money Orders are issued solely by Postal Data Centers and solely for the purpose of paying Postal Service obligations. Accordingly, Disbursement Postal Money Orders may be issued in lieu of U.S. Treasury checks.

§ 762.14 Amounts for which disbursement postal money orders may be issued.

Disbursement Postal Money Orders may be issued for any amount appropriate to pay Postal Service Obligations. There is no maximum amount above which a Disbursement Postal Money Order may not be issued.

§ 762.15 Postal Service payments not made by disbursement postal money order.

Postal Service payments not made by Disbursement Postal Money Order are made by cash, U.S. Treasury Check, or by regular postal money order, and may be made by electronic funds transfer.

Subpart B—Endorsements, Payment, Guaranties, Warranties and Processing of Disbursement Postal Money Orders

§ 762.21 Scope.

The regulations in this subpart prescribe the requirements for endorsement and the conditions for payment of Disbursement Postal Money Orders drawn by the Postal Service.

§ 762.22 Definitions.

For definitions applicable to this subpart see § 762.12 of this chapter.

§ 762.23 General rules.

All Disbursement Postal Money Orders drawn by the Postal Service are payable without limitation of time. The Postal Service shall have the usual right of a drawee to examine Disbursement Postal Money Orders presented for payment and refuse payment of any Disbursement Postal Money Orders, and shall have a reasonable time to make such examination. Disbursement Postal Money Orders shall be deemed to be paid by the Postal Service only after first examination has been fully completed. If the Postal Service is on notice of a doubtful question of law or fact when a Disbursement Postal Money Order is presented for payment, payment will be deferred pending settlement by the Postal Service.

§ 762.24 Guaranty of endorsements.

The presenting bank and the endorsers of a Disbursement Postal Money Order presented to the Postal Service for payment shall be deemed to guarantee to the Postal Service that all prior endorsements are genuine, whether or not an express guaranty is placed on the Disbursement Postal Money Order. When the first endorsement has been made by one other than the payee

personally, the presenting bank and the endorsers shall be deemed to guarantee to the Postal Service, in addition to other warranties, that the person who so endorsed had unqualified capacity and authority to endorse the Disbursement Postal Money Order on behalf of the payee.

§ 762.25 Reclamation of amounts of paid disbursement postal money orders.

The Postal Service shall have the right to demand refund from the presenting bank of the amount of a paid Disbursement Postal Money Order if after payment the Disbursement Postal Money Order is found to bear a forged or unauthorized endorsement, or an endorsement by another for a deceased payee where the right to the proceeds of such Disbursement Postal Money Orders terminated upon the death of the payee, or to contain any other material defect or alteration which was not discovered upon first examination. If refund is not made, the Postal Service shall take such action against the proper parties as may be necessary to protect its interests.

§ 762.26 Postal facilities not to cash disbursement postal money orders.

Post offices and other postal facilities shall not be expected to cash Disbursement Postal Money Orders or to return cash for endorsed Disbursement Postal Money Orders offered in payment for postal service in amounts less than the value of a Disbursement Postal Money Order. However, properly endorsed Disbursement Postal Money Orders may be accepted as total or partial payment for postal services.

§ 762.27 Processing of disbursement postal money orders by Federal Reserve Banks.

In accordance with an agreement between the Postal Service and the Federal Reserve Banks as depositaries and fiscal agents of the United States, Federal Reserve Banks will handle Disbursement Postal Money Orders as follows:

(a) Federal Reserve Banks shall not be expected to cash Disbursement Postal Money Orders presented directly to them for payment; and

(b) Each Federal Reserve Bank shall:

(1) Receive Disbursement Postal Money Orders from its member banks, and its other depositors which guarantee all prior endorsements thereon;

(2) Give immediate credit therefor in accordance with its current Time Schedules and charge the amount thereof to the general account of the U.S. Treasury, subject to examination and payment by the Postal Service; and

(3) Forward the Disbursement Postal Money Orders to the Postal Service.

§ 762.28 Release of original disbursement postal money orders.

An original Disbursement Postal Money Order may be released to a responsible endorser only upon receipt of a properly authorized request showing the reason it is required.

§ 762.29 Endorsement of disbursement postal money orders by payees.

(a) *General requirements.* Disbursement Postal Money Orders shall be endorsed by the payee or the payees named, or by another on behalf of such payee or payees as set forth in this subpart B. The forms of endorsement shall conform to those recognized by general principles of law and commercial usage for the negotiation, transfer, or collection of negotiable instruments.

(b) *Endorsement of disbursement postal money orders by a financial organization under the payee's authorization.* When a Disbursement Postal Money Order is credited by a financial organization to the payee's account under his authorization, the financial organization may use an endorsement substantially as follows:

> Credit to the account of the within-named payee in accordance with payee's or payees' instructions. Absence of endorsement guaranteed.

A financial organization using this form of endorsement shall be deemed to guarantee to all subsequent endorsers and to the Postal Service that it is acting as an attorney in fact for the payee or payees, under his or their authorization.

(c) *Endorsement of disbursement postal money orders drawn in favor of financial organizations.* All Disbursement Postal

Money Orders drawn in favor of financial organizations, for credit to the accounts of persons designating payment so to be made, shall be endorsed in the name of the financial organization as payee in the usual manner.

§ 762.30 Disbursement postal money orders issued to incompetent payees.

(a) If the Disbursement Postal Money Order is endorsed by a legal guardian or other fiduciary and presented for payment by a bank it will be paid by the Postal Service without submission to the Postal Service of documentary proof of authority of the guardian or other fiduciary.

(b) If a guardian has not been or will not be appointed, the Disbursement Postal Money Order shall be forwarded to the Money Order Division, Postal Data Center, P.O. Box 14963, St. Louis, MO 63182, with a full explanation of the circumstances.

§ 762.31 Disbursement postal money orders issued to deceased payees.

(a) If the Disbursement Postal Money Order is endorsed by an Executor or Administrator and presented for payment by a bank it will be paid by the Postal Service without submission to the Postal Service of documentary proof of the authority of the Executor or Administrator.

(b) If an Executor or Administrator has not been appointed or if there is doubt as to whether the proceeds of the Disbursement Postal Money Order pass to the estate of the deceased payee, the instrument should be returned to the Money Order Division, Postal Data Center, P.O. Box 14963, St. Louis, MO 63182, for determination whether, under applicable laws, payment is due, and for reissuance to the appropriate payee.

Subpart C—Issuance of Substitutes for Lost, Destroyed, Mutilated, and Defaced Disbursement Postal Money Orders

§ 762.41 Advice of non-receipt or loss, destruction, or mutilation.

(a) In the event of the non-receipt, loss, or destruction of a Disbursement Postal Money Order, or the mutilation or defacement of a Disbursement Postal Money Order to an extent which renders it non-negotiable, the owner should immediately contact the Money Order Division, Postal Data Center, P.O. Box 14963, St. Louis, MO 63182, describing the Disbursement Postal Money Order, stating the purpose for which it was issued, giving, if possible, its date, number, and amount, and requesting that payment be stopped. In cases involving mutilated or defaced Disbursement Postal Money Orders the owner should enclose the mutilated or defaced item with his communication.

(b) If the Disbursement Postal Money Order, which is the basis of the owner's claim, is determined to be outstanding, the Money Order Division shall furnish the claimant an appropriate application form for obtaining a substitute Disbursement Postal Money Order. However, the execution of an application shall not be required in the event the original written statement submitted by the claimant substantially meets the requirements of the prescribed application form.

§ 762.42 Request for substitute disbursement postal money orders; requirements for undertaking of indemnity.

In the case of a request for a substitute Disbursement Postal Money Order:

(a) An undertaking of indemnity in penal sum equal to the amount of the Disbursement Postal Money Order shall, unless otherwise provided in this section, be executed by the claimant, as may be required by the Postal Service, and submitted to the Money Order Division.

(b) Unless the Postal Service determines that an undertaking of indemnity is essential in the public interest, no undertaking of indemnity shall be required in the following classes of cases:

(1) If the Postal Service is satisfied that the loss, theft, destruction, mutilation or defacement occurred without fault of the owner or holder, and while the Disbursement Postal Money Order was in the custody or control of the Postal Service;

(2) If substantially the entire Disbursement Postal Money Order is presented and surrendered by the owner or holder and the Postal Service is satisfied as to the identity of the Disbursement Postal Money Order presented and that any missing portions are not sufficient to form the basis of a valid claim against the Postal Service;

(3) If the Postal Service is satisfied that the original Disbursement Postal Money Order is not negotiable and cannot be made the basis of a valid claim against the Postal Service; or

(4) If the amount of the Disbursement Postal Money Order is not more than $200.

§ 762.43 Issuance of substitute disbursement postal money order.

Upon approval of the undertaking of indemnity, application, or statement of claim, the Money Order Division shall issue to the claimant a substitute Disbursement Postal Money Order showing such information as may be necessary to identify the original instrument.

§ 762.44 Receipt or recovery of original disbursement postal money order.

(a) If the original Disbursement Postal Money Order is received or recovered by the owner after he has requested the Postal Service to stop payment on the original but before a substitute has been received, he should immediately advise the Money Order Division and hold such original Disbursement Postal Money Order until receipt of instructions with respect to its negotiability.

(b) If the original Disbursement Postal Money Order is received by the owner after a substitute has been received by him, the original shall not be cashed, but shall be immediately forwarded to the Money Order Division. Under no circumstances shall both the original and substitute be cashed.

§ 762.45 Removal of stoppage of payment.

Requests for removal of stoppage of payment shall be addressed to the Money Order Division. No request for removal of stoppage of payment shall be accepted after issuance of a substitute Disbursement Postal Money Order has been approved.

SUBCHAPTER K—ENVIRONMENTAL REGULATIONS

PART 775—NATIONAL ENVIRONMENTAL POLICY ACT PROCEDURES

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AUTHORITY: 39 U.S.C. 401; 42 U.S.C.4321 *et seq.;* 40 CFR 1500.4.

SOURCE: 44 FR 63525, Nov. 5, 1979, unless otherwise noted.

§ 775.1 Purpose.

These procedures implement the National Environmental Policy Act (NEPA) regulations (40 CFR part 1500) issued by the Council on Environmental Quality (CEQ).

[63 FR 45719, Aug. 27, 1998]

§ 775.2 Policy.

It is the policy of the Postal Service to:

(a) Interpret and administer applicable policies, regulations, and public laws of the United States in accordance with the policies set forth in the National Environmental Policy Act, as amended, and the NEPA Regulations.

(b) Make the NEPA process useful to Postal Service decision makers and the public.

(c) Emphasize environmental issues and alternatives in the consideration of proposed actions.

(d) Encourage and facilitate public involvement in decisions which affect the quality of the human environment.

(e) Use the NEPA process to identify and assess reasonable alternatives to proposed actions in order to avoid or minimize adverse effects on the environment.

(f) Use all practicable means to protect, restore, and enhance the quality of the human environment.

(g) Reduce paperwork.

(h) Reduce delay.

§ 775.3 Responsibilities.

(a) The Chief Environmental Officer is responsible for overall development of policy regarding NEPA and other environmental policies. The officer in charge of the facilities or real estate organization is responsible for the development of NEPA policy as it affects real estate or acquisition, construction and disposal of postal facilities consistent with overall NEPA policy. Each officer with responsibility over the proposed program, project, action, or facility is responsible for compliance with NEPA as the responsible official.

(b) Postal managers will designate environmental coordinators to assist with compliance with NEPA procedures.

[63 FR 45719, Aug. 27, 1998]

§ 775.4 Definitions.

(a) The definitions set forth in 40 CFR part 1508 apply to this part 775.

(b) In addition to the terms defined in 40 CFR part 1508, the following definitions apply to this part:

Approving official means the person or group of persons, who authorizes funding as established through the delegations of approval authority issued by the finance organization. That person or group of persons may not have proposed the action for which financial approval is sought.

Environmental checklist means a Postal Service form that identifies potential environmental impacts for proposed actions initiated by postal managers.

Mitigated FONSI means a FONSI which requires the implementation of specified mitigation measures in order to ensure that there are no significant impacts to the environment.

Record of environmental consideration means the Postal Service form that identifies the Postal Service's review of proposed activities under NEPA.

Responsible official means the person, or designated representative, who proposes an action and is responsible for compliance with NEPA. For larger projects, that person may not have the financial authority to approve such action. The responsible official signs the NEPA documents (FONSI, ROD) and the REC.

[63 FR 45719, Aug. 27, 1998]

§ 775.5 Classes of actions.

(a) *Actions which normally require an environment impact statement.* None, however the Postal Service will prepare an EIS when necessary based on the factors identified in 40 CFR 1508.27.

(b) *Actions requiring an environmental assessment.* Classes of actions that will require an environmental assessment unless categorically excluded include:

(1) Any project that includes the conversion, purchase, or any other alteration of the fuel source for 25 percent or more of USPS vehicles operating with fuel other than diesel or gasoline in any carbon monoxide or ozone nonattainment area;

(2) Any action that would adversely affect a federally listed threatened or endangered species or its habitat;

(3) Any action that would directly affect public health;

(4) Any action that would require development within park lands, or be located in close proximity to a wild or scenic river or other ecologically critical area;

(5) Any action affecting the quality of the physical environment that would be scientifically highly controversial;

(6) Any action that may have highly uncertain or unknown risks on the human environment;

(7) Any action that threatens a violation of applicable federal, state, or local law or requirements imposed for the protection of the environment;

(8) New construction of a facility with vehicle maintenance or fuel dispensing capabilities, whether owned or leased;

(9) Acquisition or lease of an existing building involving new uses or a change in use to a greater environmental intensity;

(10) Real property disposal involving a known change in use to a greater environmental intensity;

(11) Postal facility function changes involving new uses of greater environmental intensity;

(12) Reduction in force involving more than 1000 positions;

(13) Relocation of 300 or more employees more than 50 miles;

(14) Initiation of legislation.

[63 FR 45719, Aug. 27, 1998]

§ 775.6 Categorical exclusions.

(a) The classes of actions in this section are those that the Postal Service has determined do not individually or cumulatively have a significant impact on the human environment. To be categorically excluded, it must be determined that a proposed action fits within a class listed and there are no extraordinary circumstances that may affect the significance of the proposal. The action must not be connected to other actions with potentially significant impacts or is not related to other proposed actions with potentially significant impacts. Extraordinary circumstances are those unique situations presented by specific proposals, such as scientific controversy about the environmental impacts of the proposal, uncertain effects or effects involving unique or unknown risks.

(b) Categorical exclusions relating to general agency actions:

(1) Policy development, planning and implementation that relate to routine activities such as personnel, organizational changes or similar administrative functions.

(2) Routine actions, including the management of programs or activities necessary to support the normal conduct of agency business, such as administrative, financial, operational and personnel action that involve no commitment of resources other than manpower and funding allocations.

(3) Award of contracts for technical support services, management and operation of a government owned facility, and personal services.

(4) Research activities and studies and routine data collection when such actions are clearly limited in context and intensity.

(5) Educational and informational programs and activities.

(6) Reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances or other similar causes that do not affect more than 1,000 positions.

(7) Postal rate or mail classification actions, address information system changes, post office name and zip code changes.

(8) Property protection, law enforcement and other legal activities undertaken by the Postal Inspection Service, the Law Department, the Judicial Officer, and the Inspector General.

(9) Activities related to trade representation and market development activities abroad.

(10) Emergency preparedness planning activities, including designation of on-site evacuation routes.

(11) Minor reassignment of motor vehicles and purchase or deployment of motor vehicles to new locations that do not adversely impact traffic safety, congestion or air quality.

(12) Procurement or disposal of mail handling or transport equipment.

(13) Acquisition, installation, operation, removal or disposal of communication systems, computers and data processing equipment.

(14) Postal facility function changes not involving construction, where there are no substantial relocation of employees, or no substantial increase in the number of motor vehicles at a facility.

(15) Closure or consolidation of post offices under 39 U.S.C. 404(b).

(16) Minor operational changes at an existing facility to minimize waste generation and for reuse of materials. These changes include but are not limited to, adding filtration and recycling systems to allow reuse of vehicle or machine oil, setting up sorting areas to improve process efficiency, and segregating waste streams previously mingled and assigning new identification codes to the two resulting streams.

(17) Actions which have an insignificant effect upon the environment as established in a previously written Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) or Environmental Impact Statement (EIS). Such repetitive actions shall be considered ''reference actions'' and a record of all decisions concerning these ''reference actions'' shall be maintained by the Chief Environmental Officer or designee. The proposed action must be essentially the same in context and the same or less in intensity or create fewer impacts than the ''reference action'' previously studied under an EA or EIS in order to qualify for this exclusion.

(18) Rulemakings that are strictly procedural, and interpretations and rulings with existing regulations, or modifications or rescissions of such interpretations and rulings.

(c) Categorical exclusions relating to emergency or restoration actions:

(1) Any cleanup, remediation or removal action conducted under the provisions of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) or the Resource Conservation and Recovery Act (RCRA), any asbestos abatement actions regulated under the provisions of the Occupational Safety and Health Act (OSHA), or the Clean Air Act or any PCB transformer replacement or any lead based paint abatement actions regulated under the provisions of the Toxic Substances Control Act (TSCA), OSHA or RCRA.

(2) Testing associated with environmental cleanups or site investigations.

(d) Categorical exclusions relating to maintenance or repair actions at existing facilities:

(1) Siting, construction or operation of temporary support buildings or support structures.

(2) Routine maintenance and minor activities, such as fencing, that occur in floodplains or state and local wetlands or pursuant to the nationwide, regional or general permitting process of the US Army Corps of Engineers.

(3) Routine actions normally conducted to protect and maintain properties and which do not alter the configuration of the building.

(4) Changes in configuration of buildings required to promote handicapped accessibility pursuant to the Architectural Barriers Act.

(5) Repair to, or replacement in kind or equivalent of building equipment or components (e.g., electrical distribution, HVAC systems, doors, windows, roofs, etc.).

(6) Internal modifications or improvements to structure, or buildings to accommodate mail processing, computer, communication or other similar types of equipment or other actions which do not involve modification to the external walls of the facility.

(7) Joint development and/or joint use projects that only involve internal modifications to an existing facility.

(8) Noise abatement measures, such as construction of noise barriers and installation of noise control materials.

(9) Actions which require concurrence or approval of another federal agency where the action is a categorical exclusion under the NEPA regulations of that federal agency.

(e) Categorical exclusions relating to real estate actions.

(1) Obtaining, granting, disposing, or changing of easements, licenses and permits, rights-of-way and similar interests.

(2) Extension, renewal, renegotiation, or termination of existing lease agreements.

(3) Purchase of Postal Service occupied leased property where the planned postal uses do not differ significantly from the past uses of the site.

(4) Acquisition or disposal of existing facilities and real property where the planned uses do not differ significantly from past uses of the site.

(5) Acquisition of real property not connected to specific facility plans or when necessary to protect the interests of the Postal Service in advance of final project approval. This categorical exclusion only applies to the acquisition. Any subsequent use of the site for a facility project must be considered under this part.

(6) Disposal through sale or outlease of unimproved real property.

(7) Disposal through sale, outlease, transfer or exchange of real property to other federal or state agencies.

(8) Acquisition and disposal through sale, lease, transfer or exchange of real property that does not involve an increase in volumes, concentrations, or discharge rates of wastes, air emissions, or water effluents, and that under reasonably foreseeable uses, have generally similar environmental impacts as compared to those before the acquisition or disposal. A determination that the proposed action is categorically excluded can be based upon previous ''reference actions'' documented under § 775.6(b)(17).

(9) Acquisition and disposal through sale, lease, transfer, reservation or exchange of real property for nature and habitat preservation, conservation, a park or wildlife management.

(10) New construction, Postal Service owned or leased, or joint development and joint use projects, of any facility unless the proposed action is listed as requiring an EA in § 775.5.

(11) Expansion or improvement of an existing facility where the expansion is within the boundaries of the site or occurs in a previously developed area unless the proposed action is listed as requiring an EA in § 775.5.

(12) Construction and disturbance pursuant to a nationwide, regional or general permit issued by the US Army Corps of Engineers.

(13) Any activity in floodplains being regulated pursuant to § 775.6 and is not listed as requiring an EA in § 775.5.

[63 FR 45720, Aug. 27, 1998]

§ 775.7 Planning and early coordination.

Early planning and coordination among postal functional groups is required to properly consider environmental issues that may be attributable to the proposed action. Operational and facility personnel must cooperate in the early concept stages of a program or project. If it is determined that more than one postal organization will be involved in any action, a lead organization will be selected to complete the NEPA process before any NEPA documents are prepared. If it is determined that a project has both real estate and non-real estate actions, the facilities functional organization will take the lead.

[63 FR 45721, Aug. 27, 1998]

§ 775.8 Environmental evaluation guidelines.

(a) *Approach*. When dealing with proposals which may have an impact on the human environment, environmental coordinators, planners, decision makers, and other officials responsible for actions, will, as appropriate:

(1) Use a systematic approach that integrates natural and social sciences and environmental design in planning and making decisions.

(2) Identify environmental effects and values in detail, and appraise them in conjunction with economic and technical analyses.

(3) Consider environmental documents at all decision points at which other planning documents are considered. (Plans and decisions are to reflect environmental values. Proposed actions should be assessed as soon as their effects can be meaningfully evaluated, to provide the bases for early decision on whether detailed environmental impact statements must be prepared.)

(4) Study, develop, describe, and evaluate at all decision points, reasonable alternatives to recommended actions which may have a significant effect on the environment.

(b) *Proposal requirements.* When an environmental impact statement has been prepared, it must accompany the proposal through and be used in the decision-making process. Any other proposal must refer to applicable environmental documents (e.g., determination of categorical exclusion; finding of no significant impact; notice of intent to prepare an impact statement), and relevant comments and responses.

(c) *Lead agency arrangements.* If the Postal Service and another Federal agency become involved in a lead agency arrangement for the preparation of an environmental impact statement, the Service will cooperate fully.

[44 FR 63525, Nov. 5, 1979. Redesignated at 63 FR 45719, Aug. 27, 1998]

§ 775.9 Environmental evaluation process.

(a) *All actions*—(1) *Assessment of actions.* An environmental checklist may be used to support a record of environmental consideration as the determination that the proposed action does not require an environmental assessment. An environmental assessment must be prepared for each proposed action except that an assessment need not be made if a determination is made that:

(i) The action is one of a class listed in § 775.6, Categorical Exclusions, and

(ii) The action is not affected by extraordinary circumstances which may cause it to have a significant environmental effect, or

(iii) The action is a type that is not a major federal action with a significant impact upon the environment.

(2) *Findings of no significant impact.* If an environmental assessment indicates that there is no significant impact of a proposed action on the environment, an environmental impact statement is not required. A ''finding of no significant impact'' (FONSI) is prepared and published in accordance with § 775.13. When the proposed action is approved, it may be accomplished without further environmental consideration. A FONSI document briefly presents the reasons why an action will not have a significant effect on the human environment and states that an environmental impact statement will not be prepared. It must refer to the environmental assessment and any other environmentally pertinent documents related to it. The assessment may be included in the finding if it is short, in which case the discussion in the assessment need not be repeated in the finding. The FONSI may be a mitigated FONSI in which case the required mitigation factors should be listed in the FONSI. The use of a mitigated FONSI is conditioned upon the implementation of the identified mitigation measures in the EA that support the FONSI. Unless the mitigation measures are implemented by the responsible official, the use of an EA in lieu of an EIS is not acceptable.

(3) Impact statement preparation decision and notices. If an environmental assessment indicates that a proposed major action would have a significant impact on the environment, a notice of intent to prepare an impact statement is published (see § 775.13) and an environmental impact statement is prepared.

(4) Role of impact statement in decision making. An environmental impact statement is used, with other analyses and materials, to decide which alternative should be pursued, or whether a proposed action should be abandoned or other courses of action pursued. See § 775.12 for restrictions on the timing of this decision.

(5) *Record of decision*. For actions requiring environmental impact statements, a concise public record of decision is prepared when a decision, or a proposal for legislation, is made. The record, which may be integrated into any other record, or notice, including that required by Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions, must:

(i) State what the decision was.

(ii) Identify all alternatives considered in reaching a decision, specifying alternatives considered to be environmentally preferable; identify and discuss all significant factors, including any essential considerations of national policy, which were weighed in making the decision and state how those considerations entered into the decision.

(iii) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been or will be adopted, and if not, why not.

(6) *Actions prohibited prior to issuance of record of decision*. Until a record of decision is issued, no action may be taken on a proposal on which an environmental impact statement is made if the action would:

(i) Have an adverse environmental impact, or

(ii) Limit the choice of reasonable alternatives.

(7) *Mitigation measures*. Practicable mitigation measures identified in an environmental assessment must be implemented. Mitigation measures described in an environmental impact statement and accepted in a decision must be implemented. Upon request, the Postal Service informs federal, state, and local agencies and the public of the progress in carrying out adopted mitigation measures.

(b) *Additional requirements for facility actions*. (1) The environmental assessment of any action which involves the construction or acquisition of a new mail processing facility must include reasonable alternatives to the proposed action and not just consideration of contending sites for a facility. This process must be started early in the planning of the action. An environmental assessment report, however, is not required until the contending project sites have been determined. The information contained in the environmental assessment report must be used, together with other site planning information, in the selection of the final site.

(2) When an environmental assessment indicates that an environmental impact statement may be needed for a proposed facility action, the responsible officer will make the decision whether to prepare an environmental impact statement for presentation to the Capital Investment Committee, and to the Board of Governors if the Board considers the proposal.

(3) If an environmental impact statement is presented to the Committee or the Board, and an analysis indicates that it would be more cost-effective to proceed immediately with continued control of sites, (including advance acquisition, if necessary, and where authorized by postal procedures), environmental impact statement preparation, and project designs, a budgetary request will include authorization of funds to permit:

(i) The preparation of an impact statement encompassing all reasonable alternatives and site alternatives,

(ii) The continued control of specified competing sites (including advance acquisition, if necessary, and where authorized by postal procedures), chosen to preserve environmental or other options, and

(iii) The development of limited designs of facilities for each competing site.

(4) A completed environmental impact statement will be presented to the Capital Investment Committee, and to the Board of Governors if the Board considers the proposal, for use in deciding whether a proposed project should proceed, be restudied, or be abandoned. If the decision is to proceed with a proposed project, the Committee, or the Board if it considers the proposal, decides which alternative site is to be

used for project development, and authorizes the project.

[44 FR 63525, Nov. 5, 1979, as amended at 48 FR 29378, June 24, 1983; 50 FR 32411, Aug. 12, 1985; 50 FR 33036, Aug. 16, 1985; 55 FR 10454, Mar. 21, 1990. Redesignated and amended at 63 FR 45719, 45721, Aug. 27, 1998; 65 FR 41012, July 3, 2000]

§ 775.10 Environmental assessments.

(a) An environmental assessment must contain:

(1) A summary of major considerations and conclusions,

(2) A description of the proposed action,

(3) For each reasonable alternative, a description of the affected environment, the environmental consequences, the mitigation measures, if any, and a comparison to all alternatives considered.

(4) A list of applicable environmental permits necessary to complete the proposed action.

(b) Those preparing an environmental assessment must solicit information and views from Federal, State, and local agencies and, where there is a substantial likelihood of significant effects on the environment, the public. All responsible views and information must be considered.

[44 FR 63525, Nov. 5, 1979. Redesignated and amended at 63 FR 45719, 45722, Aug. 27, 1998]

§ 775.11 Environmental impact statements.

(a) *Determining scope.* Before an environmental impact statement is prepared, the following procedures must be followed to determine what issues are to be addressed and in what depth:

(1) Affected Federal, State, and local agencies and other interested persons are invited to participate by furnishing written views and information, or at a hearing if appropriate. Notice is given in accordance with § 775.13.

(2) The significance of issues to be analyzed in depth in the environmental impact statement is determined through consideration of:

(i) Actions which are closely related, or similar, or have cumulative significant impacts.

(ii) Alternatives, which must include the ''no action'' alternative, other reasonable courses of action, and mitigation measures.

(iii) Impacts, which may be direct, indirect, or cumulative.

(3) Issues which are not significant are identified and eliminated.

(4) The determinations made must be revised if substantial changes are made later in the proposed action, or if significant new circumstances or information arise which bear on the proposal or its impacts.

(b) *Preparation.* (1) Except for proposals for legislation, environmental impact statements are prepared in two stages:

(i) Draft environmental impact statement, prepared in accordance with the scope decided upon under paragraph (a) of this section.

(ii) Final environmental impact statement, responding to comments on the draft statement and discussing and responding to any responsible opposing view which was not adequately discussed in the draft statement.

(2) Environmental impact statements must:

(i) Be analytic rather than encyclopedic.

(ii) Contain discussions of impacts in proportion to their significance. Insignificant impacts eliminated during the process under § 775.11(a) to determine the scope of issues must be discussed only to the extent necessary to state why they will not be significant.

(iii) Be concise, and not longer than is necessary to comply with NEPA. They must not contain repeated statements of the same basic points.

(iv) Contain discussions of alternatives considered and of how alternatives chosen will meet the requirements of NEPA and other environmental laws and policies.

(v) Encompass the range of alternatives to be considered by the decision makers.

(vi) Serve to assess the environmental impact of proposed actions, rather than to justify decisions already made.

(3) The text of final environmental impact statements normally should be less than 150 pages. Statements on proposals of unusual scope or complexity normally should be less than 300 pages.

(4) Staged or ''tiered'' environmental impact statements must not contain repetitive discussions of the same issues. Each document must state where each earlier document is available.

(5) Material may be incorporated into an environmental impact statement by reference only when the material is reasonably available for inspection by potentially interested persons within the time allowed for comment.

(6) If information relevant to reasonably foreseeable adverse impacts cannot be obtained because the overall cost of obtaining it is exorbitant or the means to obtain it are not known, the fact that such information is incomplete or unavailable must be stated clearly. In addition, the relevance of the incomplete or unavailable information to the evaluation of the impacts must be stated, and a summary of existing credible scientific evidence relevant to evaluation of the impacts must be included, as well as an evaluation of such impacts on the basis of theoretical approaches or generally accepted research methods. For purposes of this subsection, ''reasonably foreseeable'' includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

(7) If a cost-benefit analysis relevant to the choice among environmentally different alternatives was prepared for the proposed action, it must be incorporated by reference or appended to the statement to aid in evaluating the environmental consequences. The relationship between the cost-benefit analysis and any analysis of unquantified environmental impacts, values, and amenities must be discussed.

(8) Methods used must be identified, and footnote references must be made to scientific and other sources relied on for conclusions. Analytical techniques may be incorporated in appendices.

(9) Permits, licenses, and other authorizations needed to implement a proposal must be listed in the draft environmental impact statement and the prospects for obtaining them must be assessed. Where there is uncertainty as to the need for an authorization it must be indicated.

(10) An environmental impact statement must contain a discussion of any inconsistency between the proposed action and any State or local law, ordinance, or approved plan; and must contain a description of the manner and extent to which the proposed action will be reconciled with the law, ordinance, or approved plan.

(11) Where State laws or local ordinances impose environmental impact statement requirements which are not in conflict with those in NEPA, an environmental impact statement made by the Postal Service should satisfy pertinent State and local requirements to the extent practicable.

(c) *Format.* The standard format for environmental statements is:

(1) *Cover Sheet.* The cover sheet, not to exceed one page, must include:

(i) A list of the responsible agencies including the lead agency and any cooperating agencies.

(ii) The title of the proposed action that is the subject of the statement (and if appropriate, the titles of related cooperating agency actions), together with any city, state, and county where the action is to take place.

(iii) The name, address, and telephone number of a person at the agency who can supply further information.

(iv) A designation of the document as a draft or final statement or a draft or final supplement.

(v) A one-paragraph abstract of the statement.

(vi) The date by which comments must be received.

(2) Summary. The section should compare and summarize the findings of the analyses of the affected environment, the environmental impacts, the environmental consequences, the alternatives, and the mitigation measures. The summary should sharply define the issues and provide a clear basis for choosing alternatives.

(3) *Table of Contents.*

(4) Proposed action. This section should clearly outline the need for the EIS and the purpose and description of the proposed action. The entire action

should be discussed, including connected and similar actions. A clear discussion of the action will assist in consideration of the alternatives.

(5) *Alternatives and mitigation.* This portion of the environmental impact statement is vitally important. Based on the analysis in the Affected Environment and Environmental Consequences section (see § 775.11(c)(6)), the environmental impacts and the alternatives are presented in comparative form, thus sharply defining the issues and providing a clear basis for choosing alternatives. Those preparing the statement must:

(i) Explore and evaluate all reasonable alternatives, including the ''no action'' alternative, and briefly discuss the reasons for eliminating any alternatives.

(ii) Devote substantial treatment to each alternative considered in detail, including the proposed action, so that reviewers may evaluate their comparative merits.

(iii) Identify the preferred alternative or alternatives in the draft and final statements.

(iv) Describe appropriate mitigation measures not considered to be an integral part of the proposed action or alternatives. See § 775.9(a)(7).

(6) *Affected Environment and Environmental Consequences.* For each reasonable alternative, each affected element of the environment must be described, followed immediately by an analysis of the impacts (environmental consequences). The analysis must include, among others, the following:

(i) Any adverse environmental effects which cannot be avoided should the action be implemented.

(ii) The relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity,

(iii) Any irreversible or irretrievable commitments of resources should the action be implemented, and

(iv) Energy requirements and conservation; and natural, or depletable, resource requirements and conservation.

(7) *List of Mitigation Measures.*

(8) *List of Preparers.* List the names, together with the qualifications (expertise, professional disciplines), of persons who were primarily responsible for preparing the environmental impact statement or significant background papers.

(9) *List of Agencies, Organizations and Persons to Whom Copies of the Statement Are Sent.*

(10) *Index.*

(11) *Appendices.* Include comments on draft statement in final statement.

(d) *Distribution.* (1) Any completed draft environmental impact statement which is made the subject of a public hearing, must be made available to the public as provided in § 775.12, of this chapter at least 15 days in advance of the hearing.

(2) Draft and final environmental impact statements must be filed with the Environmental Protection Agency. Five copies are filed with EPA's headquarters addressed to the Office of Federal Activities (A–104), Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; five copies are also filed with the responsible EPA region. Statements may not be filed with the EPA earlier than they are transmitted to commenting agencies and made available to the public.

(3) Copies of draft and final environmental impact statements must be furnished to:

(i) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.

(ii) Any appropriate Federal, state, or local agency authorized to develop and enforce environmental standards.

(iii) The appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions, the State Historic Preservation Officer, and, when National Register or eligible properties may be affected, the Advisory Council on Historic Preservation.

(iv) Any person, organization or agency requesting them.

(4) Copies of final environmental impact statements must be furnished to any person who, or organization or agency which, submitted substantive comments on the draft.

(e) *Responses to comments.* (1) A final statement responds to comments on a

draft statement in one or more of the following ways:

(i) Modification of alternatives, including the proposed action.

(ii) Development and evaluation of alternatives not previously given serious consideration.

(iii) Supplementation, improvement, or modification of analyses.

(iv) Correction of facts.

(v) Explanation of why a comment does not warrant a direct response, citing supporting sources, authorities, or reasons. Relevant circumstances which may trigger reappraisal or further response must be indicated.

(2) Substantive comments received on a draft statement must be attached to the final statement.

(3) If all of the changes are minor and are confined to responses described in paragraphs (e)(1) (iv) and (v) of this section, errata sheets may be written, and only the comments and errata sheets need be recirculated. In such a case, the draft statement with the comments, errata sheets, and a new cover, must be filed as the final statement.

(f) *Supplements.* (1) A supplement to a draft or final environmental impact statement must be issued if:

(i) Substantial changes are made in the proposed action that are relevant to environmental concerns; or

(ii) Significant new circumstances or information bearing on environmental impacts of the proposed action arise or are discovered.

(2) The decision on a proposed action involving an environmental impact statement, must be delayed until any necessary supplement has been circulated and has gone through the commenting period. A supplement is prepared, circulated, and filed in the same manner (except for determining scope) as draft and final statements, unless alternative procedures are approved by CEQ.

(g) *Contracting.* A contractor employed to prepare an environmental impact statement must certify that it has no financial or other interest in the outcome of the project.

(h) *Proposals for Legislation.* Legislative environmental impact statements must be prepared and transmitted as follows:

(1) A legislative environmental impact statement is considered part of the formal transmittal of a legislative proposal to the Congress. It may be transmitted to the Congress up to 30 days after the proposal. The statement must be available in time for Congressional hearings and deliberations.

(2) Preparation and processing of a legislative statement must conform to the requirements for impact statements, except as follows:

(i) It is not necessary to determine the scope of issues.

(ii) A draft is considered to be a final statement. Both draft and final statements are needed only when:

(A) A Congressional committee with jurisdiction over the proposal has a rule requiring both.

(B) Both are specifically required by statute for proposals of the type being submitted.

(3) Comments received on a legislative statement, and the Postal Service's responses, must be forwarded to the Congress.

[44 FR 63525, Nov. 5, 1979, as amended at 48 FR 29378, June 24, 1983; 55 FR 10455; Mar. 21, 1990. Redesignated and amended at 63 FR 45719, 45722, Aug. 27, 1998]

§ 775.12 Time frames for environmental impact statement actions.

(a) Each week the EPA publishes in the FEDERAL REGISTER a notice of the draft and final environmental impact statements received in that office during the preceding week. The minimum time periods for decision on an action, specified in paragraphs (b) through (d) of this section, are calculated from the date of publication of an EPA notice of receipt of the relevant impact statement.

(b) A decision on a proposed action may not be made or recorded until the later of the following dates: 90 days after publication of the notice described in paragraph (a) of this section for a draft statement or 30 days after publication of the notice for a final statement.

(c) If a final statement is filed with the EPA within 90 days after a draft statement is filed, the 30 day period and the 90 day period may run concurrently.

(d) A minimum of 45 days must be allowed for comments on draft statements.

[44 FR 63525, Nov. 5, 1979. Redesignated at 63 FR 45719, Aug. 27, 1998]

§ 775.13 Public notice and information.

(a) Public notice is given of NEPA-related hearings, intent to undertake environmental assessments and environmental impact statements, and the availability of environmental documents (that is, environmental assessments, findings of no significant impact, and environmental impact statements), as follows:

(1) Notices must be mailed to those who have requested them.

(2) Notices concerning a proposal of national concern must be mailed to national organizations reasonably expected to be interested. Any such notice must be published in the FEDERAL REGISTER. (See paragraph (a)(4) of this section.

(3) Notices of any proposed action having effects primarily of local concern are given as follows:

(i) Any such notice, including a copy of any pertinent environmental document, must be mailed to the appropriate review officials identified in the Postal Service regulations and procedures governing intergovernmental review of Postal Service facility project actions, to the State Historic Preservation Officer, and to local public officials.

(ii) Any such notice must be published in one or more local newspapers.

(iii) Any such notice must be posted on and near any proposed and alternate sites for an action.

(iv) Any such notice may be mailed to potentially interested community organizations, including small business associations.

(v) Any such notice may be mailed to owners and occupants of nearby or affected property.

(4) A copy of every notice of intent to prepare an environmental impact statement must be furnished to the Chief Counsel, Legislative, Law Department, who will have it published in the FEDERAL REGISTER.

(b) All notices must give the name, address, and telephone number of a postal official who may be contacted for information. Environmental documents are made available to the public on request. Inspection, copying, and the furnishing of copies will be in accordance with 39 CFR Part 265, ''Release of Information.''

[44 FR 63525, Nov. 5, 1979, as amended at 47 FR 19992, May 10, 1982; 48 FR 29378, June 24, 1983. Redesignated and amended at 63 FR 45719, 45722, Aug. 27, 1998]

§ 775.14 Hearings.

(a) Public hearings must be held whenever there is:

(1) Substantial environmental controversy concerning a proposed action and a request for a hearing by any responsible individual or organization;

(2) A request for a hearing by an agency with jurisdiction over or special expertise concerning the proposed action; or

(3) A reasonable expectation that a hearing will produce significant information not likely to be obtained without a hearing.

(b) The distribution and notice requirements of §§ 775.11(d)(1) and 775.13 must be complied with whenever a hearing is to be held.

[44 FR 63525, Nov. 5, 1979. Redesignated and amended at 63 FR 45719, 45722, Aug. 27, 1998]

PART 776—FLOODPLAIN AND WETLAND PROCEDURES

Subpart A—General Provisions

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AUTHORITY: 39 U.S.C. 401.

SOURCE: 64 FR 56254, Oct. 19, 1999, unless otherwise noted.

Subpart A—General Provisions

§ 776.1 Purpose and policy.

(a) The regulations in this part implement the goals of Executive Orders 11990, Protection of Wetlands, and 11988, Floodplain Management, and are adopted pursuant to the Postal Reorganization Act, as the Postal Service does not meet the definition of the term ''agency'' used in the Executive Orders.

(b) The Postal Service intends to exercise leadership in the acquisition and management of real property, construction of facilities, and disposal of real property, located in floodplains and wetlands. Consistent with the goals of the Executive Orders, the regulations in this part are not intended to prohibit floodplain and wetland development in all circumstances, but rather to create a consistent policy to minimize adverse impacts.

§ 776.2 Responsibility.

The appropriate Manager, Facilities Service Office, or functional equivalent within the Postal Service's facilities organization, in conjunction with the appropriate Vice President, Area Operations, or functional equivalent within the Postal Service's operations organization, are responsible for overall compliance with the regulations in this part pertaining to facilities projects. The Vice President, Area Operations, is responsible for compliance with these regulations for those projects within the Vice President's delegated authority.

§ 776.3 Definitions.

Construction means construction, alterations, renovations, and expansions of buildings, structures and improvements.

Contending site means a site or existing building for a proposed postal facility action, which meets the requirements of the Postal Service as determined by the operations organization.

Facility means any building, appurtenant structures, or associated infrastructure.

Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including, at a minimum, that area subject to a one percent or greater chance of flooding in any given year (also known as a 100-year floodplain).

Practicable means capable of being accomplished within existing constraints. The test of what is practicable depends on the situation and includes consideration of many factors, such as environment, cost, technology, implementation time, and postal operational needs.

Preferred area means the specific geographical area proposed for a new postal facility, as developed by the operations organization within the Postal Service. A preferred area's boundaries are unique for each proposed facility based on the operational and customer service needs of the Postal Service.

Preferred site means the most advantageous site for a proposed facility, taking into consideration postal operational and customer service needs, cost, and availability, as determined by the operations organization within the Postal Service.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Subpart B—Floodplain Management

§ 776.4 Scope.

(a) The regulations in this subpart are applicable to the following proposed postal facility actions located in a floodplain:

(1) New construction, owned or leased; or

(2) Construction projects at an existing facility that would increase the amount of impervious surface at the site.

(b) These procedures are not applicable to the following postal facility actions:

(1) Those actions identified in paragraphs (a)(1) and (a)(2) of this section, when the entire preferred area, or all

contending sites, for such actions lies within a floodplain;

(2) Incidental construction, such as construction of athletic fields, recreational facilities, sidewalks, and other minor alteration projects;

(3) Construction at existing postal facilities pursuant to the Architectural Barriers Act or postal accessibility standards;

(4) Any facility construction project deemed necessary to comply with federal, state, or local health, sanitary, or safety code standards to ensure safe working conditions;

(5) Construction of facilities that are functionally dependent on water, such as piers, docks, or boat ramps;

(6) Maintenance, repair, or renovation of existing facilities; or

(7) Leasing or other use of space for not more than one year.

§ 776.5 Review procedures.

Officials shall follow the decision-making process outlined in paragraphs (a) through (f) of this section, when a facility action may involve floodplain issues. Under certain circumstances, this process may be carried out with fewer steps if all objectives of the decision-making process can be achieved. A general principle underlying this process is that a postal facility action requiring construction in a floodplain may be considered only when there is no practicable alternative.

(a) *Analysis of alternatives.* If a postal facility action would involve construction in a floodplain, alternative actions shall be considered.

(b) *Early public notice.* If a facility action at the contending site(s) could require construction in a floodplain, public notice must be provided.

(c) *Floodplain location and information.* (1) Personnel shall determine whether construction would occur within a floodplain. The determination shall be made by reference to appropriate Department of Housing and Urban Development (HUD) floodplain maps (sometimes referred to as Floodplain Insurance Rate Maps (FIRM)), or Federal Emergency Management Agency (FEMA) maps, or more detailed maps if available. If such maps are not available, floodplain location must be determined based on the best available information.

(2) Once the preferred site has been identified, potential floodplain impacts must be determined. As part of this determination process, specific floodplain information should be developed, which is to consider:

(i) Whether the proposed action will directly or indirectly support floodplain development;

(ii) Flood hazard and risk to lives and property;

(iii) Effects on natural and beneficial floodplain values, such as water quality maintenance, groundwater recharge, and agriculture; and

(iv) Possible measures to minimize harm to, or impact on, the floodplain.

(d) *Reevaluation.* After the above steps have been followed, if the determination is that there appears to be no practicable alternative to constructing in a floodplain, a further review of alternatives must be conducted by the facilities organization in conjunction with the operations organization requesting the construction of the facility. The further review of alternatives must be conducted by the operations organization for projects within the delegated authority of the Vice President, Area Operations.

(e) *Final public notice.* As a result of the reevaluation, if it is determined that there is no practicable alternative to constructing in a floodplain, public notice shall be provided as soon as possible for the proposed action. The notice should be publicized and should include:

(1) Identification of the project's location;

(2) Provision for a 30-day public commenting period before irrevocable action is taken by the Postal Service; and

(3) Name and complete address of a postal contact person responsible for providing further information on the decision to proceed with a facility action or construction project in a floodplain. Upon request, that person shall provide further information as follows:

(i) A description of why the proposed action must be located in a floodplain;

(ii) A listing of alternative actions considered in making the determination; and

(iii) A statement indicating whether the action conforms to applicable state and local floodplain protection standards.

(f) *Distribution.* The above public notice will be sent to appropriate officials, local newspapers, and other parties who express interest in the project.

(g) *NEPA coordination.* If either an Environmental Impact Statement or an Environmental Assessment is required under the Postal Service's National Environmental Policy Act (NEPA) regulations, the above review procedures must be incorporated into and evaluated in that document.

§ 776.6 Design requirements for construction.

If structures impact, are located in, or support development in a floodplain, construction must conform, at a minimum, to the standards and criteria of the National Flood Insurance Program (NFIP), except where those standards are demonstrably inappropriate for postal purposes.

§ 776.7 Lease, easement, right-of-way, or disposal of property to non-federal parties.

When postal property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-federal public or private parties, the Postal Service shall:

(a) Reference in the conveyance document that the parcel is located in a floodplain and may be restricted in use pursuant to federal, state, or local floodplain regulations; or

(b) Withhold the property from conveyance.

Subpart C—Wetlands Protection

§ 776.8 Scope.

(a) The regulations in this subpart are applicable to the following proposed postal facility actions located in a wetland:

(1) New construction, owned or leased; or

(2) Construction projects at an existing facility that would alter the external configuration of the facility.

(b) These procedures are not applicable to the following postal facility actions:

(1) Construction of foot and bike trails, or boardwalks, including signs, the primary purposes of which are public education, interpretation, or enjoyment of wetland resources;

(2) Construction at existing postal facilities pursuant to the Architectural Barriers Act or postal accessibility standards;

(3) Any facility construction project deemed necessary to comply with federal, state, or local health, sanitary, or safety code standards to ensure safe working conditions;

(4) Construction of facilities that are functionally dependent on water, such as piers, docks, or boat ramps; or

(5) Maintenance, repair, or renovation of existing facilities.

§ 776.9 Review procedures.

(a) *Early public notice.* If a facility action at the contending site(s) could require construction in a wetland, public notice must be provided.

(b) *Finding of no practicable alternative.* The Postal Service shall avoid construction located in a wetland unless it issues a finding of no practicable alternative. The facilities organization, in conjunction with the operations organization, or, for projects within the delegated authority of the Vice President, Area Operations, the operations organization, shall make a written determination that:

(1) There is no practicable alternative to such construction; and

(2) The proposed action includes all practicable measures to minimize harm to wetlands.

(c) *NEPA coordination.* If either an Environmental Impact Statement or an Environmental Assessment is required under the Postal Service's National Environmental Policy Act (NEPA) regulations, the above review procedures must be incorporated into and evaluated in that document.

§ 776.10 Lease, easement, right-of-way, or disposal of property to non-federal parties.

When postal-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way, or disposal to non-federal public or private parties, the Postal Service shall:

(a) Reference in the conveyance document that the parcel contains wetlands and may be restricted in use pursuant to federal, state, or local wetlands regulations; or

(b) Withhold the property from conveyance.

SUBCHAPTER L—SPECIAL REGULATIONS

PART 777—RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES

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777.41 Acquisition procedures.

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777.51 Acceptance of donations.

AUTHORITY: 39 U.S.C. 401.

SOURCE: 51 FR 6983, Feb. 27, 1986, unless otherwise noted.

Subpart A—General Policy, Purpose and Definitions

§ 777.11 General policy.

It is the policy of the Postal Service to comply voluntarily with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646; 84 Stat. 1894), hereinafter referred to as the Act.

§ 777.12 Purpose.

The purpose of these regulations is to update policy and procedures for the Postal Service's voluntary compliance with the Act.

§ 777.13 Definitions.

(a) *The Act.* The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646; 84 Stat. 1894).

(b) *Business.* Any lawful activity, except a farm operation, that is:

(1) Conducted primarily for the purchase, sale, lease, and/or rental of personal and/or real property, and for the manufacturing, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Conducted primarily for the sale of services to the public; or

(3) Solely for the purposes of reimbursing moving and related expenses, conducted primarily for outdoor advertising display purposes, when the display(s) must be moved as a result of the project; or

(4) Conducted by a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(c) *Small business.* A business having at least one but not more than 500 employees working at the location being acquired.

(d) *Comparable Replacement Dwelling.* A dwelling which is:

(1) Decent, safe, and sanitary.

(2) Functionally similar to the displacement dwelling with particular attention to the number of rooms and living space.

(3) In an area that is not subject to unreasonably adverse environmental conditions, is not generally less desirable than the location of the displacement dwelling with respect to public utilities and commercial and public facilities, and is reasonably accessible to the displaced person's place of employment.

(4) On a site that is typical in size for residential development with normal site improvements including customary landscaping. The site need not

include special improvements such as outbuildings, fences, swimming pools, and greenhouses.

(5) Currently available to the displaced person.

(6) Within the financial means of the displaced person.

(e) *Decent, Safe, and Sanitary Dwelling.* A dwelling which meets local housing and occupancy codes and the following standards, unless they are waived for good cause by the Postal Service. The dwelling must:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other electrical devices.

(3) Contain a heating system capable of sustaining a healthful temperature of approximately 70 degrees except in those areas where local climatic conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and areas of living space needed to accommodate the displaced persons. There shall be a separate, well-lighted and ventilated bathroom that provides privacy to the user and contains a bathtub or shower stall, sink, and toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping unit—as opposed to, for example, a room in a boarding house—there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage draining system, and adequate space and utility service connections for a stove and a refrigerator.

(5) Contain unobstructed egress to safe, open space at ground level.

(6) For displaced persons who are handicapped, be free of any barriers which would preclude their reasonable ingress, egress, or use of the dwelling.

(f) *Displaced Person.* (1) Subject to the additional definitions, limitations and exceptions in paragraph (f)(2) of this section, the term ''displaced person'' is defined as follows. (''Displaced persons'' are entitled to receive benefits only as specifically provided for elsewhere in these regulations.)

(i) A person who owns real property, and who is required to move or to move personal property from the real property following Postal Service action to obtain title to, or a leasehold interest in, such real property by the exercise or the threat of the exercise of eminent domain.

(ii) A person who is a tenant and who is required to move or to move his or her personal property from real property:

(A) Following Postal Service action to obtain the tenant's leasehold interest in such real property by the exercise or the threat of the exercise of eminent domain, or,

(B) Where the Postal Service acquires a fee interest in the property (including long-term leases of 50 years or more), as a result of a Postal Service notice of displacement or notice to vacate such real property, provided the tenant was lawfully in possession on the date title to such property transfers to the Postal Service. (The requirement that the tenant occupy such real property on the date title in such real property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(C) Where such real property was used to construct a new building for the express purpose of leasing to the Postal Service under circumstances where such tenant would have been a ''displaced person'' hereunder had the Postal Service itself acquired the land and required the removal of the tenant to undertake construction of the building for Postal Service ownership.

(iii) Where the Postal Service acquires either a fee interest or a leasehold interest in the property, a person who is a residential tenant and is or will be required to move or to move his or her property from the real property, in order for the Postal Service to accomplish the project for which the property was acquired, provided such tenant occupies such real property on the date title in such real property transfers to the Postal Service or the date the Postal Service leases or contracts to lease such property, and further provided such tenant was lawfully in possession at the time of the initiation of negotiations. (The requirement that the tenant occupy such real property on the date title in such real

property transfers to the Postal Service may be waived for good cause by the Postal Service.)

(2) The term ''displaced person'' covers only persons meeting the requirements in paragraph (f)(1) of this section. The term ''displaced person'' does not cover the following non-exclusive list of examples.

(i) An owner who voluntarily sells his or her real property to the Postal Service, or,

(ii) A tenant who voluntarily transfers his or her leasehold interest to the Postal Service without the exercise or the threat of the exercise of eminent domain, or,

(iii) A tenant who is not lawfully in possession at the times for which lawful possession is specified in paragraphs (f)(1)(ii)(B) and (f)(1)(iii) of this section. A tenant who was legally required by the lease or otherwise to have moved from the property at the times specified in such paragraphs shall not be considered to be lawfully in possession.

(iv) A person who, at the determination of the Postal Service, is not required to relocate permanently, or,

(v) A person who, after receiving a notice of displacement or notice to vacate by the Postal Service, is notified in writing that he or she will not be displaced. Such later notification shall not be issued if the person has already moved. If such latter notification is issued, the Postal Service shall reimburse the person for any reasonable expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of displacement or the notice to vacate or,

(vi) A person who is required to temporarily vacate the premises in order to permit fumigation, repair, painting, or other maintenance or code of enforcement work or,

(vii) A tenant who is required to move from real property as a result of a notice from the Postal Service to vacate such real property where such notice to vacate is issued five years or more after the date of the acquisition of such real property. A tenant who is given a notice to vacate as a result of failure to comply with the terms of his/her lease with the Postal Service or failure to renew his/her lease under prevailing market conditions is not considered to be a displaced person.

(viii) A mobile home occupant who owns the site on which the mobile home is located and who voluntarily sells the site to the Postal Service, regardless of whether such person owns or rents the mobile home.

(ix) A person whose property is acquired through a ''friendly condemnation action'' where price is not an issue.

(g) *Displacement Dwelling.* The dwelling acquired by the Postal Service from which a displaced person is required to move.

(h) *Dwelling.* The place of permanent or customary and usual residence of a person including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit (i.e. room in a boarding house); a mobile home; or any other residential unit.

(i) *Family.* Two or more individuals who are related by blood, adoption, marriage, or legal guardianship who live together as a family unit. If the Postal Service considers that circumstances warrant, others who live together as a family unit may be treated as if they are a family for the purpose of determining assistance under these regulations.

(j) *Farm Operation.* Any activity conducted solely or primarily for the production of one or more types of agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(k) *Financial Means.* A comparable replacement dwelling is within the financial means of the displaced family or individual if the average monthly rental or housing cost (e.g., monthly mortgage payments, insurance for the dwelling unit, property taxes, and other reasonable recurring related expenses) which the displaced person will be required to pay does not exceed the greater of 25 percent of the monthly gross income of the displaced family or individual or the ratio of the present monthly rental or housing cost to the

gross income of the displaced family or individual. (Supplemental payments made by public agencies are to be included in gross income for purposes of these comparisons.)

(l) *Initiation of Negotiations.* In the case where eminent domain is neither exercised nor threatened to be exercised, the initiation of negotiations is the initial written communication stating a price by the owner or the owner's representative to the Postal Service, or by the Postal Service to the owner or the owner's representative, regarding a proposed acquisition (by purchase or lease) or an interest in a specific piece of real property. In the case where eminent domain is either exercised or threatened to be exercised, the initiation of negotiations is the date the Postal Service makes a written offer of just compensation.

(m) *Notice of Displacement.* A notice given in writing by the Postal Service to a person that he or she will be displaced from his or her place of residence, business or farm, as a result of a facility action by the Postal Service. A notice of displacement may be combined with or in a notice to vacate.

(n) *Notice to Vacate.* A notice given in writing by the Postal Service to a person that he or she is to vacate postal owned property on or before a certain date. A notice to vacate may be combined with or in a notice of displacement.

(o) *Owner of Displacement Dwelling.* A person is considered to be an owner, if, at the initiation of negotiations, the person holds any of the following interests in real property acquired for a postal project:

(1) Fee title, a life estate, a 99-year lease, or a lease, including any options for extension, with at least 50 years to run from the date of acquisition; or

(2) An interest other than leasehold interest in a cooperative housing project which includes the right to occupy a dwelling; or

(3) A contract to purchase any of the interests or estates described in paragraph (o)(1) or (o)(2) of this section; or

(4) Any other interest, including a partial interest, which in the judgment of the Postal Service, warrants consideration as ownership.

(p) *Person.* Any individual, family, partnership, corporation, association, business or farm operation.

(q) *Personal Property.* Any tangible property, not considered part of the real property, for which payment has not been included in the acquisition cost.

(r) *Tenant.* A person who has the legal right to temporary use and occupancy of real property owned by another. In some cases, these regulations also use the term ''tenant'' to refer to a person who occupies real property owned by another but whose legal right was terminated due to a timely notice to vacate the real property used and occupied.

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10666, Mar. 15, 1989]

§ 777.14 Certain indirect actions prohibited.

Postal employees shall take no indirect, coercive, or deceptive actions to cause persons to move from real property in an effort to avoid the circumstances under which such persons would be eligible to receive relocation benefits as displaced persons under these regulations. If a claimant demonstrates that such prohibited action caused him or her to move, he or she will be treated as a displaced person hereunder, if he or she otherwise meets the definition of a displaced person.

Subpart B—Uniform Relocation Assistance

§ 777.21 General procedures.

(a) *Planning Prior to Site Selection.* When acquisition of a site under consideration would likely involve displacement of a person eligible under § 777.13 for relocation assistance, the Postal Service representative shall prepare a relocation needs and availability analysis. The Postal Service representative shall include in the analysis a complete inventory of persons who may be displaced and specifically identify their needs.

(b) *Planning Subsequent to Site Selection.* Subsequent to site selection, the Postal Service must review the relocation needs and availability analysis

and establish a specific plan for providing the assistance covered by these regulations to any eligible displaced persons. It will further determine the necessity of establishing an on-site relocation office which would be accessible to displaced persons and would be staffed with relocation personnel qualified to render all relocation services. The Postal Service will assure that cost estimates reflect current market conditions and that funding is available for all relocation assistance and activities.

(c) *Contracting for Relocation Services.* When the Postal Service determines it to be advantageous, it may enter into a relocation assistance service contract with a public agency or private firm having expertise in relocation assistance. The contract must require the contractor to follow Postal Service relocation assistance regulations.

(d) *Notice to Vacate, Ninety Day Requirement.* Postal Service notices to vacate must be issued at least 90 days prior to the date the property must be vacated. Any such notice must be in writing and delivered in person with receipt acknowledged, or by certified mail, return receipt requested. The 90-day requirement does not apply to any such notice issued subsequent to a valid notice to vacate issued by the prior owner of the property. A 90-day notice may be given with, or such notice may be combined with, but such notice must not be given before, the notice of displacement referred to in paragraph (f) of this section.

(e) *Shorter Notice Period, Unusual Circumstances.* An occupant may be required to vacate the property on less than 90 days advance written notice if the Postal Service determines that a 90-day notice is impracticable. An example of such a situation is when the person's continued occupancy of the property would constitute a substantial danger to the person's health or safety.

(f) *Notice of Displacement.* Normally, a notice of displacement will be given at the time of acquisition or later. Such notice must not be given earlier than the time of contracting, except in the case of acquisitions by eminent domain or by the threat of eminent domain. Such notice may be given at the time of contracting or between the time of contracting and the time of acquisition if the Postal Service considers it wise to start the displacement process then and if, in the judgment of the Postal Service, it is clear that person will in fact be a displaced person.

(g) *Notice of Availability of Advisory Services.* The notice of displacement will state that relocation assistance advisory services will be available to the displaced person and will designate who will provide such services.

(h) *Eviction for cause.* Any person occupying real property and not in unlawful occupancy on the date of initiation of negotiations is presumed to be entitled to relocation payments and other assistance unless the Postal Service determines that:

(1) The person received an eviction notice prior to initiation of negotiations and, as a result of that notice, is later evicted; or

(2) The person is evicted after initiation of negotiations for serious or repeated violation of material terms of the lease or occupancy agreement; and

(3) In either case the eviction is not undertaken for the purpose of evading the obligation to make the relocation payments and other assistance available.

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10667, Mar. 15, 1989]

§ 777.22 Relocation assistance advisory services.

(a) *General.* The Postal Service carries out an advisory assistance program for displaced persons.

(b) *Relocation Information.* The Postal Service must contact each displaced person to provide an informational statement outlining the assistance available to the particular person. If it is impracticable to contact the displaced persons personally, the informational statement must be mailed to the persons, certified mail, return receipt requested.

(c) *Time of Initial Contact to Provide Relocation Information.* The initial contact to provide relocation information must take place by the following dates:

(1) Where acquisition of the property is to occur as a result of the exercise or the threat of the exercise of eminent

domain, at the time of initiation of negotiation or within 30 days thereafter.

(2) In any other instance such contact must be made prior to acquisition and prior to the notice of displacement or the notice to vacate, but it should normally not be made prior to contracting for the acquisition.

(d) *Service to be Provided.* The advisory program shall include such services as may be necessary or appropriate to:

(1) Provide current information on the availability, purchase prices, financing, and rental costs of replacement dwellings.

(2) For displaced persons eligible for replacement housing payments, explain that the displaced person cannot be required to move unless at least one comparable replacement dwelling is made available.

(i) At the request of the displaced person, the Postal Service must inform that person, in writing, of the specific comparable replacement dwelling used as the basis for the replacement housing payment offer, the price or rent used to establish the upper limit of that offer, the basis for the determination, and the amount of the replacement housing payment to which he or she may be entitled.

(ii) Where feasible, housing must be inspected by the Postal Service representative prior to its being made available to assure that it is a comparable replacement dwelling and meets the decent, safe, and sanitary standard. The displaced person must be notified that a replacement housing payment will not be made unless the replacement dwelling is inspected and determined to be decent, safe, and sanitary.

(iii) Whenever possible, minority displaced persons must be given reasonable opportunities to relocate to comparable dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require the Postal Service to provide a person a larger payment than is necessary to enable that person to relocate to a comparable replacement dwelling.

(iv) All displaced persons, especially the elderly and handicapped, must be offered transportation to inspect housing to which they are referred.

(3) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations, and assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(4) Minimize hardships to displaced persons in adjusting to relocation by providing counseling, advice about other sources of assistance that may be available, and such other help as may be appropriate.

(5) Supply displaced persons with appropriate information concerning Federal, State, and local housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal, State, and local programs offering assistance to displaced persons.

(6) Upon selection of a replacement property by a displaced person, the Postal Service may arrange for a representative to assist the displaced person with necessary arrangements for the move.

§ 777.23 Moving expenses.

(a) *Eligibility.* (1) Residential displaced persons are entitled to benefits under paragraphs (b) and (c) of this section.

(2) Business and farm displaced persons are entitled to benefits under paragraphs (d) through (k) of this section.

(3) Those business or farm displaced persons who reside on the property where the business or farm operation is conducted are eligible for applicable benefits both as residents and as business or farm displaced persons, but no duplicate payments are allowed.

(4) Persons who are required to move or to move personal property from real property, an interest in which is not acquired by the Postal Service, when it is determined by the Postal Service that such move is necessary or reasonable because of the Postal Service's having acquired an interest in other real property owned or leased by such persons and on which such persons conduct a business or farm operation,

under circumstances where such persons are displaced persons with regard to such other real property or would have been displaced persons with regard to such other real property had they been required to move or to move personal property from such other real property, are entitled to benefits as residential, business or farm displaced persons under paragraphs (a)(1) or (a)(2) of this section.

(5) Eligibility for moving expenses does not depend upon the owner's or tenant's actual occupancy of the displacement real property.

(b) *Allowable Expenses, Residential Moves.* Allowable moving expenses include:

(1) Transportation of the displaced person and his or her personal property. Transportation costs are limited to the costs of a move up to a distance of 50 miles unless the Postal Service determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances and other personal property.

(4) Storage of the personal property not to exceed 12 months unless the Postal Service determines that a longer period is necessary.

(5) Reasonable costs for insurance for the replacement value of the personal property being moved or stored.

(6) When determined to be fair and reasonable by the Postal Service the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee), but only where insurance covering such loss, theft, or damage is not reasonably available.

(7) Other moving related expenses that are not listed as non-allowable under paragraph (l)(3) of this section and which the Postal Service determines to be reasonable and necessary.

(c) *Fixed payment for moving expenses. residential moves.* Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration. This includes a provision that the expense and dislocation allowance to a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons or a person whose residential move is performed by an agency at no cost to the person shall be limited to $50.

(d) *Allowable Expenses, Business and Farm Operations.* Allowable expenses include:

(1) The expenses allowed under paragraphs (b) (2), (4), (5) and (6) of this section;

(2) Transportation of personal property. Transportation costs are limited to a distance up to 50 miles unless the Postal Service makes a finding that relocation beyond 50 miles is justified.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, and substitute personal property as described in paragraph (d)(8) of this section. This includes connection to utilities available at the replacement site or building and minor modifications to personal property to adapt it to the replacement site or building. Excluded are expenses for providing utilities to or installing utilities at the replacement site or building and expenses for repair, alteration, improvement or modification of the replacement site or building. This exclusion includes, but is not limited to, any repairs, alterations, improvements, or modifications required by local code to bring the building up to standard.

(4) Any license, permit, or certification fee required of the displaced person by a governmental authority at the replacement location. However, this payment is limited to the pro rata value for the remaining useful life of any existing license, permit, or certification.

(5) Reasonable professional services necessary for planning the move of the personal property. Such professional services must be approved in advance by the Postal Service and shall not exceed the lowest of three acceptable bids.

(6) Relettering signs and replacing stationary on hand at the time of displacement that are made obsolete as a result of the move.

(7) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment will consist of the reasonable costs incurred in attempting to sell the item plus the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for this payment the claimant must make a good faith effort to sell the personal property, unless the Postal Service determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value must be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item no more than 50 miles, but with no allowance for storage.

(8) If an item of personal property which is used as part of a business or farm operation is not moved, is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, less any proceeds from the sale. (To be eligible for payments under paragraph (d)(8) of this section, the claimant must make a good faith effort to sell the personal property, unless the Postal Service determines that such effort is not necessary.)

(ii) The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by the Postal Service for eligible moving and related expenses, but with no allowance for storage.

(9) A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed $1,000, which the Postal Service determines to be reasonable and which are incurred in searching for a replacement location. These expenses include transportation, meals and lodging away from home, time spent searching (based on reasonable salary or earnings) and fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(10) Other moving-related expenses, not listed as non-allowable under paragraph (l)(3) of this section, which the Postal Service determines to be reasonable and necessary.

(e) *Fixed Payment in Lieu of Moving Expenses, Business Moves.* Any displaced business, other than an outdoor advertising display business, or a non-profit organization, is eligible for a fixed payment in lieu of actual moving and related expenses. This payment must be in an amount equal to the average annual net earnings of the business at that location, as computed under paragraph (i) of this section, but not less than $1,000 nor more than $20,000. For a displaced person to qualify for this payment, the Postal Service must determine that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site; and

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Postal Service determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Postal Service, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see paragraph (h) of this section). However, the Postal Service may waive this test for good cause.

(5) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(f) *Determining the Number of Businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(g) *Fixed Payment in Lieu of Moving Expenses, Farm Operation.* Any displaced farm operation may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount equal to its average annual net earnings as computed in accordance with paragraph (i) of this section, but not less than $1,000 nor more than $20,000. For a displaced person to qualify for this payment, the Postal Service must determine that the farm operation contributed materially to the income of the displaced person during the two taxable years prior to the displacement (see paragraph (h) of this section). In the case of acquisition of land which was part of a farm operation before the acquisition, the fixed payment shall be made only if the Postal Service determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(h) *Contributes materially.* The term ''contributes materially,'' as used in paragraphs (e) and (g) of this section means that, during the 2 taxable years prior to the taxable year in which displacement occurs, or during such other period as the Postal Service determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least $5,000; or

(2) Had average annual net earnings of at least $1,000; or

(3) Contributed at least 33⅓ percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Postal Service may approve the use of other criteria as determined appropriate.

(i) *Average Annual Net Earnings of a Business or Farm Operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different period of time when the Postal Service determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Postal Service proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Postal Service determines is satisfactory.

(j) *Nonprofit Organizations.* Any displaced nonprofit organization may choose a fixed payment in lieu of a payment for actual moving and related expenses in an amount of $2,500, if the Postal Service determines that it:

(1) Cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Postal Service demonstrates otherwise; and

(2) Is not part of an enterprise having at least one other establishment engaged in the same or similar activity which is not being acquired by the Postal Service.

(k) *Relocation of Outdoor Advertising Signs.* The amount of a payment for direct loss of an advertising sign which is personal property is the lesser of:

(1) The depreciated replacement cost of the sign, as determined by the Postal Service, less the proceeds from its sale; (To be eligible for payments under this paragraph (k)(1), the claimant must make a good faith effort to sell the sign, unless the Postal Service determines that such effort is not necessary.) or

(2) The estimated cost of moving the sign, no more than 50 miles, but with no allowance for storage.

(l) *Payment for actual reasonable reestablishment expenses, nonresidential moves.* In addition to the payments available as allowable expenses for nonresidential moves, a small business, farm or non-profit organization may be eligible to receive a payment, not to exceed $10,000 for expenses actually incurred in relocating and reestablishing such small business, farm or non-profit organization at a replacement site.

(1) *Allowable expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Postal Service. They may include the following:

(i) Repairs or improvements to the replacement real property as required by federal, state, local law, code or ordinance.

(ii) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for occupancy.

(iii) Construction and installation costs not to exceed $1,500 for exterior signing to advertise the business.

(iv) Installation of security or fire protection devices.

(v) Provision of utilities from right-of-way to improvements on the replacement site.

(vi) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling or carpeting.

(vii) Licenses, fees and permits when not paid as part of the moving expenses.

(viii) Feasibility surveys, soil testing and marketing studies.

(ix) Advertisement of replacement location, not to exceed $1,500

(x) Professional services in connection with the purchase or lease of a replacement site.

(xi) Increased costs of operation during the first two years at the replacement site, not to exceed $5,000, for such items as lease or rental charges, personal or real property taxes, insurance premiums, utility charges including impact fees or one time assessments for anticipated heavy utility usage.

(xii) Other items that the Postal Service considers essential to the reestablishment of the business.

(2) *Non-allowable expenses.* Following is a non-exclusive listing of restablishment expenditures not considered to be reasonable, necessary or otherwise allowable.

(i) Purchase of capital assets such as office furniture, filing cabinets, machinery, or trade fixtures.

(ii) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.

(iii) Interior or exterior refurbishment at the replacement site which are for cosmetic purposes only.

(iv) Interest on money borrowed to make the move or purchase the replacement property.

(v) Payment to a part-time business in the home which does not contribute materially to the household income.

(vi) Payment to a person whose sole business at a replacement dwelling is the rental of such dwelling to others.

(m) *General Provisions*—(1) *Self moves.* If the displaced person elects to take full responsibility for all or a part of the move, the Postal Service may approve a payment for the person's moving expenses in an amount not to exceed the lowest of three bids acceptable to the Postal Service. Bids may be obtained by either the displaced person or the Postal Service.

(2) *Transfer of Ownership.* Upon request by the Postal Service and in accordance with applicable law, the displaced person may transfer to the Postal Service ownership of any personal property that is not to be moved, sold, or traded-in by executing a disclaimer of all rights or interest in the property.

(3) *Non-Allowable Expenses.* Except as specifically otherwise provided herein, a displaced person is not entitled to payment for:

(i) The cost of moving any structure or other real property improvement.

(ii) Loss of goodwill.

(iii) Loss of profits.

(iv) Loss of trained employees.

(v) Any additional operating expenses of a business or farm operation caused by operating in a new location.

(vi) Personal injury.

(vii) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the displaced person before the Postal Service.

(viii) Expenses for searching for a replacement dwelling.

(ix) Costs for storage of personal property on real property owned or leased by the displaced person.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987; 54 FR 10667, Mar. 15, 1989]

§ 777.24 Replacement housing payments.

(a) Residential displaced persons are eligible for replacement housing payments as follows:

(1) Residential displaced persons who lawfully and continuously owned and occupied a displacement dwelling for not less than 180 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (b) of this section. Such displaced persons may alternately choose the benefits under paragraph (f) of this section.

(2) Residential displaced persons who lawfully and continuously owned and occupied, and residential displaced persons who were tenants and lawfully and continuously occupied, a displacement dwelling for not less than 90 days prior to the initiation of negotiations are entitled to the benefits set out in paragraph (e) of this section.

(3) Where the replacement housing payment provided hereunder does not provide for housing within the financial means (see § 777.13(j)) of the displaced person, see § 777.27, Last Resort Housing.

(b) *Benefits for 180 Day Owner Occupants.* Displaced persons eligible under paragraph (a)(1) of this section are entitled to benefits as set out below:

(1) An amount which is the sum of:

(i) The amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(A) The reasonable cost of a comparable replacement dwelling as determined by paragraph (c) of this section; or

(B) The purchase price of a decent, safe and sanitary replacement dwelling actually purchased and occupied by the displaced person; plus

(ii) Interest Cost (see paragraph (d) of this section); plus

(iii) Incidental Expenses (see paragraph (h) of this section).

(2) The benefits in paragraph (b)(1) of this section, are limited to a maximum payment of $22,500.

(3) The benefits in paragraph (b)(1) of this section, are available only if a decent, safe and sanitary replacement dwelling is purchased within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in a court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(c) *Determining the Cost of a Comparable Replacement Dwelling.* The cost of a comparable replacement dwelling for purposes of benefits to be paid to 180 day owner occupants will be determined by applying the following:

(1) If available, at least three representative comparable replacement dwellings must be examined and the payment offer computed on the cost of the fair market value of the dwelling most closely comparable to the displacement dwelling.

(2) To the extent, feasible, comparable replacement dwellings will be selected from the neighborhood in which the displacement dwelling was located. If this is not possible, comparable replacement dwellings will be selected from nearby or similar neighborhoods where housing costs are similar.

(d) *Increased Mortgage Interest Costs.* The amount to be paid to a displaced 180 day owner occupant for increased mortgage interest costs is the amount, if any, by which the present value of the interest on the mortgage loan(s) on the replacement dwelling plus any other debt service costs exceeds the present value of the interest on the

mortgage loan(s) on the displacement dwelling plus purchaser's points and loan origination fees, subject to the following:

(1) The payment must be based only on bona fide mortgages that were a valid lien on the displacement dwelling for at least 180 days prior to the initiation of negotiations. All such mortgages on the displacement dwelling must be used to compute the payment.

(2) The payment must be based on the unpaid mortgage balance on the displacement dwelling or the new mortgage amount, whichever is less.

(3) The payment must be based on the remaining term of the mortgage on the displacement dwelling or the actual term of the new mortgage, whichever is shorter.

(4) The new mortgage must be a bona fide mortgage and its interest rate must not exceed the prevailing interest rate currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(5) The discount rate used to compute the present value of the increased interest cost must be the prevailing interest rate paid on demand savings deposits by commercial banks in the area in which the replacement dwelling is located.

(6) Purchaser's points and loan origination fees, but not seller's points, are reimbursable to the extent they are not paid as incidental expenses, they do not exceed rates normal to similar real estate transactions in the area, and the Postal Service determines them to be necessary. The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, or the new mortgage amount, whichever is less.

(e) *Benefits for 90 Day Owner Occupant and Tenants.* Displaced persons eligible under paragraph (a)(2) of this section are entitled to benefits as set out below:

(1) Rental assistance benefits, as set out in paragraph (f) of this section or downpayment assistance benefits, as set out in paragraph (g) of this section.

(2) The benefits in paragraph (e)(1) of this section, are limited to $5,250.

(3) The benefits in (e)(1) above are available only if a decent, safe and sanitary replacement dwelling is purchased or rented within 12 months after the latter of:

(i) The date of acquisition or, in the case of condemnation, the date the required amount is deposited in the court for the displaced person's benefit, or

(ii) The date the person moves from the displacement dwelling.

(f) *Rental Assistance.* The rental assistance benefits, not to exceed $5,250, for 90 day owner occupants and tenants will be computed as follows:

(1) The amount which must be added to 42 times the average monthly rental paid at the displacement dwelling (or, if the displaced person is an owner occupant, the fair market rental value had the displacement dwelling been rented) for the three-month period prior to displacement to provide a total amount equal to the lesser of:

(i) 42 times the reasonable monthly rental of a comparable replacement dwelling; or

(ii) 42 times the actual monthly rental cost of the decent, safe, and sanitary dwelling actually rented and occupied by the displaced person.

(2) If utilities are included in either the replacement dwelling or the displacement dwelling rent, appropriate utilities must be factored into both rentals. If utilities are not included in either monthly rental then the payment will be computed using the base rental rates.

(3) If, in the opinion of the Postal Service, the monthly rental at the displacement dwelling is significantly below the fair market rent of the displacement dwelling, such fair market rent must be used in computing the rental assistance payment.

(4) The payment under this section must be disbursed in a lump-sum amount unless the Postal Service determines on a case-by-case basis, for good cause, that the payment should be made in installments. Where the rental assistance payment exceeds $5,250 under the provisions of Last Resort Housing, (§ 777.27), installment payments or payments through escrow accounts may be considered.

(g) *Downpayment assistance.* Downpayment assistance, not to exceed $5,250, is available to 90 day owner occupants and 90 day tenants. This $5,250

amount may be considered to include the full amount of the required down-payment and incidental expenses.

(h) *Incidental Expenses.* Incidental expenses covered under paragraph (b)(1)(iii) or (g) of this section are those reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling and customarily paid by the buyer (not to exceed the costs of such for a comparable replacement dwelling). They include:

(1) Legal, closing, and related costs, including those for title search and insurance, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA appraisal fees.

(3) FHA or VA application fee.

(4) Certification of structural soundness when required by the lender.

(5) Credit report.

(6) Owner's and mortgagee's evidence or assurance of title.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes.

(9) Such other costs as the Postal Service determines to be incidental to the purchase.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987]

§ 777.25 Additional rules for replacement housing payments.

(a) *Multiple Owners.* When a single family dwelling is owned by more than one person and occupied by only some of the 180 day owners (for example, when the dwelling is owned by an estate and only one of the heirs is in occupancy), the occupant(s) is (are) eligible to receive a maximum total price differential which is the lesser of:

(1) The difference between (i) the reasonable cost of a comparable replacement dwelling, as determined under § 777.24(c) and (ii) the acquisition cost of the displacement dwelling; or

(2) The difference between (i) the occupant's share of the acquisition cost of the displacement dwelling and (ii) the purchase price of a decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(b) *Multiple Occupants of One Displacement Dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Postal Service, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Postal Service determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(c) *Mixed Use and Multi-Family Properties Acquired.* If the displacement dwelling was part of a property that contained another dwelling unit or space used for non-residential purposes, or if it is located on a lot larger than that typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling and site can be considered its acquisition cost when computing the price differential.

(d) *Disaster-Related Insurance Proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a disaster related loss to the displacement dwelling must be included in the acquisition cost of the displacement dwelling when computing the price differential.

(e) *Inspection of Replacement Dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Postal Service must inspect the replacement dwelling and determine that it is a decent, safe, and sanitary dwelling.

(f) *Purchase of Replacement Dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling if the person has purchased an existing dwelling; purchased and rehabilitated or moved and restored an existing dwelling; or constructed a new dwelling, provided in each instance the dwelling is determined to be decent, safe and sanitary.

(g) *Conversion of Payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment may, within the required 12 month eligibility period, purchase a decent, safe and sanitary replacement dwelling. In such case, he or she is eligible to revise his or her original claim, and claim any additional assistance for which he or she was originally eligible. However, any portion of the rental assistance payment that has been disbursed must be deducted from the resultant replacement housing payment or downpayment assistance payment.

(h) *Payment After Death.* A replacement housing payment is personal to the displaced person. Upon his or her death, the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced person's period of actual occupancy of the replacement housing will be paid.

(2) The full payment must be disbursed in any case in which a member of a displaced family dies and other family members continue to occupy the replacement dwelling selected in accordance with these regulations.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person must be disbursed to the estate.

(i) *180 Day Owner Retention of Displacement Dwelling.* If a 180 day owner occupant retains ownership of his or her dwelling or the right to move his or her dwelling from the displacement site, and he or she moves it and reoccupies it on a replacement site, the cost of the actual replacement dwelling to be computed for purposes of § 777.24(b)(1)(i)(A) (not to exceed the purchase price of a comparable replacement dwelling) will be the sum of:

(1) The expenses of moving and restoring the retained dwelling to a condition comparable to that prior to the move; and

(2) The salvage or other value deducted from the acquisition cost for the retained ownership; and

(3) Additional costs, if necessary, incurred to make the unit a decent, safe, and sanitary replacement dwelling; and

(4) The cost of the replacement site, not to exceed the cost of a comparable available and suitable replacement site.

(j) *90 Day Owner/Retention of Displacement Dwelling.* A 90 day owner occupant who retains ownership of his or her dwelling or the right to remove his or her dwelling may receive the benefits as if he or she were a 180 day owner occupant subject, however, to a limitation of $5,250 on maximum benefits in lieu of the $22,500 limitation set out in paragraph § 777.24(b)(2).

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10668, Mar. 15, 1989]

§ 777.26 Mobile homes.

(a) *Moving Expenses.* Displaced persons who are occupants of mobile homes are eligible for moving expenses under § 777.23 subject to the following:

(1) If the person owns the mobile home, moving expenses may, at the owner's option, include any reasonable costs incurred to move the mobile home to a replacement site, plus the reasonable cost of disassembling, moving, and reassembling any attached appurtenances (such as porches, decks, skirting, and awnings) which were not acquired, anchoring of the unit, and utility ''hook-up charges.''

(2) If the person rents the mobile home, the Postal Service may allow the person moving expense benefits for moving the mobile home as if the person were an owner of the mobile home under paragraph (a)(1) of this section.

(3) If costs of moving a mobile home are paid as moving expenses under paragraph (a)(1) or (2) of this section, the person may not receive housing assistance benefits hereunder, other than any benefits to which they are entitled that are limited to the site of the mobile home.

(4) Displaced occupants of mobile homes are eligible for moving expenses for personal property other than the mobile home and its appurtenances, but only to the extent the Postal Service does not pay the costs of moving the mobile home (either as moving expenses or replacement housing payments or, if it does pay such costs, the

personal property is of a type that is customarily moved separately from the mobile home.)

(b) *Replacement Housing Payments.* Displaced persons who are 180 day or 90 day occupants of mobile homes qualify for replacement housing payments under § 777.24 subject to the following:

(1) If the displaced person owns the mobile home and owns the site, the person is eligible for benefits under either § 777.24 (b) or (e).

(2) If the displaced person rents the mobile home and rents the site the person is eligible for benefits under § 777.24(e).

(3) If the displaced person rents the mobile home and owns the site the person is eligible for benefits under § 777.24(e), with regard to the mobile home and to benefits under § 777.24(b) with regard to the site, subject to a limitation on the home and site benefits combined of $22,500. (Persons who voluntarily sell mobile home sites are not displaced persons and are not entitled to benefits under Subpart B. See § 777.13(e)(2)(viii)).

(4) If the displaced person owns the mobile home and rents the site the person is eligible for benefits under either § 777.24 (b) or (e) with regard to the mobile home and to benefits as a tenant under § 777.24(e) with regard to the site, subject to a limitation on home and site benefits combined of $5,250.

(c) *Special Rules for Mobile Homes.* (1) In computing replacement housing payments for mobile home owners under paragraph (b) of this section, apply the terms of § 777.25 (i) and (j) as appropriate, to transactions involving moving the mobile home to a new site.

(2) The acquisition of a portion of a mobile home park may leave a remainder that is not adequate to continue the operation of the park. When the Postal Service determines that its acquisition of the real property has had this effect and that for this reason a mobile home occupant located on the remaining part of the property is required to move, such occupant shall be considered a displaced person under these regulations and shall be entitled to such benefits hereunder as the person would otherwise qualify.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987]

§ 777.27 Last resort housing.

(a) *Basic Determination to Provide Last Resort Housing.* A displaced person cannot be required to move from his or her dwelling unless at least one comparable replacement dwelling is made available to him or her which is within his or her financial means. When such comparable replacement dwelling is not available, additional measures may be taken to provide for ''last resort'' housing for eligible displaced persons.

(b) *Basic Rights of Persons to be Displaced.* The provisions of this section do not deprive any displaced person of any rights the person may have under these regulations such as the right to accept the maximum replacement housing payment available under these regulations and to move to a decent, safe and sanitary replacement dwelling even if such dwelling is beyond the person's financial means.

(c) *Methods of Providing Replacement Housing.* The Postal Service has broad latitude in implementing this section, but implementation must be on a reasonable cost basis. The Postal Service may provide last resort housing using the following methods:

(1) Rehabilitation of and/or additions to an existing replacement dwelling.

(2) The construction of a new replacement dwelling.

(3) The provision of a direct loan which requires regular amortization or deferred repayment. Terms of such loan will be at the discretion of the Postal Service.

(4) A replacement housing payment in excess of the $5,250 and $22,500 limitations contained in § 777.24. A rental subsidy under this section may be provided in installments.

(5) The relocation and any needed rehabilitation of a replacement dwelling.

(6) The purchase or lease of land and/or a replacement dwelling by the Postal Service and subsequent sale or lease to, or exchange with, a displaced person.

(7) The removal of barriers to the handicapped.

(8) Any other method determined by the Postal Service to be reasonable.

(d) *Proof of Financial Need.* Last Resort Housing benefits exceeding the limitations under § 777.24(b)(2) and

§ 777.24(e)(2) will not be paid unless required to provide housing within the displaced person's financial means. To establish financial means, the displaced person must furnish the Postal Service proof of gross monthly income through income tax returns, certified financial statements or other reasonable evidence which the Postal Service determines is satisfactory.

[51 FR 6983, Feb. 27, 1986, as amended at 52 FR 48029, Dec. 17, 1987]

§ 777.28 Claims and appeals.

(a) *Preparation of Claim.* The relocation representative should assist eligible displaced persons in the preparation of claims for moving assistance and relocation housing assistance. Preliminary review should be conducted in the field by the relocation representative with the displaced person, to preclude technical difficulties in processing the claim at a higher level.

(b) *Documentation.* Any claim for a relocation payment must be supported by such documentation as may be required to support the claim, for example the length of occupancy at the displacement dwelling, the rent paid at the displacement dwelling, expenses incurred in relocating, etc. A displaced person must be provided reasonable assistance to complete and file any required claim.

(c) *Time for Filing.* All claims must be filed with the Postal Service within 18 months after the date of the actual move from the displacement property.

(d) *Review, Approval and Payment.* The Postal Service will review claims within 60 days of submission and approve or disapprove payment. Upon approval or partial approval of the displaced person's claim, the Postal Service will promptly authorize payment of the approved amount. The certification that the claimant has occupied decent, safe, and sanitary housing must be completed prior to final payment of replacement housing payments.

(e) *Relocation Payments Not Considered as Income.* Upon approval of the claim and delivery of the relocation payment, the displaced person must be advised that no relocation payment made under these procedures shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal Law.

(f) *Certification.* Certification that a person is displaced will be provided any agency requiring such information to assist that person under any Federal law or program.

(g) *Advance of Funds.* If the displaced person cannot arrange for the acquisition of a replacement property because of financial problems and the problems would be solved by an advance of funds, the Postal Service may determine the estimated amount of the actual claim and authorize an advance of that amount or a portion thereof. The displaced person will be fully informed in writing that his or her final claim will then be subject to adjustment. Advance payments should not be made to persons with a history of financial irresponsibility.

(h) *Money Owed to the Postal Service.* In cases of Postal Service leasing the acquired property to a displaced persons, or in cases of advance moving cost payments, any monies due the Postal Service by the displaced person and not paid before the remainder of the relocation payments are made must be deducted from such payments and the relocation file so documented.

(i) *Notice of Denial of Claim.* If the Postal Service disapproves all or part of a payment claimed, of refuses to consider the claim on its merits because of untimely filing or other grounds, it must promptly notify the claimant in writing of the determination, the basis for the determination, and the procedures for appealing the determination.

(j) *Appeal Procedure.* If a displaced person wishes to file an appeal:

(1) The appeal must be in writing.

(2) The appeal must be directed to the General Manager, Real Estate Division, and must set forth the displaced person's reasons for the appeal. (The General Manager shall not have taken part in the decision which led to the appeal. Appeals misdirected to others must be forwarded immediately to the General Manager with notification of the forwarding to the appellant.)

(3) The appeal must be submitted within 60 days after the displaced person receives written notification of the Postal Service's original determination concerning the displacee's claim. The Postal Service may extend this time limit for good cause.

(k) *Right of Representation.* A displaced person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(l) *Review of Files by Appellant.* The Postal Service must permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are confidential. Such inspection will be permitted as allowed under the Freedom of Information Act, 39 CFR Part 265.

(m) *Scope of Review.* In deciding an appeal, the Postal Service must consider all pertinent justification and other material submitted by the displaced person and all other available information that is needed to ensure a fair and full review of the appeal.

(n) *Determination and Notification After Appeal.* Promptly after receipt of all supporting information submitted by the appellant, the General Manager, Real Estate Division, must make a written determination on the appeal, including the basis on which the decision was made, and furnish the appellant a copy. If the full relief requested is not granted at the Service Center level, the General Manager, Real Estate Division, must advise the person of his or her right to appeal the decision to the Director, Office of Real Estate. The rules stated here for appeals to the General Manager apply as well as to appeals to the Director, Office of Real Estate.

[51 FR 6983, Feb. 27, 1986, as amended at 54 FR 10668, Mar. 15, 1989]

Subpart C—Acquisition

§ 777.31 Acquisition procedures.

(a) *Policy; Application of Section.* The Postal Service, as a matter of policy, acquires interests in real property through voluntary agreements with owners. Only under unusual and compelling circumstances, and on a case-by-case basis, does the Postal Service acquire real property through the exercise or the threat of the exercise of eminent domain. This policy does not, however, prevent the Postal Service from occasionally entering into mutually agreeable condemnation proceedings with an owner, where price is not an issue, and for such purposes as to clear title or to acquire property from certain elected officials. For the purposes of this section, the Postal Service does not consider such voluntary and mutually agreeable uses of condemnation proceedings as the exercise or the threat of the exercise of eminent domain. The following regulations apply only to acquisitions by the exercise or the threat of the exercise of eminent domain:

(1) *Notice to Owner.* As soon as feasible after deciding to acquire a specific property through the exercise of eminent domain, the Postal Service must notify the owner of its intent to acquire the property.

(2) *Expeditious Negotiations.* The Postal Service must make every reasonable effort to acquire real property expeditiously by negotiation.

(3) *Appraisal and Invitation to Owner.* Before the initiation of negotiations, the real property shall be appraised in accordance with Postal Service appraisal standards as outlined in RE–1 and the owner or the owner's designated agent shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(4) *Establishment of Offer of Just Compensation.* Prior to the initiation of negotiations (see § 777.13(k) for definition) the Postal Service must establish an amount which it believes is just compensation for the real property rights be acquired. The amount must not be less than the approved appraisal of the fair market value, including damages or benefits to the remaining property. Appraisers shall not give consideration to, or include in their real property appraisals, any allowances for the benefits provided by title II of the Act.

(5) *Summary Statement.* Promptly after determining fair market value, the Postal Service shall make a written offer to acquire the property for the full amount believed to be just compensation. Along with the written

purchase offer, the owner must be given a written statement of the basis for the offer of just compensation. This statement must include:

(i) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, must be separately stated.

(ii) The location and description of the real property and the interest(s) to be acquired.

(iii) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify and separately held ownership interest in the improvement(s), for example, a tenant-owned improvement.

(6) *Basic Negotiation Procedures.* The Postal Service must make every reasonable effort to contact the owner or the owner's representative and:

(i) Discuss the Postal Service's offer to purchase the property including the basis for the offer of just compensation, and;

(ii) Explain Postal Service acquisition policies and procedures including the provisions for the payment of incidental expenses as described under § 777.33.

(7) *Opportunity to Consider Offer.* The owner must be given a reasonable opportunity to consider the Postal Service's offer, to present material which he or she believes is relevant to determining the value of the property, and to suggest modification in the proposed terms and conditions of the purchase. The Postal Service must consider the owner's presentation.

(8) *Updating Offer of Just Compensation.* If the information presented by the owner or a material change in the character or condition of the property indicates the need for new appraisal information, or if a significant delay has occurred since the time of the appraisal(s) of the property, the Postal Service must have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Postal Service must promptly reestablish just compensation and offer the revised amount to the owner in writing.

(9) *Contracts and Options.* Contracts to purchase shall cover only those items related to the acquisition of the property, and not incorporate provisions for making payments for relocation costs or related costs under title II of these regulations.

(10) *Title II Benefits Not To Be Considered.* In the event of condemnation, estimated compensation shall be determined solely on the basis of the appraised value of the real property with no consideration being given to or reference contained therein to the payments to be made under title II.

(11) *Coercive Action.* The Postal Service shall not advance the time of condemnation, or defer negotiations or condemnation, or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(12) *Inverse Condemnation.* If the Postal Service intends to acquire any interest in real property by exercise of the power of eminent domain, it must institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute proceedings to prove the fact of the taking of the real property.

(13) *Payment Before Taking Possession.* Before requiring the owner to surrender possession of the real property, the Postal Service must either:

(i) Pay the agreed purchase price to the owner; or

(ii) In the case of a condemnation proceeding, deposit with the court for the benefit of the owner an amount not less than the amount of the approved appraised value of the property or the amount of the award of compensation in the condemnation proceeding for the property.

(14) *Right-of-Entry.* With the prior approval of the owner, the Postal Service may obtain a right-of-entry before making payment to the owner.

§ 777.32 Acquisition of tenant-owned improvements.

(a) *Acquisition of Improvements.* When acquiring any interest in real property,

the Postal Service must acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property. This must include any improvement of a tenant owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Special Conditions.* Payment for tenant-owned improvements will be made to the tenant only if he or she meets the following conditions:

(1) In consideration for the payment the tenant-owner assigns, transfers, and releases to the Postal Service all of the tenant-owner's rights, title, and interests in the improvement;

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(c) *Preservation of Tenant's Rights.* Nothing in this section shall be construed to deprive the tenant-owner of any rights to reject payment under this section and to obtain payment for such property interests in accordance with other applicable law.

§ 777.33 Expenses incidental to transfer of title to the Postal Service.

(a) *Reimbursement.* When property is acquired through the exercise or the threat of the exercise of eminent domain, the owner shall be reimbursed for all reasonable expenses he or she necessarily incurred in conveying the real property to the Postal Service for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar incidental expenses. However, the Postal Service will not pay costs solely required to perfect the owner's title to the real property.

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage, entered into in good faith, encumbering the real property.

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Postal Service obtains title to the property or effective possession of it, whichever is earlier.

(b) *Direct Payment.* Whenever feasible the Postal Service must pay these costs directly and thus avoid the need for an owner to pay such costs and then seek reimbursement from the Postal Service.

(c) *Certain Litigation Expenses.* The owner of the real property acquired must be reimbursed any reasonable expenses, including reasonable attorney, appraisal, and engineering fees which the owner actually incurred because of a condemnation proceeding if:

(1) The final judgment of the court is that the Postal Service cannot acquire the real property by condemnation; or

(2) The condemnation proceeding is abandoned by the Postal Service other than under an agreed-upon settlement; or

(3) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Postal Service effects a settlement of such a proceeding.

Subpart D—Voluntary Acquisitions

§ 777.41 Acquisition procedures.

(a) *Voluntary Acquisitions.* Acquisition rules for voluntary purchases are set out in Handbook RE–1, Realty Acquisition and Management and cover such areas as appraisal and negotiation procedures.

(b) *Tenant-Owned Improvements.* In general the Postal Service deals exclusively with the fee owner on the acquisition of all real property interest at the site. The Postal Service may, however, in exceptional cases deal directly with a tenant on a leasehold improvements matter. Should the Postal Service acquire the fee interest without acquiring rights in a leasehold improvement under circumstances in which the tenant would be entitled to compensation under § 777.32 of this part, if the acquisition were by eminent domain or the under threat thereof, the tenant will be entitled to the benefits that would, under such circumstances, have been paid under § 777.32 of this part, unless the tenant has formally disclaimed further right in the real property improvement beyond the time of the expiration of his or her tenancy.

Subpart E—Donations

§ 777.51 Acceptance of donations.

Nothing in these regulations shall prevent a person from making a gift or donation of real property or any part thereof, or any interest therein, or of any compensation paid therefor, to the Postal Service. The Postal Service may obtain an appraisal of the real property for income tax or other purposes if the owner thereof requests the Postal Service to do so.

PART 778—INTERGOVERNMENTAL REVIEW OF POSTAL SERVICE FACILITY ACTIONS

Sec.

778.1 What is the purpose of these regulations?
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AUTHORITY: 39 U.S.C. 401.

SOURCE: 48 FR 29376, June 24, 1983, unless otherwise noted.

§ 778.1 What is the purpose of these regulations?

(a) The regulations in this part implement Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' issued July 14, 1982 and amended on April 8, 1983. These regulations also implement applicable provisions of section 401 of the Intergovernmental Cooperation Act of 1968, which the Postal Service follows as a matter of policy.

(b) These regulations are intended to foster an intergovernmental partnership and a strengthened Federalism by relying on state processes and on state, areawide, regional and local coordination for review of proposed direct federal development projects.

(c) These regulations are not intended to create any right or benefit enforceable at law by a party against the Postal Service or its officers.

(d) These regulations implement Executive Order 12372 and are adopted under the Postal Reorganization Act rather than the statute and Executive Order listed in paragraph (a) of this section to the extent the statute and Executive Order do not apply to the Postal Service under 39 U.S.C. 410(a).

§ 778.2 What definitions apply to these regulations?

Order means Executive Order 12372, issued July 14, 1982, and amended April 8, 1983, and titled ''Intergovernmental Review of Federal Programs.''

State means any of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the U.S. Virgin Islands, or the Trust Territory of the Pacific Islands.

§ 778.3 What categories of facility project actions of the Postal Service are subject to these regulations?

The Postal Service publishes in the FEDERAL REGISTER a list of its categories of facility project actions that are subject to these regulations.

§ 778.4 What are the Postal Service's general responsibilities under the Order?

(a) The Postal Service provides opportunities for consultation by elected officials of those state and local governments that would be directly affected by the Postal Service's facility project actions.

(b) If a state adopts a process under the Order to review and coordinate proposed direct Federal development

projects, the Postal Service, to the extent permitted by law:

(1) Uses the state process to determine official views of state and local elected officials;

(2) Communicates with state and local elected officials as early in a facility project action's planning cycle as is reasonably feasible to explain specific plans and actions;

(3) Makes efforts to accommodate state and local elected officials' concerns with proposed direct Federal development projects that are communicated through the state process; and

(4)–(5) [Reserved]

(6) Seeks the coordination of views of affected state and local elected officials in one state with those of another state when a proposed direct Federal development project has an impact on interstate metropolitan urban centers or other interstate areas.

§ 778.5 What is the Postal Service's obligation with respect to federal interagency coordination?

The Postal Service, to the extent practicable, consults with and seeks advice from other federal departments and agencies substantially affected by Postal Service facility project actions covered under these regulations.

§ 778.6 What procedures apply to a state's choice of facility action categories under these regulations?

(a) A state may select any categories of facility project actions published in the FEDERAL REGISTER in accordance with § 778.3 for intergovernmental review under these regulations. Each state, before selecting categories of facility project actions, shall consult with local elected officials.

(b) Each state that adopts a process shall notify the Postal Service of the Postal Service's categories of facility actions selected for that process.

(c) A state may notify the Postal Service of changes in its selections at any time. For each change, the state shall submit to the Postal Service an assurance that the state has consulted with local elected officials regarding the change. The Postal Service may establish deadlines by which states are required to inform the Postal Service of changes in their facility action category selections.

(d) The Postal Service uses a state's process as soon as feasible, after the Postal Service is notified of the state's selections.

§ 778.7 How does the Postal Service communicate with state and local officials concerning the Postal Service's facility project actions?

(a) [Reserved]

(b) The Postal Service provides notice directly to affected state, areawide, regional, and local entities in a state of a proposed direct Federal development project if:

(1) The state has not adopted a process under the Order; or

(2) The development project involves a facility project action category not selected for the state process.

This notice may be made by publication in local newspapers and/or by letter.

§ 778.8 How does the Postal Service provide states an opportunity to comment on proposed facility project actions?

(a) Except in unusual circumstances, the Postal Service gives state processes or directly affected state, areawide, regional and local officials and entities:

(1) [Reserved]

(2) At least 60 days from the date established by the Postal Service to comment on proposed facility project actions (except as noted in paragraph (a)(3) of this section).

(3) For facility project actions in the Washington, DC National Capital Region, coordination also is accomplished with the National Capital Planning Commission (NCPC). The Postal Service gives the NCPC 90 days to comment on projects in the Maryland and Virginia portions of the National Capital Region.

(b) This section also applies to comments in cases in which the review, coordination, and communication with the Postal Service have been delegated.

§ 778.9 How does the Postal Service receive and respond to comments?

(a) The Postal Service follows the procedures in § 778.10 if:

(1) A state office or official is designated to act as a single point of contact between a state process and all federal agencies, and

(2) That office or official transmits a state process recommendation for a facility project action of a category selected under § 778.6.

(b)(1) The single point of contact is not obligated to transmit comments from state, areawide, regional or local officials and entities where there is no state process recommendation.

(2) If a state process recommendation is transmitted by a single point of contact, all comments from state, areawide, regional, and local officials and entities that differ from it must also be transmitted.

(c) If a state has not established a process, or does not submit a state process recommendation, state, areawide, regional and local officials and entities may submit comments directly to the Postal Service.

(d) If a facility project action is not selected for a state process, state, areawide, regional and local officials and entities may submit comments directly to the Postal Service. In addition, if a state process recommendation for a nonselected facility project action is transmitted to the Postal Service by the single point of contact, the Postal Service follows the procedures of § 778.10.

(e) The Postal Service considers comments which do not constitute a state process recommendation submitted under these regulations and for which the Postal Service is not required to apply the procedures of § 778.10 when such comments are provided by a single point of contact or directly to the Postal Service by a commenting party.

§ 778.10 How does the Postal Service make efforts to accommodate intergovernmental concerns?

(a) If a state process provides a state process recommendation to the Postal Service through its single point of contact, the Postal Service either:

(1) Accepts the recommendation;

(2) Reaches a mutually agreeable solution with the state process; or

(3) Provides the single point of contact with such written explanation of its decision as the Postal Service in its discretion deems appropriate. The Postal Service may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Postal Service informs the single point of contact that:

(1) The Postal Service will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Postal Service has reviewed the decision and determined that because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 778.11 What are the Postal Service's obligations in interstate situations?

(a) The Postal Service is responsible for:

(1) Identifying proposed direct federal development projects that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Postal Service's facility project action for review;

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Postal Service's facility project action for review;

(4) Responding pursuant to § 778.10 if the Postal Service receives a recommendation from a designated areawide agency transmitted by a single point of contact in cases in which the review, coordination, and communication with the Postal Service have been delegated.

(b) The Postal Service uses the procedures in § 778.10 if a state process provides a state process recommendation to the Postal Service through a single point of contact.

§ 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.
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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 the General Counsel's 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, as amended at 69 FR 52607, Aug. 27, 2004]

§ 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.

Claims should be filed with the Tort Claims Coordinator for the Postal Service District Office where the accident occurred, but may be filed at any office of the Postal Service, or sent directly to the Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63166–6640.

[69 FR 52607, Aug. 27, 2004]

§ 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 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. A standard Form 95 may be obtained from the local District Tort Claims Coordinator, the National Tort Center, or online at usa.gov (select Government forms).

(b) A claim presented in compliance with paragraph (a) of this section may be amended by the claimant at any time prior to:

(1) The claimant's exercise of the option to file a civil action pursuant to 28 U.S.C. 2675(a);

(2) The Postal Service's issuance of a payment in the full amount of the claim; or

(3) The Postal Service's issuance of a written denial of the claim in accordance with § 912.9.

[36 FR 12448, June 30, 1971, as amended at 45 FR 43720, June 30, 1980; 69 FR 52607, Aug. 27, 2004]

§ 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 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 written 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 Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63166–6640, 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.

(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 Chief Counsel, National Tort Center, U.S. Postal Service, P.O. Box 66640, St. Louis, MO 63166–6640.

(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; 69 FR 52607, Aug. 27, 2004]

§ 912.10 Action on approved claims.

In any case where the General Counsel or the General Counsel's 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, as amended at 69 FR 52607, Aug. 27, 2004]

§ 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 $5,000, be exercised only after review by a legal officer of the Postal Service.

[45 FR 43720, June 30, 1980, as amended at 69 FR 52607, Aug. 27, 2004]

§ 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.

(b) Production of records. A subpoena issued by the General Counsel may require the production of any records (including computer records, books, papers, documents, and other tangible things which constitute or contain evidence) which the General Counsel considers relevant or material to an investigation.

(c) Requirements. No subpoena shall be issued until a specific case (identifying the individual or entity that is the subject) has been opened and an appropriate supervisory and legal review of a subpoena request have been performed.

(d) Requests for subpoenas. (1) A request for a subpoena shall be submitted to the Office of the General Counsel by a Postal Inspector, Inspector Attorney, or other Inspector specifically authorized by the Postal Inspection Service to submit such a request, after appropriate review by an Inspector In Charge or that person's designee.

(2) A request for a subpoena shall state the specific case, with an individual or entity identified as the subject, in which the subpoena is requested.

(3) A request for a subpoena shall contain a specific description of the

records requested, and shall state how they are relevant or material to the investigation.

(4) The General Counsel, in his or her discretion, may issue or deny the requested subpoena, or require the requesting individual to provide additional information. The General Counsel, in his or her discretion, may also honor requests to amend or supplement a request for a subpoena.

(e) Form and issuance. Every subpoena shall cite 39 U.S.C. 3016 as the authority under which it is issued, and shall command each person to whom it is directed to produce specified records at a time and place therein specified. The General Counsel shall sign the subpoena and enter the name of the individual or entity to whom it is directed.

§913.2 Service.

(a) Service within the United States. A subpoena issued under this section may be served by a person designated under section 3061 of title 18 at any place within the territorial jurisdiction of any court of the United States.

(b) Foreign service. Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure describe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(c) Service on business persons. Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by—

(1) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(2) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(3) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(d) Service on natural persons. Service of any subpoena may be made upon any natural person by—

(1) Delivering a duly executed copy to the person to be served; or

(2) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(e) Verified return. A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

§913.3 Enforcement.

(a) In general. Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the General Counsel may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia), and serve upon such person a petition for an order of such court for the enforcement of this part.

(b) Jurisdiction. Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order entered shall be subject to appeal under section 1291 of title 28, United States Code. Any disobedience of any

final order entered under this section by any court may be punished as contempt.

§ 913.4 Disclosure.

Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under section 552 of title 5, United States Code.

PART 916 [RESERVED]

Rules of Procedure Before the Mail Processing Department

PART 927—RULES OF PROCEDURE RELATING TO FINES, DEDUCTIONS, AND DAMAGES

Sec

927.1 Noncontractual carriage of international mail by vessel.
927.2 Noncontractual air service for international and military mail.
927.3 Other remedies.

AUTHORITY: 39 U.S.C. 401, 2601 Chap. 56 Section 5604; 49 U.S.C. 1357, 1471.

SOURCE: 67 FR 50353, Aug. 2, 2002, unless otherwise noted.

§ 927.1 Noncontractual carriage of international mail by vessel.

(a) *Report of infraction.* Where evidence is found or reported that a carrier of mail by vessel which has transported mail pursuant to the provisions of Chapter 4, USPS Purchasing Manual, has unreasonably or unnecessarily delayed the mails, or committed other delinquencies in the transportation of mail, has failed to carry the mail in a safe and secure manner, or has caused loss or damage to the mail, the facts will be reported to International Network Operations, Headquarters.

(b) *Review, investigation, recommendation.* International Network Operations will investigate the matter, record findings of fact, make a recommendation concerning the need for imposition of fine or penalty with reasons for the recommendation, and will advise the carrier of the recommendation.

(c) *Penalty action.* International Network Operations, upon review of the record, may impose a fine or penalty against a carrier for any irregularity properly documented, whether or not penalty action has been recommended. A tentative decision of International Network Operations to take penalty action will be set forth in detail the facts and reasons upon which the determination is based. International Network Operations will send the tentative decision, including notice of the irregularities found and the amount of fine or penalty proposed, to the carrier. The carrier may present a written defense to the proposed action within 21 days after receipt of the tentative decision. International Network Operations will advise the carrier of the final decision.

(d) *Appeal.* If the final decision includes a penalty International Network Operations will advise the carrier that it may, within 30 days, appeal the action in writing to the Vice President, Network Operations Management, U.S. Postal Service Headquarters and that its written appeal should include all facts and arguments upon which the carrier relies in support of the appeal. If an appeal is not received, International Network Operations will close the record. When an appeal is taken, the Vice President, Network Operations Management will review the complete record the decide the appeal. He will advise the carrier of the decision in writing and will take actions consistent with that decision. The Vice President, Network Operations Management, may sustain, rescind, or compromise a fine or penalty. The decision of the Vice President, Network Operations Management on appeal shall be the final decision of the Postal Service. The Postal Service may, in its discretion, deduct from payment otherwise due the carrier an amount necessary to satisfy the penalty action taken under this section.

(e) *Details of administration.* For further administrative details, see USPS Purchasing Manual, chapter 4.

§ 927.2 Noncontractual air service for international and military mail.

(a) *Report of infraction.* Each mail handling irregularity will be reported in the prescribed format by the cognizant postal official or designated representative. As soon as possible the reporting authority will ask the local

representative of the air carrier to provide an explanation of the irregularity. A summary of the explanation, if any, will be entered in the record. A copy of the report will be provided to the local station manager of the air carrier concerned at the close of each tour or not less frequently than each 24 hours.

(b) *Carrier conferences.* At least one a month, postal officials will schedule meetings with the local representatives of the affected air carriers to discuss the reported irregularities. The carrier's representative will be advised of any irregularity for which the reporting authority will recommend penalty action. The carrier's representative will be offered the opportunity to comment on any irregularity, and any comments will be attached and/or be made part of the record. The reports on which penalty action is recommended will then be processed by International Network Operations, Postal Headquarters.

(c) *Review, investigation, penalty action.* International Network Operations will review the matter and advise the carrier of the recommendations. The carrier has 21 days from receipt of notice to dispute the recommended penalties. In those instances which the carrier has disputed the facts alleged by the reporting authority, International Network Operations will investigate the matter to resolve the differences. International Network Operations, upon review of the record, may impose a fine or penalty against an air carrier for any irregularity properly documented, whether or not penalty action has been recommended. International Network Operations will send the decision, including notice of the irregularities alleged and the amount of fine or penalty proposed to the carrier. The Postal Service may, in its discretion, deduct from payment otherwise due the air carrier an amount necessary to satisfy the penalty action taken under this section.

(d) *Appeal.* If the final decision includes a penalty, International Network Operations will advise the carrier that it may, within 30 days, appeal the action in writing to the Vice President, Network Operations Management, Postal Headquarters, and that its written appeal should include all facts and arguments upon which the carrier relies in support of the appeal. If an appeal is not received, International Network Operations will close the file. When an appeal is taken, the Vice President, Network Operations Management, will review the complete record and decide the appeals. He will advise the carrier of the decision in writing and will take action consistent with that decision. The Vice President, Network Operations Management, may sustain, rescind, or compromise a fine or penalty. The decision of the Vice President, Network Operations Management, on appeal shall be the final decision of the Postal Service. The Postal Service, may, in its discretion, deduct from pay otherwise due the air carrier an amount necessary to satisfy the penalty action taken under this section.

(e) *Details of administration.* For further administrative details, forms, and other implementing materials adapted to the respective modes of transportation, see International Mail Operations, Handbook T–5, chapter 5.

§927.3 Other remedies.

The procedures and other requirements of this part apply only where the Postal Service proposes to assess penalties, fines, deductions, or damages. This part does not limit other remedies available to the Postal Service, including such remedies as summary action to withhold tender of mail to protect the public interest in the event of major irregularities such as theft, deliberate loss, damage, abandonment of the mail or service failures by the air carrier.

PART 931—RULES OF PROCEDURE GOVERNING THE COMPROMISE OF OBLIGATIONS

§931.1 Compromise of obligations.

Any proposition of compromise shall be submitted in writing, and the amount offered in compromise shall be deposited with the Manager, Accounting Division or the appropriate postal data center. If the offer in compromise is rejected the amount deposited will

be returned. The amount of a compromise offer must be tendered unconditionally for deposit pending the consideration of acceptance. Checks and drafts cannot be accepted as offers in compromise when they bear endorsements or instructions to the effect that the acceptance of such checks or drafts constitutes settlement in full of the claim, fine, penalty, or liability in connection with which the offer is made, except that such checks or drafts may be accepted when they are accompanied with a written waiver of the endorsements or instructions printed thereon. Offers in compromise should be transmitted or delivered to the office or officer of the Postal Service from whom demand is received for payment of the amount due.

(39 U.S.C. 401)

[26 FR 11662, Dec. 6, 1961. Redesignated at 33 FR 6291, April 25, 1968]

Rules of Procedure Before the Postal Inspection Service

PART 946—RULES OF PROCEDURE RELATING TO THE DISPOSITION OF STOLEN MAIL MATTER AND PROPERTY ACQUIRED BY THE POSTAL INSPECTION SERVICE FOR USE AS EVIDENCE

Sec.

946.1 Scope of part.
946.2 Disposition of property of apparent owners.
946.3 Contraband and property subject to court order.
946.4 Disposition of property of unknown owners.
946.5 Disposition of property having a value of less than $200.
946.6 Disposition of abandoned property; additional period for filing claims.
946.7 Submission of claims.
946.8 Determination of claims.
946.9 Reconsideration of claims.
946.10 Record retention.
946.11 Disposition of property declared abandoned.

AUTHORITY: 5 U.S.C. 552(a); 39 U.S.C. 401(2), (5), (8), 404(a)(7), 2003, 3001.

SOURCE: 53 FR 6986, Mar. 4, 1988, unless otherwise noted.

§ 946.1 Scope of part.

This part prescribes procedures governing the disposition of recovered stolen mail matter and any other property (real, personal, tangible or intangible) obtained by the Postal Inspection Service for possible use as evidence after the need to retain such property no longer exists. Property obtained by Postal Inspectors which appears to have been loose in the mails but is not retained for use as evidence, except unlawful matter, must be treated in accordance with postal regulations concerning disposition of dead mail (see Domestic Manual (DMM) 159.4). Unlawful matter must be disposed of in accordance with § 946.3.

§ 946.2 Disposition of property of apparent owners.

Where an apparent owner of property subject to this part is known, the Chief Postal Inspector or delegate will mail, by certified mail to the apparent owner's last known address, written notice describing the property and the procedure for filing a claim for its return (see §§ 946.3 and 946.7). Such claims must be filed within 30 days from the date the notice is postmarked. If the apparent owner of the property fails to file a timely claim, the property is considered abandoned and must be disposed of as provided in § 946.6.

§ 946.3 Contraband and property subject to court order.

Claims submitted with respect to property subject to this part, possession of which is unlawful, must be denied, in writing, by certified mail and the person submitting the claim must be accorded 45 days from the postmarked date to institute judicial proceedings to challenge the denial. If judicial proceedings are not instituted within 45 days, or any extension of time for good cause shown, the contraband property must be destroyed unless the Chief Postal Inspector or delegate determines that it should be placed in official use by the Postal Inspection Service. Property subject to this part, the disposition of which is involved in litigation or is subject to an order of court, must be disposed of as determined by the court.

§946.4 Disposition of property of unknown owners.

(a) Where no apparent owner of property subject to this part is known, except property described in §946.3, and the Chief Postal Inspector or delegate estimates that the fair market value of the property exceeds $200, and the property is not needed as evidence, the Chief Postal Inspector or delegate must publish notice providing the following information:

(1) A description of the property including model or serial numbers, if known;

(2) The name, address, and telephone number of the Postal Inspector in Charge who has custody of the property; and

(3) A statement inviting any person who believes that he or she is fully entitled to the property to submit a claim for its return with the Postal Inspector in Charge who is identified in the notice. Such claim must be submitted within 30 days from the date of first publication of the notice (See §946.7).

(b) The notice under §946.4(a) must be published once a week for three consecutive weeks in a publication of general circulation within the judicial district where the Postal Inspection Service took possession of the property.

§946.5 Disposition of property having a value of less than $200.

Where the owner of property subject to this part is unknown and the Chief Postal Inspector or delegate estimates that fair market value of such property is $200 or less, title to the property vests in the United States Postal Service, subject to the right of the owner to submit a valid claim as provided in §946.6.

§946.6 Disposition of abandoned property; additional period for filing claims.

(a) Upon expiration of the time provided in §§946.2 and 946.4(a)(3) for the filing of claims or any extension thereof, and without the receipt of a timely claim, the property described in the notice is considered abandoned and becomes the property of the United States Postal Service. However, if the owner satisfies the requirements of §946.6(b), except for property described in §946.3, such abandoned property must be returned to the owner if a valid claim is filed within 3 years from the date the property became abandoned, with the following qualifications:

(1) Where property has been placed in official use by the Postal Inspection Service, a person submitting a valid claim under this section must be reimbursed the fair market value of the property at the time title vested in the United States Postal Service, less costs incurred by the Postal Service in returning or attempting to return such property to the owner and;

(2) Where property has been sold, a person submitting a valid claim under this section must be reimbursed the same amount as the last appraised value of the property prior to the sale of such property.

(b) In order to present a valid claim under §946.6(a), the claimant must establish that he or she had no actual or constructive notice prior to the date the property became abandoned that he or she was entitled to file a claim pursuant to §946.2 or §946.4. Publication of notice pursuant to §946.4 provides constructive notice unless a claimant can demonstrate circumstances which reasonably precluded his access to the published notice.

[53 FR 6986, Mar. 4, 1988, as amended at 63 FR 8126, Feb. 18, 1998]

§946.7 Submission of claims.

Claims submitted pursuant to this part must be submitted on Postal Service Form 1503 which may be obtained from the Inspector in Charge who has custody of the property.

§946.8 Determination of claims.

Upon receipt of a claim under this part, the Postal Inspection Service must conduct an investigation to determine the merits of the claim. The results of the investigation must be submitted to the Chief Postal Inspector or delegate who must approve or deny the claim by written decision, a copy of which must be forwarded to the claimant by certified mail. If the claim is approved, the procedures to be followed by the claimant to obtain return of the property, or its determined value, must

be stated. If the claim is denied, the decision must state the reasons therefor.

§ 946.9 Reconsideration of claims.

A written request for reconsideration of denied claims may be submitted within 10 days of the postmarked date of the mailing denying the claim. Such requests must be addressed to the Chief Postal Inspector or delegate and must be based on evidence recently developed or not previously presented.

§ 946.10 Record retention.

Records regarding property subject to this part will be retained for a period of 3 years following return of the property to its owner or a determination that the property is abandoned.

§ 946.11 Disposition of property declared abandoned.

Property declared abandoned, including cash, and proceeds from the sale of property subject to this part may be shared by the Postal Inspection Service with federal, state, or local law enforcement agencies. Unless the Chief Postal Inspector determines that cash or the proceeds of the sale of the abandoned property are to be shared with other law enforcement agencies, such cash or proceeds shall be deposited in the Postal Service Fund established by 39 U.S.C. 2003. The authority to make this determination may be delegated by the Chief Postal Inspector.

[59 FR 29372, June 7, 1994]

Rules of Procedure Before the Judicial Officer

PART 951—PROCEDURE GOVERNING THE ELIGIBILITY OF PERSONS TO PRACTICE BEFORE THE POSTAL SERVICE

Sec.

951.1 Authority for rules.
951.2 Eligibility to practice.
951.3 Persons ineligible for admission to practice.
951.4 Authorization of appearance may be required.
951.5 Complaint of misconduct.
951.6 Censure, suspension or disbarment; grounds.
951.7 Notice of disbarment; exclusion from practice.
951.8 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11562, June 16, 1971, unless otherwise noted.

§ 951.1 Authority for rules.

The Judicial Officer promulgates these rules pursuant to authority delegated by the Postmaster General.

§ 951.2 Eligibility to practice.

(a) Any individual who is a party to any proceeding before the Judicial Officer, the Board of Contract Appeals or an Administrative Law Judge may appear for himself or by an attorney at law.

(b) The head of any department of the Postal Service may establish such special rules and regulations pertaining to eligibility to practice before such department as he may deem to be necessary or desirable.

(c) Generally, except as provided in § 951.3, any attorney at law who is a member in good standing of the Bar of the Supreme Court of the United States or of the highest court of any State, District, Territory, Protectorate or Possession of the United States, or of the District of Columbia, and is not under any order of any court or executive department of one of the foregoing governmental entities suspending, enjoining, restraining, disbarring, or otherwise restricting him in the practice of law may represent others before the U.S. Postal Service.

(d) When any person acting in a representative capacity appears in person or signs a paper in practice before the Postal Service his personal appearance or signature shall constitute a representation to the Postal Service that under the provisions of this part and the law he is authorized and qualified to represent the particular party in whose behalf he acts. The Postal Service does not generally take formal action or issue any certificate to show that an individual is eligible to practice before it. (See § 951.4.)

§ 951.3 Persons ineligible for admission to practice.

(a) No person disbarred from practice before the Postal Service or in any other executive department of any of the governmental entities mentioned

in §951.2(c) will be eligible to practice before the Postal Service until said order of disbarment shall have been revoked.

(b) Any person who, subsequently to being admitted to practice before the Postal Service, is disbarred by any governmental entity mentioned in §951.2(c) shall be deemed suspended from practice before the Postal Service during the pendency of said order or disbarment.

(c) No person who has been an attorney, officer, clerk, or employee in the Postal Service will be recognized as attorney for prosecuting before it or any office thereof any case or matter which he was in anywise connected while he was such attorney, officer, clerk, or employee.

(d) No person coming within the prohibitions of 18 U.S.C. 203, 205, or 207, will be recognized as attorney before the Postal Service or any office thereof.

§951.4 Authorization of appearance may be required.

The Judicial Officer, the head of any department of the Postal Service or any Administrative Law Judge may require any person to present satisfactory evidence of his authority to represent the person for whom he appears.

§951.5 Complaint of misconduct.

(a) If the head of any department of the Postal Service has reason to believe, or if complaint be made to him, that any person is guilty of conduct subjecting him to suspension or disbarment, the head of such office shall report the same to the Judicial Officer.

(b) Whenever any person submits to the Judicial Officer a complaint against any person who has practiced, is practicing or holding himself out as entitled to practice before the Postal Service, the Judicial Officer may refer such complaint to the Chief Inspector for a complete investigation and report.

(c) At any time, the Judicial Officer may refer the complaint to the General Counsel for the preparation of formal charges to be lodged against and served upon the person against whom the complaint has been made.

§951.6 Censure, suspension or disbarment; grounds.

(a) The Judicial Officer may censure, suspend or disbar any person against whom a complaint has been made and upon whom charges have been served as provided in §951.5 if he finds that such person:

(1) Does not possess the qualifications required by §951.2;

(2) Has failed to conform to standards of ethical conduct required of practitioners at the Bar of any court of which he is a member;

(3) Represents, as an associate, an attorney who, known to him, solicits practice by means of runners or other unethical methods;

(4) By use of his name, personal appearance, or any device, aids or abets an attorney to practice during the period of his suspension or disbarment, such suspension or disbarment being known to him;

(5) Displays toward the Judicial Officer, Board of Contract Appeals or any Administrative Law Judge assigned to the Postal Service, conduct which, if displayed toward any court of any State, the United States, any of its Territories or the District of Columbia, would be cause for censure, suspension or disbarment; or

(6) Is otherwise guilty of misconduct or lacking in character or professional integrity.

(b) Before any person shall be censured, suspended or disbarred, he shall be afforded an opportunity to be heard by the Judicial Officer on the charges made against him. The General Counsel or his designee shall prosecute such cases.

(c) In the event the Judicial Officer is unavailable for any reason, he may assign complaints of misconduct to the Associate Judicial Officer, an Administrative Law Judge appointed pursuant to the provisions of the Administrative Procedure Act, an Administrative Judge appointed pursuant to the provisions of the Contract Disputes Act of 1978, or some other disinterested member of the headquarters staff of the Postal Service recommended by the Deputy Postmaster General, for the determinations required by §951.5, the

conduct of the hearings, and the decision to censure, suspend, or debar persons as provided herein.

[36 FR 11562, June 16, 1971, as amended at 51 FR 16517, May 5, 1986]

§ 951.7 Notice of disbarment; exclusion from practice.

Upon the disbarment of any person, notice thereof will be given to the heads of the departments of the Postal Service and to the other Executive Departments, and thereafter, until otherwise ordered, such disbarred persons will not be entitled to practice before the Postal Service or any department thereof.

§ 951.8 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5357, Jan. 28, 1977]

PART 952—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO FALSE REPRESENTATION AND LOTTERY ORDERS

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AUTHORITY: 39 U.S.C. 204, 401, 3005, 3012, 3016.

SOURCE: 36 FR 11563, June 16, 1971, unless otherwise noted.

§ 952.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service (See § 952.26) pursuant to authority delegated by the Postmaster General.

§ 952.2 Scope of rules.

These rules of practice shall be applicable in all formal proceedings before the Postal Service, 39 U.S.C. 3005, including such cases instituted under prior rules of practice pertaining to these or predecessor statutes, unless timely shown to be prejudicial to the respondent.

[36 FR 11563, June 16, 1971, as amended at 52 FR 36763, Oct. 1, 1987]

§ 952.3 Informal dispositions.

These rules do not preclude the disposition of any matter by agreement between the parties either before or after the filing of a complaint when time, the nature of the proceeding, and the public interest permit.

§ 952.4 Office business hours.

The offices of the officials mentioned in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, and are open Monday through Friday except holidays from 8:15 a.m. to 4:45 p.m.

[63 FR 66050, Dec. 1, 1998]

§ 952.5 Complaints.

When the the Chief Postal Inspector or his or her designated representative believes that a person is using the mails in a manner requiring formal administrative action under 39 U.S.C. 3005, he shall prepare and file with the Recorder a complaint which names the

person involved; states the name, address and telephone number of the attorney representing Complainant; states the legal authority and jurisdiction under which the proceeding is initiated; states the facts in a manner sufficient to enable the person named therein to make answer thereto; and requests the issuance of an appropriate order or orders and/or the assessment of civil penalties. Complainant shall attach to the complaint a copy of the order or orders requested which may, at any time during the proceedings, be modified. The person named in the complaint shall be known as the ''Respondent'', and the Chief Postal Inspector or his or designee shall be known as the ''Complainant.''

The term ''person'' (1 U.S.C. 1) shall include any name, address, number or other designation under or by use of which the Respondent seeks remittances of money or property through the mail.

[48 FR 55126, Dec. 9, 1983, as amended at 65 FR 32027, May 22, 2000; 67 FR 62179, Oct. 4, 2002; 71 FR 53972, Sept. 13, 2006]

§ 952.6 Interim impounding.

In preparation for or during the pendency of a proceeding initiated under 39 U.S.C. 3005, mail addressed to a respondent may be impounded upon obtaining an appropriate order from a U.S. District Court, as provided in 39 U.S.C. 3007.

§ 952.7 Notice of answer and hearing.

(a) When a complaint is filed against a Respondent whose mailing address is within the United States, the Recorder shall issue a notice of answer and hearing stating the date for filing an answer which shall not exceed 15 days from the service of the complaint, the time and place of the hearing and a reference to the effect of failure to file an answer or appear at the hearing. (*See* §§ 952.10 and 952.11.) Whenever practicable, the hearing date shall be within 30 days of the date of the notice.

(b) Where a complaint is filed against a Respondent whose mailing address is not within the United States, the Judicial Officer shall review the complaint and any supporting information and determine whether a prima facie showing has been made that Respondent is engaged in conduct warranting issuance of the orders authorized by 39 U.S.C. 3005(a) and/or the assessment of civil penalties authorized by 39 U.S.C. 3012. Where he concludes that a prima facie showing has not been made he shall dismiss the complaint. Where he concludes that a prima facie showing has been made, he shall issue a tentative decision and orders which: set forth findings of fact and conclusions of law; direct Respondent to cease and desist from engaging in conduct warranting the issuance of an order authorized by 39 U.S.C. 3005(a); direct that postal money orders drawn to the order of Respondent not be paid for 45 days from date of the tentative decision; direct that mail addressed to Respondent be forwarded to designated facilities and detained for 45 days from the date of the tentative decision subject to survey by Respondent and release of mail unrelated to the matter complained of; tentatively assess such civil penalties as he considers appropriate under applicable law; and provide that unless Respondent presents, within 45 days of the date of the tentative decision, good cause for dismissing the complaint, or modifying the tentative decision and orders, the tentative decision and orders shall become final. The Judicial Officer may, upon a showing of good cause made within 45 days of the date of the tentative decision, hold a hearing to determine whether the tentative decision and orders should be revoked, modified or allowed to become final. Should a hearing be granted, the Judicial Officer may modify the tentative decision and orders to extend the time during which the payment of postal money orders payable to Respondent is suspended and mail addressed to Respondent is detained.

[44 FR 61959, Oct. 29, 1979, as amended at 48 FR 55126, Dec. 9, 1983; 65 FR 32027, May 22, 2000]

§ 952.8 Service.

(a) Where the Respondent's mailing address is within the United States, the Recorder shall cause a notice of answer and hearing and a copy of the complaint to be transmitted to the postmaster at any office of address of the Respondent or to the inspector in

charge of any division in which the Respondent is doing business, which shall be delivered to the Respondent or his agent by said postmaster or a supervisory employee of his post office or a postal inspector. A receipt acknowledging delivery of the notice shall be secured from the Respondent or his agent and forwarded to the Recorder, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, to become a part of the official record.

(b) If, after 5 days, the postmaster or his agent can find no person to accept service of the notice of answer and hearing and complaint pursuant to paragraph (a) of this section, the notice may be delivered in the usual manner as other mail addressed to the respondent. A statement, showing the time and place of delivery, signed by the postal employee who delivered the notice of answer and hearing and complaint shall be forwarded to the Recorder and such statement shall constitute evidence of service.

(c) Where the only address against which Complainant seeks relief is outside the United States, a copy of the complaint, the tentative decision, and a copy of these rules of practice shall be sent by registered air mail, return receipt requested, by the Recorder to the address cited in the complaint. A written statement by the Recorder noting the time and place of mailing shall be accepted as evidence of service in the event a signed return receipt is not returned to the Recorder.

[36 FR 11563, June 16, 1971, as amended at 37 FR 7321, Apr. 13, 1972; 44 FR 61959, Oct. 29, 1979; 44 FR 65399, Nov. 13, 1979; 63 FR 66050, Dec. 1, 1998]

§ 952.9 Filing documents for the record.

(a) Each party shall file with the Recorder pleadings, motions, proposed orders and other documents for the record. The Recorder shall cause copies to be delivered promptly to other parties to the proceeding and to the presiding officer.

(b) The parties shall submit four copies of all documents unless otherwise ordered by the presiding officer. One copy shall be signed as the original.

(c) Documents shall be dated and state the docket number and title of the proceeding. Any pleading or other document required by order of the presiding officer to be filed by a specified date shall be delivered to the Recorder on or before such date. The date of filing shall be entered thereon by the Recorder.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.10 Answer.

(a) The answer shall contain a concise statement admitting, denying, or explaining each of the allegations set forth in the complaint.

(b) Any facts alleged in the complaint which are not denied or are expressly admitted in the answer may be considered as proved, and no further evidence regarding these facts need be adduced at the hearing.

(c) The answer shall be signed personally by an individual respondent, or in the case of a partnership by one of the partners, or, in the case of a corporation or association, by an officer thereof.

(d) The answer shall set forth the Respondent's address and telephone number or the name, address and telephone number of its attorney.

(e) The answer shall affirmatively state whether the respondent will appear in person or by counsel at the hearing.

(f) If the respondent does not desire to appear at the hearing in person or by counsel he may request that the matter be submitted for determination pursuant to paragraph (b) of § 952.11.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.11 Default.

(a) If the Respondent fails to file an answer within the time specified in the notice of answer and hearing, he shall be deemed in default, and to have waived hearing and further procedural steps. The Judicial Officer shall thereafter issue orders and/or assess civil penalties without further notice to the Respondent.

(b) If the Respondent files an answer but fails to appear at the hearing, the

Respondent may, unless timely indications to the contrary are received, be deemed to have abandoned the intention to present a defense to the charges of the complaint, and the Judicial Officer, without further notice to Respondent, may issue the orders and/or assess civil penalties sought in the complaint.

[48 FR 55126, Dec. 9, 1983, as amended at 65 FR 32027, May 22, 2000]

§ 952.12 Amendment of pleadings.

(a) Amendments proposed prior to the hearing shall be filed with the Recorder. Amendments proposed thereafter shall be filed with the presiding officer.

(b) By consent of the parties a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing and, provided that the amendment is reasonably within the scope of the proceeding initiated by the complaint, the presiding officer shall make such ruling on the motion as he deems to be fair and equitable to the parties.

(c) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the complaint are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence and to raise such issues shall be allowed at any time upon the motion of any party.

(d) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues made by the pleadings, but fails to satisfy the presiding officer that an amendment of the pleadings would prejudice him on the merits, the presiding officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

(e) The presiding officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.13 Continuances and extensions.

Continuances and extensions will not be granted by the presiding officer except for good cause shown.

§ 952.14 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

[63 FR 66050, Dec. 1, 1998]

§ 952.15 Change of place of hearings.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Arlington, VA. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[36 FR 11563, June 16, 1971, as amended at 63 FR 66050, Dec. 1, 1998]

§ 952.16 Appearances.

(a) A respondent may appear and be heard in person or by attorney.

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. See part 951 of this chapter.

(c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the complaint shall be mailed to the attorney.

(d) A respondent must promptly file a notice of change of attorney.

§ 952.17 Presiding officers.

(a) The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law or the Judicial Officer (39 U.S.C. 204). The Chief Administrative Law Judge

shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause shown, preside at the reception of evidence in proceedings where expedited hearings are requested by either party.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision, which becomes the final Agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 952.19 and § 952.21.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 38 FR 20263, July 30, 1973; 44 FR 61960, Oct. 29, 1979; 65 FR 32027, May 22, 2000]

§ 952.18 Evidence.

(a) Except as otherwise provided in these rules, the Federal Rules of Evidence shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to insure a fair hearing. The presiding officer shall exclude irrelevant, immaterial or repetitious evidence.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received in evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) Authoritative writings of the medical or other sciences, may be admitted in evidence but only through the testimony of expert witnesses or by stipulation.

(f) Lay testimonials will not be received in evidence as proof of the efficacy or quality of any product or thing sold through the mails.

(g) The written statement of a competent witness may be received in evidence provided that such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his opinion or knowledge concerning the matters in question.

(h) A party who objects to the admission of evidence shall make a brief statement of the grounds for the objection. Formal exceptions to the rulings of the presiding officer are unnecessary.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979]

§ 952.19 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the presiding officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the presiding officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of records.* In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of records designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and

(2) To secure voluntary production of desired third-party records whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall to the extent practical be filed:

(i) At the same time a request for deposition is filed; or

(ii) 15 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the presiding officer may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed records. Where circumstances require, the presiding officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 39 U.S.C. 3016(a)(2) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified records at a time and place therein specified. In issuing a subpoena to a requesting party, the presiding officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the presiding officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(f) *Service*—(1) *In general.* The party requesting issuance of a subpoena shall arrange for service.

(2) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 or by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age at any place within the territorial jurisdiction of any court of the United States.

(3) *Foreign Service.* Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(4) *Service on Business Persons.* Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by:

(i) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(ii) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(iii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(5) *Service on Natural Persons.* Service of any subpoena may be made upon any natural person by:

(i) delivering a duly executed copy to the person to be served; or

(ii) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(6) *Verified Return.* A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(g) *Contumacy or refusal to obey a subpoena.* In the case of contumacy or refusal to obey a subpoena, the Judicial Officer may request the Attorney General to petition the district court for any district in which the person receiving the subpoena resides, is found, or conducts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia) to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt.

[65 FR 32027, May 22, 2000]

§ 952.20 Witness fees.

The Postal Service does not pay fees and expenses for respondent's witnesses or for depositions requested by respondent.

§ 952.21 Depositions, interrogatories, requests for admission of fact and production of documents.

(a) Not later than 5 days after the filing of Respondent's answer, any party may file application with the Recorder for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness and its relevancy.

(b) If the application is granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, and require that the deposition be taken before a person authorized to administer oaths as required by paragraph (f) of this section.

(c) Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. The deposition officer shall put the witness on oath. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular possession,

subject to the dominion of the United States, depositions or interrogatories may be taken or certified before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions or interrogatories may be taken or certified before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties except a witness who is a party shall be present or represented, and no person, other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words. For good cause shown or by stipulation of the parties, written interrogatories and cross-interrogatories propounding questions of fact may be answered by the witness in writing, without the presence of an officer and without being recorded by a stenographic reporter, provided the answers are sworn to by the witness before a person authorized to administer an oath prescribed by paragraph (f).

(h) Not later than 5 days after the filing of Respondent's answer, any party may serve on the other party a request for the admission of specified facts. In the event the party served refuses timely to respond to the request for admissions, the presiding officer for good cause shown may require the party served to admit or deny each requested fact. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the presiding officer's order for admission or denial.

(i) Not later than 5 days after the filing of Respondent's answer, either party may file an application for the production of documents or objects. The application shall state the cause therefor and specifically identify the documents or objects and their relevance and materiality to the cause or causes in issue. The presiding officer may order the other party to produce and permit the inspection and photographing of any designated documents or objects not privileged which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify such terms and conditions in making the inspection and taking the copies and photographs.

(j) Failure of a party to comply with an order pursuant to this rule may result in the presiding officer's ruling that the disobedient party may not support or oppose designated charges or defenses or may not introduce designated matters in evidence. The presiding officer may also infer from the disobedient party's failure to comply with the order that the facts to which the order related would, if produced or admitted, be adverse to such party's interests. The admissibility of matter adduced by operation of § 952.21 shall be governed by § 952.18.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61960, Oct. 29, 1979; 44 FR 65399, Nov. 13, 1979]

§ 952.22 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the assigned presiding officer. Argument upon any matter may be excluded from the transcript by order of the presiding officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript shall be supplied to the parties to the proceeding by the reporter at rates not to exceed the maximum rates fixed by contract between the Postal Service and the reporter. Copies of parts of the official record including exhibits admitted into evidence, other than the transcript, may be obtained by the Respondent from the Recorder upon the payment of reasonable copying charges. Items that cannot reasonably be photocopied may be photographed

and furnished in that form to Respondent.

(b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, he may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing of his concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the presiding officer shall by order specify the corrections to be made in the transcript. The presiding officer on his own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the presiding officer other than by agreement of the parties shall be subject to objection and exception.

[36 FR 11563, June 16, 1971, as amended at 44 FR 61961, Oct. 29, 1979]

§ 952.23 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to answer the complaint or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to any proceeding to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

(c) Except when presented orally before the close of the hearing, proposed orders shall state the statutory basis of the order and, with respect to orders proposed to be issued pursuant to 39 U.S.C. 3005(a)(3), shall be set forth in serially numbered paragraphs stating with particularity the representations Respondent and its representatives shall cease and desist from using for the purpose of obtaining money or property through the mail.

[48 FR 55126, Dec. 9, 1983]

§ 952.24 Decisions.

(a) *Initial decision by Administrative Law Judge.* A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The initial decision shall become the final Agency decision unless an appeal is taken in accordance with § 952.25.

(b) *Tentative or final decision by the Judicial Officer.* When the Judicial Officer presides at the hearing he shall issue a final or a tentative decision. Such decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented on the record, and the appropriate orders or denial thereof. The tentative decision shall become the final Agency decision unless exceptions are filed in accordance with § 952.25.

(c) *Oral decisions.* The presiding Officer may render an oral decision (an initial decision by an Administrative Law Judge, or a tentative or final decision by the Judicial Officer) at the close of the hearing when the nature of the case and the public interest warrant. A party who desires an oral decision shall notify the presiding officer and the opposing party at least 5 days prior to the date set for the hearing. Either party may submit proposed findings, conclusions, and proposed orders either orally or in writing at the conclusion of the hearing.

[48 FR 55126, Dec. 9, 1983]

§ 952.25 Exceptions to initial decision or tentative decision.

(a) A party in a proceeding presided over by an Administrative Law Judge, except a party who failed to file an answer, may appeal to the Judicial Officer by filing exceptions in a brief on appeal within 15 days from the receipt of the Administrative Law Judge's initial decision.

(b) A party in a proceeding presided over by the Judicial Officer, except one who has failed to file an answer, may file exceptions within 15 days from the receipt of the Judicial Officer's tentative decision.

(c) If an initial or tentative decision is rendered orally by the presiding officer at the close of the hearing, he may then orally give notice to the parties participating in the hearing of the time limit within which an appeal must be filed.

(d) The date for filing the reply to an appeal brief or to a brief in support of exceptions to a tentative decision by the Judicial Officer is 10 days after the receipt thereof. No additional briefs shall be received unless requested by the Judicial Officer.

(e) Briefs upon appeal or in support of exceptions to a tentative decision by the Judicial Officer and replies thereto shall be filed in triplicate with the Recorder and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited with page references.

(2) A concise abstract or statement of the case in briefs on appeal or in support of exceptions.

(3) Numbered exceptions to specific findings and conclusions of fact, conclusions of law, or recommended orders of the presiding officer in briefs on appeal or in support of exceptions.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of or in opposition to each exception taken, together with specific references to the parts of the record and the legal or other authorities relied upon.

(f) Unless permission is granted by the Judicial Officer no brief shall exceed 50 printed or 100 typewritten pages double spaced.

(g) The Judicial Officer will extend the time to file briefs only upon written application for good cause shown. The Recorder shall promptly notify the applicant of the decision of the Judicial Officer on the application. If the appeal brief or brief in support of exceptions is not filed within the time prescribed, the defaulting party will be deemed to have abandoned the appeal or waived the exceptions, and the initial or tentative decision shall become the final Agency decision.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 44 FR 61961, Oct. 29, 1979; 48 FR 55127, Dec. 9, 1983]

§ 952.26 Judicial Officer.

The Judicial Officer is authorized: (a) To act as presiding officer at hearings, (b) to render tentative decisions, (c) to render final Agency decisions, (d) to issue Postal Service orders for the Postmaster General, (e) to refer the record in any proceeding to the Postmaster General or the Deputy Postmaster General for final Agency decision, (f) to remand a case to the presiding officer for consideration, (g) to revise or amend these rules of practice. In determining appeals from initial decisions or exceptions to tentative decisions (*see* § 952.24 (a) and (b) *supra*), the entire official record will be considered before a final Agency decision is rendered. Before rendering a final Agency decision, the Judicial Officer may order the hearing reopened for the

presentation of additional evidence by the parties.

[44 FR 61961, Oct. 29, 1979]

§ 952.27 Motion for reconsideration.

A party may file a motion for reconsideration of a final agency decision within 10 days after receiving it or within such longer period as the Judicial Officer may fix. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973]

§ 952.28 Orders.

(a) If an order is issued which prohibits delivery of mail to a respondent it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be published in the *Postal Bulletin* and cause the order to be transmitted to such postmasters and other officers and employees of the Postal Service as may be required to place the order into effect.

(b) If an order is issued which requires the Respondent to cease and desist from using certain representations for the purpose of obtaining money or property through the mail, it shall be incorporated in the record of the proceeding and a copy thereof shall be served upon the Respondent or his agent by certified mail or by personal service, or if no person can be found to accept service, service shall be accomplished by ordinary mail to the last known address of Respondent or his agent. If service is not accomplished by certified mail, a statement, showing the time and place of delivery, signed by the postal employee who delivered the order, shall be forwarded to the Recorder.

[36 FR 11563, June 16, 1971, as amended at 38 FR 17216, June 29, 1973; 44 FR 61961, Oct. 29, 1979; 48 FR 55127, Dec. 9, 1983]

§ 952.29 Modification or revocation of orders.

A party against whom an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the Chief Postal Inspector or his or her designee, who shall file a written reply within 10 days after filing or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

[48 FR 55127, Dec. 9, 1983, as amended at 71 FR 53972, Sept. 13, 2006]

§ 952.30 Supplemental orders.

When the Chief Postal Inspector or his or her designee or his designated representative shall have reason to believe that a person is evading or attempting to evade the provisions of any such orders by conducting the same or a similar enterprise under a different name or at a different address he may file a petition with accompanying evidence setting forth the alleged evasion or attempted evasion and requesting the issuance of a supplemental order or orders against the name or names allegedly used. Notice shall then be given by the Recorder to the person that the order has been requested and that an answer may be filed within 10 days of the notice. The Judicial Officer, for good cause shown, may hold a hearing to consider the issues in controversy, and shall, in any event, render a final decision granting or denying the supplemental order or orders.

[48 FR 55127, Dec. 9, 1983, as amended at 71 FR 53972, Sept. 13, 2006]

§ 952.31 Computation of time.

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§ 952.32 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs and other documents filed in the proceeding shall constitute the official record of the proceeding.

§ 952.33 Public Information.

The Librarian of the Postal Service maintains for public inspection in the

Library copies of all initial, tentative and final Agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[48 FR 55127, Dec. 9, 1983, as amended at 67 FR 62179, Oct. 4, 2002]

§ 952.34 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5357, Jan. 28, 1977]

PART 953—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAILABILITY

Sec.

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 59 FR 31538, June 20, 1994, unless otherwise noted.

§ 953.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 953.2 Initiation.

Mailability proceedings are initiated upon the filing of a written appeal with the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[63 FR 66050, Dec. 1, 1998]

§ 953.3 Appeal.

The appeal shall:

(a) Identify the appellant;

(b) Describe or be accompanied by a copy of the determination or ruling being appealed;

(c) Describe the character or content of the matter the appellant wishes to have carried and delivered by the U.S. Postal Service;

(d) Request review of the determination or ruling, specifying each and every reason why the appellant believes the determination or ruling should be reversed;

(e) Indicate whether the appellant desires to have an oral hearing or, instead, to have the case decided solely on the basis of the written record (i.e., the appeal, the General Counsel's or Chief Postal Inspector's or his or her designee's reply reply, and any documents submitted by the parties pursuant to an order of the presiding officer); and

(f) Bear the signature, typed or printed name, title, business address, and telephone number of any attorney at law representing the appellant in bringing the appeal, and of each individual appellant or, if the appellant is a partnership, corporation, limited liability company, or unincorporated association, of the managing partner, chief executive officer, chief operating officer, or other officer authorized to bind the organization.

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

§ 953.4 Service of notice; Reply; Motion for summary judgment.

(a) *Service of notice.* (1) Upon receiving the appeal, the Recorder shall issue a notice specifying that the Postal Service General Counsel's or Chief Postal Inspector's or his or her designee's reply shall be filed within 15 days of receipt of the notice; and the time and place of the hearing (if one was requested).

(2) The Recorder shall promptly serve this notice on the parties as follows:

(i) The notice, with a copy of the appeal, shall be sent to the General Counsel or the Chief Postal Inspector or his or her designee at Postal Service headquarters.

(ii) When the appellant's address is within the United States, the notice, with a copy of the appeal, shall be sent to the postmaster at the office that delivers mail to the appellant's address. The postmaster shall be instructed that, acting personally or through a supervisory employee or a postal inspector, he or she is to serve these documents on the appellant. If the appellant cannot be found within 3 days, the postmaster shall send these documents to the appellant by ordinary mail and forward a statement to the Recorder that is signed by the delivering employee and that specifies the time and place of delivery.

(iii) When the appellant's address is outside the United States, the notice, with a copy of the appeal, shall be sent to the appellant by registered airmail, return receipt requested. A written statement by the Recorder, noting the time and place of mailing, shall be accepted as proof of service in the event a signed and dated return receipt is not received.

(b) *Reply*. The General Counsel or the Chief Postal Inspector or his or her designee shall file a written reply, in triplicate, with the Recorder, within the aforementioned 15-day period or any extension granted by the presiding officer for good cause shown. If the General Counsel's or the Chief Postal Inspector's or his or her designee's reply fails to address any allegation in the appeal, that allegation shall be deemed admitted.

(c) *Motion for summary judgment*. Upon motion of either the General Counsel, the Chief Postal Inspector, or his or her designee, or the appellant, or on the presiding officer's own initiative, the presiding officer may find that the appeal and answer present no genuine and material issues of fact requiring an evidentiary hearing, and thereupon may render an initial decision upholding or reversing the determination or ruling. The initial decision shall become the final Agency decision if a timely appeal is not taken.

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

§ 953.5 Hearings.

(a) In general, admissibility of evidence at hearings conducted under this part hinges on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, or by needless presentation of cumulative evidence. Testimony shall be given under oath or affirmation, and witnesses are subject to cross-examination. Stipulations of fact are encouraged and may be received in evidence.

(b) Objections to the admission or exclusion of evidence shall be in short form, stating the grounds of objections relied upon. The transcript shall not include argument or debate thereon except as ordered by the presiding officer. Rulings on such objections shall be a part of the transcript.

(c) Formal exceptions to the rulings of the presiding officer made during the course of the hearing are unnecessary. For all purposes for which an exception otherwise would be taken, it is sufficient that a party, when the ruling of the presiding officer is made or sought, makes known the action he desires the presiding officer to take or his objection to an action taken, and his grounds therefor.

§ 953.6 Compromise and informal dispositions.

Either party may request the other to consider informal disposition of any question of mailability, and the scheduled hearing date may be postponed by the presiding officer for such period of time as may be necessary to accommodate settlement discussions between the parties.

§ 953.7 Default; Appearances.

If a timely reply to the appeal is not filed, the presiding officer shall refer the appeal to the Judicial Officer, who may find that the General Counsel or the Chief Postal Inspector or his or her designee is in default. Whenever the General Counsel or the Chief Postal Inspector or his or her designee has been deemed to be in default, the Judicial Officer shall take whatever action on the appeal he deems appropriate. If an oral evidentiary hearing is to be held, the appellant may appear at the hearing in person or by counsel. If either party fails to appear at the hearing,

the presiding officer shall receive the evidence of the party appearing and render a decision.

[59 FR 31538, June 20, 1994, as amended at 71 FR 53972, Sept. 13, 2006]

§ 953.8 Location of hearing.

Unless otherwise ordered by the presiding officer, the hearing shall be held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, on the date set in the notice.

[63 FR 66050, Dec. 1, 1998]

§ 953.9 Change of place of hearing.

(a) Not later than the date fixed for the filing of the reply, a party may file a motion that the scheduled hearing be held at a place other than that designated in the notice. The motion shall include a supporting statement outlining:

(1) The evidence to be offered in such place;

(2) The names and addresses of the witnesses who will testify; and

(3) The reasons why such evidence cannot be presented in Arlington, VA.

(b) In ruling on the motion, the presiding officer shall consider the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[59 FR 31538, June 20, 1994, as amended at 63 FR 66050, Dec. 1, 1998]

§ 953.10 Presiding officers.

The presiding officer at any hearing shall be an Administrative Law Judge qualified in accordance with law (5 U.S.C. 3105) and assigned by the Judicial Officer (39 U.S.C. 204), or the Judicial Officer, may at his discretion, elect to preside at the reception of evidence. The Judicial Officer shall assign cases to Administrative Law Judges upon rotation if practicable.

§ 953.11 Proposed findings of fact and conclusions of law.

Proposed findings of fact and conclusions of law shall be submitted orally or in writing at the conclusion of the hearing, or otherwise, as ordered by the presiding officer.

§ 953.12 Initial decision.

Unless given orally at the conclusion of the hearing, the Administrative Law Judge shall render an initial decision as expeditiously as practicable after the conclusion of the hearing and the receipt of the proposed findings and conclusions, if any. The initial decision shall become the decision of the Postal Service if an appeal is not perfected. When the Judicial Officer presides at the hearing, his powers shall include those of an Administrative Law Judge, but the Judicial Officer may render either an initial or final decision. Exceptions may be filed to an initial decision rendered by the Judicial Officer in accordance with § 953.13.

§ 953.13 Appeal from initial decision.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 5 days after receipt of the initial decision unless additional time is granted. A reply brief may be filed within 5 days after the receipt of the appeal brief by the opposing party.

§ 953.14 Final Agency decision.

The Judicial Officer shall render a final Agency decision. The decision shall be served upon the parties and the postal official having custody of any mail detained pursuant to the determination or ruling.

§ 953.15 Expedition.

For the purpose of further expedition, either party may move to have the hearing held at an earlier date than that specified in the notice. Either party may also move to have the initial decision (if an Administrative Law Judge or the Judicial Officer is presiding) or the final Agency decision (if the Judicial Officer is presiding) rendered orally at the conclusion of the hearing. The presiding officer may grant or deny any such motion. The parties may, with the concurrence of the Judicial Officer, agree to waive any of the procedures established in these rules.

§ 953.16 Disposition.

Mail matter found to be nonmailable shall be held at the post office where detained for a period of 15 days from

the date of the Postal Service decision, unless that period is extended by the Judicial Officer. During this holding period, the appellant may apply for the withdrawal of the matter. If any such application is made, the General Counsel or Chief Postal Inspector or his or her designee shall be given notice and the opportunity to oppose the application. Upon the expiration of the holding period with no application having been made, the Judicial Officer shall order that the matter be disposed of in accordance with 39 U.S.C. 3001(b). If a timely application is made, the Judicial Officer shall consider the application and any reasons advanced by the General Counsel or Chief Postal Inspector or his or her designee for denying the application. The Judicial Officer shall thereafter order either that the matter be returned to the applicant or that it be disposed of in accordance with 39 U.S.C. 3001(b).

[59 FR 31538, as amended at 71 FR 5392, Sept. 13, 2006]

§ 953.17 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 954—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE DENIAL, SUSPENSION, OR REVOCATION OF PERIODICALS MAIL PRIVILEGES

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11567, June 16, 1971, unless otherwise noted.

§ 954.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§ 954.2 Scope of rules.

The rules of practice shall apply to all Postal Service proceedings concerning applications, denials, suspensions and revocations of Periodicals mailing privileges arising under former title 39 U.S.C. 4351, 4352, 4353, 4354, 4355, 4356, and 4369 as continued by sec. 3 of the Postal Reorganization Act (Pub. L. 91–375).

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.3 Informal dispositions.

These rules do not preclude the informal dispositions of Periodicals mailing privilege matters before or after institution of proceedings.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.4 Office business hours.

The offices of the officials mentioned in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078 and are open Monday through Friday from 8:15 a.m. to 4:45 p.m.

[63 FR 66050, Dec. 1, 1998]

§ 954.5 Application.

A publisher may file an application for Periodicals mailing privileges. (See § E213 of the Domestic Mail Manual.) An authorized administrative official of the Postal Service (hereinafter called ''the authorized official'') rules upon all applications. If he or she denies the application he or she shall notify the publisher specifying the reasons for his or her denial and attaching

a copy of these rules. Before taking action on an application, the authorized official may call upon the publisher for additional information or evidence to support or clarify the application. Failure of the publisher to furnish such information or evidence may be cause for the authorized official to deny the application as incomplete or, on its face, not fulfilling the requirements for entry.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 42 FR 30504, June 15, 1977; 62 FR 66998, Dec. 23, 1997]

§954.6 Revocation or suspension.

When the authorized official determines that a publication is no longer entitled to Periodicals mailing privileges, he or she shall issue a ruling of suspension or revocation to the publisher at the last known address of the office of publication stating the reasons and attaching a copy of these rules.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 62 FR 66998, Dec. 23, 1997]

§954.7 Failure to appeal proposed action.

A ruling of the authorized official shall become final upon failure of the publisher to file a petition in accordance with the requirements of §954.8(b).

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§954.8 Pleading.

(a) *Place of filing.* Parties shall file an original and three copies of all documents of record, unless otherwise ordered by the presiding officer with the Recorder of the Postal Service, who shall cause copies to be delivered to the other parties and to the presiding officer. Service is ordinarily made on the private parties by certified mail and delivery is deemed complete when a document or notice of its arrival is left at the designated address. The Recorder shall maintain a docket and the files in all proceedings.

(b) *Petition.* A publisher may appeal from a ruling of the authorized official by filing a petition within 15 days of the receipt of the ruling unless the time is extended by the authorized official. The petition shall state the reasons why the publisher (designated ''Petitioner'' in the proceeding) believes the ruling of the authorized official is erroneous and shall provide the address at which documents may be served on the Petitioner. The petition shall also allege facts showing compliance with each provision of law or regulation on which the publisher's claim to Periodicals mail privileges is based. The publisher shall attach to his or her petition a copy of the letter of the authorized official denying, suspending or revoking Periodicals mail privileges.

(c) *Notice of hearing.* Upon receipt of the petition the Recorder shall set a date for the hearing and issue a notice of hearing to the parties stating the time and place of the hearing, the date for filing an answer, and the name of the presiding officer.

(d) *Answer.* The authorized official (designated the ''Respondent'' in the proceeding) shall answer the petition within 15 days after filing and admit or deny each allegation of the petition.

(e) *Amendment.* An amendment of a pleading may be offered by any party at any time prior to the close of the hearing. If the presiding officer deems it appropriate to permit the amendment of a pleading, he or she may impose such conditions, by way of continuance of the hearing date or otherwise, as he or she considers necessary to assure a fair hearing.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 62 FR 66998, Dec. 23, 1997]

§954.9 Default.

If a publisher fails to appear at the hearing, the presiding officer may: (a) Dismiss the petition; (b) order the petitioner to show cause within 30 days from the date of the order why an order of dismissal should not be entered, and thereafter enter such order as the presiding officer deems to be appropriate. If the petition is dismissed by order of an Administrative Law Judge, the dismissal may be appealed to the Judicial Officer within 15 days from the date of the order.

§ 954.10 Intervention or other participation.

To intervene or otherwise participate in a proceeding, any person may file a timely application in accordance with § 954.8(a). A timely application is one which will not unduly delay the proceeding. The application shall state whom the potential intervenor represents, his or her interest, the extent to which he or she desires to participate, and the evidence he or she seeks to introduce. The presiding officer shall fix the time within which the parties shall answer the application. The presiding officer shall grant or deny the application on such terms and conditions as he or she deems appropriate. In so doing the presiding officer will consider, among other things, whether intervention or other participation is consistent with the timely and proper adjudication of the rights of the original parties.

[31 FR 5198, Mar. 31, 1966. Redesignated at 31 FR 16270, Dec. 20, 1966; 62 FR 66998, Dec. 23, 1997]

§ 954.11 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

[63 FR 66050, Dec. 1, 1998]

§ 954.12 Change of place of hearing.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his or her behalf at a place other than that designated for hearing in the notice. He or she shall support his request with a statement setting forth:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997; 63 FR 66050, Dec. 1, 1998]

§ 954.13 Appearances.

(a) The General Counsel of the Postal Service or a member of his or her staff designated by him or her shall represent the authorized official.

(b) A publisher or intervenor may appear and be heard in person or by attorney. Attorneys may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer. See part 951 of this chapter.

(c) An attorney representing a publisher or intervenor shall file a written authorization from the publisher or intervenor before he or she may participate in the proceeding. The publisher or intervenor must promptly file a notice of change of attorneys.

(d) When a publisher or intervenor is represented by an authorized attorney all subsequent pleadings shall be served upon the attorney.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.14 Presiding officers.

(a) The Chief Administrative Law Judge shall assign each case to an Administrative Law Judge qualified in accordance with law to preside over the hearing. Such assignments shall be made, so far as practical, in rotation.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon matters of evidence and procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs on any matter upon which he or she is required to rule;

(7) Order prehearing conferences for the settlement or simplification of issues by consent of the parties;

(8) Order the proceeding reopened at any time prior to his or her decision for the receipt of additional evidence;

(9) Render an initial decision.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 38 FR 20263, July 30, 1973; 62 FR 66998, Dec. 23, 1997]

§ 954.15 Judicial Officer.

The Judicial Officer is authorized (a) to act as presiding officer at hearings and (b) to render a final Postal Service Decision for the Postmaster General. On appeal from an Initial Decision of an Administrative Law Judge, the Judicial Officer will consider the entire record including the initial decision and the exceptions to that decision. Before any final agency decision has been rendered, the Judicial Officer may order the hearing reopened for the presiding officer to take additional evidence.

§ 954.16 Procedure.

(a) *Evidence.* The general rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States apply. The rules may be relaxed to the extent that the presiding officer may deem proper to insure an adequate and fair hearing. The presiding officer may exclude irrelevant or repetitious evidence.

(b) *Subpoenas.* The Postal Service is not authorized to issue subpoenas.

(c) *Fees.* The Postal Service does not pay fees and expenses for witnesses of, or depositions requested by, the publisher or intervenor.

(d) *Depositions.* Depositions may be taken as follows:

(1) Not later than 5 days after the filing of the authorized officials's answer, any party may file application with the presiding officer for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(2) If the application is granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken and any other necessary information.

(3) Each witness testifying upon deposition shall be duly sworn by the deposition officer and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the deposition officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(4) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(5) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(6) Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary

of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(7) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the deposition officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.17 Transcript.

(a) A contract reporter of the Postal Service under the supervision of the presiding officer shall report hearings. The reporter shall supply the parties with copies of the transcript at rates not to exceed those fixed by contract between the Postal Service and the reporter.

(b) Changes in the official transcript may be made only when they involve substantial errors. A party may file a motion for correction of the official transcript within 10 days after his or her receipt of the transcript or any part thereof. Other parties shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing if they object to the requested corrections. Failure of a party to interpose timely objection to a proposed correction may be considered by the presiding officer to be concurrence. The presiding officer shall then specify the corrections to be made in the transcript. He or she may on his or her own initiative order corrections in the transcript after notice to the parties subject to their objection.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.18 Proposed findings and conclusions.

(a) A party to a proceeding may submit proposed findings of fact and conclusions of law to the presiding officer. The presiding officer shall determine whether they shall be oral or written. The presiding officer may require parties to a proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. When the proposed findings and conclusions are not submitted orally they shall be filed within 15 days after delivery of the official transcript to the Recorder. The Recorder shall notify the parties of the filing date which shall be the same for both parties. If not submitted by that date, the findings and conclusions will not be considered or included in the record.

(b) Except when presented orally, proposed findings of fact and conclusions of law shall be set forth in numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits relied upon to support the conclusions proposed. Each proposed conclusion shall be separately stated.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.19 Initial decision.

(a) Upon request of either party the presiding officer may render an oral initial decision at the close of the hearing when the nature of the case and the public interest warrant. If a party desires an oral initial decision he or she shall notify the presiding officer and the opposing party at least 5 days prior to the date set for hearing. Parties may then submit proposed findings and conclusions orally or in writing at the conclusion of the hearing.

(b) If an oral initial decision is not rendered, the presiding officer shall render a written initial decision with all due speed after the parties have submitted all posthearing material. The initial decision shall become the final agency decision unless it is appealed.

(c) The initial decision shall include findings upon all material issues of fact

and law presented on the record and the reasons for those findings.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.20 Appeals.

(a) A party may appeal to the Judicial Officer from an initial decision by filing exceptions in a brief on appeal within 15 days from the receipt of a written or oral initial decision.

(b) The time for the filing of the reply brief is 10 days after receipt of the appeal brief. No additional briefs shall be received unless requested by the Judicial Officer.

(c) Appeal briefs shall contain the following matter in the order indicated:

(1) A subject index of the matters presented with page references;

(2) A table of cases alphabetically arranged;

(3) A list of statutes and texts cited with page references;

(4) A concise abstract or statement of the case;

(5) Numbered exceptions to the findings and conclusions of the presiding officer and the reasons for the exceptions.

(d) Reply briefs shall contain paragraphs (c) (1), (2), and (3) of this section and the reasons for opposing the exceptions.

[36 FR 11567, June 16, 1971, as amended at 38 FR 17217, June 29, 1973]

§ 954.21 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of a final Agency decision.

§ 954.22 Continuances.

For good cause shown, continuances or extensions may be granted by the presiding officer. Similar action may be taken by the Judicial Officer when the proceeding is on appeal.

§ 954.23 Computation of time.

A designated period of time under these rules excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or holiday, in which event the period runs until the close of business on the next working day.

§ 954.24 Official record.

The pleadings, orders, exhibits, transcript of testimony, briefs, decisions and other documents filed in the proceeding constitute the official record of the proceeding.

§ 954.25 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial and final Agency decisions. The Recorder of the Postal Service maintains a complete official record of every proceeding. A person may examine a record upon authorization by the Judicial Officer.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

§ 954.26 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 955—RULES OF PRACTICE BEFORE THE BOARD OF CONTRACT APPEALS

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AUTHORITY: 39 U.S.C. 204, 401; 41 U.S.C. 607, 608.

SOURCE: 41 FR 7408, Feb. 18, 1976, unless otherwise noted.

§ 955.1 Jurisdiction, procedure, representation of parties.

(a) *Jurisdiction for considering appeals.* The U.S. Postal Service Board of Contract Appeals (Board) shall consider and determine appeals from decisions of contracting officers arising under contracts which contain provisions requiring the determination of appeals by the Postmaster General or his duly authorized representative or board. In addition the Board shall have jurisdiction over other matters assigned to it by the Postmaster General. The Board has authority to determine appeals falling within the scope of its jurisdiction as fully and finally as might the Postmaster General himself.

(b) *Organization and location of the Board.* (1) The Board is located in Arlington, VA and its mailing address is 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(2) The Board consists of the Judicial Officer as Chairman, the Associate Judicial Officer as Vice Chairman, and the Administrative Judges of the Postal Service. All members of the Board shall be attorneys at law duly licensed by any state, commonwealth, territory, or the District of Columbia. In general, the appeals are assigned to a panel of at least three members of the Board. The decision of a majority of the panel constitutes the decision of the Board.

(c) *Decisions on questions of law.* When an appeal is taken pursuant to a Disputes Clause in a contract which limits appeals to disputes concerning questions of fact, the Board may, in its discretion, hear, consider, and decide all questions of law necessary for the complete adjudication of the issue. In the consideration of an appeal, should it appear that a claim is involved which is not cognizable under the terms of the contract, the Board may make findings of fact with respect to such a claim without expressing an opinion on the question of liability.

(d) *Board of contract appeals procedure*—(1) *Rules.* Appeals referred to the Board are handled in accordance with the rules of the Board.

(2) *Administration and interpretation of rules.* Emphasis is placed upon the sound administration of these rules in specific cases, because it is impracticable to articulate a rule to fit every possible circumstance which may be encountered. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay.

(3) *Preliminary procedures.* Preliminary procedures are available to encourage full disclosure of relevant and material facts, and to discourage unwarranted surprise.

(4) *Time, computation, and extensions.* (i) All time limitations specified for various procedural actions are computed as maximums, and are not to be fully exhausted if the action described can be accomplished in a lesser period. These time limitations are similarly eligible for extension in appropriate circumstances, on good cause shown.

(ii) Except as otherwise provided by law, in computing any period of time prescribed by these rules or by any order of the Board, the day of the event from which the designated period of time begins to run shall not be included, but the last day of the period shall be included unless it is a Saturday, Sunday, or a legal holiday in which event the period shall run to the end of the next business day.

(iii) Requests for extensions of time from either party shall be made in writing stating good cause therefor.

(5) Place of filings. Unless the Board otherwise directs, all notices of appeal, pleadings and other communications shall be filed with the Recorder of the Board at its office at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(e) *Representation of parties.* Whenever reference is made to contractor, appellant, contracting officer, respondent and parties, this shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board.

[41 FR 7408, Feb. 18, 1976, as amended at 43 FR 60275, Dec. 27, 1978; 60 FR 57938, Nov. 24, 1995; 63 FR 66050, Dec. 1, 1998]

PRELIMINARY PROCEDURES

§955.2 Appeals, how taken.

Notice of an appeal must be in writing, and the original, together with two copies, may be filed with the contracting officer from whose decision the appeal is taken. The notice of appeal must be mailed or otherwise filed within the time specified therefor in the contract or allowed by applicable provision of directive or law.

§955.3 Notice of appeal, contents of.

A notice of appeal should indicate that an appeal is thereby intended, and should identify the contract (by number), the department and agency or bureau cognizant of the dispute, and the decision from which the appeal is taken. The notice of appeal should be signed personally by the appellant (the contractor making the appeal), or by an officer of the appellant corporation or member of the appellant firm, or by the contractor's duly authorized representative or attorney. The complaint referred to in §955.7 may be filed with the notice of appeal, or the appellant may designate the notice of appeal as a complaint, if it otherwise fulfills the requirements of a complaint.

§955.4 Forwarding of appeals.

When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date of receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor and contracting officer will be promptly advised of its receipt and the contractor will be furnished a copy of these rules.

§955.5 Preparation, contents, organization, forwarding, and status of appeal file.

(a) *Duties of contracting officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the Board through Postal Service counsel an appeal file consisting of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which decision was issued;

(4) Transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

Within the same time above specified Postal Service counsel shall furnish the appellant a copy of each document he transmits to the Board, except those stated in paragraph (a)(2) of this section, as to which a list furnished appellant indicating specific contractual documents transmitted will suffice,

and those stated in paragraph (d) of this section.

(b) *Duties of the appellant.* Within 30 days after receipt of a copy of the appeal file assembled by the contracting officer, the appellant shall supplement the same by transmitting to the Board any documents not contained therein which he considers pertinent to the appeal, furnishing two copies of such documents to the Government trial attorney.

(c) *Organization of appeal file.* Documents in the appeal file may be originals or legible facsimile or authenticated copies thereof, and shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed to identify the contents of the file.

(d) *Lengthy documents.* The Board may waive the requirement of furnishing to the other party copies of bulky, lengthy, or out-of-size documents in the appeal file when a party has shown that doing so would impose an undue burden. At the time a party files with the Board a document as to which such a waiver has been granted, he shall notify the other party that the same or a copy is available for inspection at the offices of the Board or of the party filing same.

(e) *Status of documents in appeal file.* Documents contained in the appeal file are considered, without further action by the parties, as part of the record upon which the Board will render its decision, unless a party objects to the consideration of a particular document in advance of hearing or of settling the record in the event there is no hearing on the appeal. If objection to a document is made, the Board will rule upon its admissibility into the record as evidence in accordance with §§ 955.14 and 955.21.

§ 955.6 Dismissal for lack of jurisdiction.

Any motion addressed to the jurisdiction of the Board shall be promptly filed. Hearing on the motion shall be afforded on application of either party, unless the Board determines that its decision on the motion will be deferred pending hearing on both the merits and the motion. The Board shall have the right at any time and on its own motion to raise the issue of its jurisdiction to proceed with a particular case, and shall do so by an appropriate order, affording the parties an opportunity to be heard thereon.

§ 955.7 Pleadings.

(a) *Appellant.* Within 30 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board an original and one copy of a complaint setting forth simple, concise and direct statements of each of his claims, alleging the basis, with appropriate reference to contract provisions, for each claim, and the dollar amount claimed. This pleading shall fulfill the generally recognized requirements of a complaint although no particular form or formality is required. Upon receipt thereof, the Board shall serve a copy upon the respondent. Should the complaint not be received within 30 days, appellant's claim and appeal may, if in the opinion of the Board the issues before the Board are sufficiently defined, be deemed to set forth his complaint and the respondent shall be so notified.

(b) *Respondent.* Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, respondent shall prepare and file with the Board an original and one copy of an answer thereto, setting forth simple, concise, and direct statements of respondent's defenses to each claim asserted by appellant. This pleading shall fulfill the generally recognized requirements of an answer, and shall set forth any affirmative defenses or counter-claims as appropriate. Upon receipt thereof, the Board shall serve a copy upon appellant. Should the answer not be received within 30 days, the Board may, in its discretion, enter a general denial on behalf of the Government, and the appellant shall be so notified.

§ 955.8 Amendments of pleadings or record.

(a) The Board upon its own initiative or upon application by a party may, in its discretion, order a party to make a more definite statement of the complaint or answer, or to reply to an answer.

(b) The Board may, in its discretion, and within the proper scope of the appeal, permit either party to amend his

pleading upon conditions just to both parties. When issues within the proper scope of the appeal, but not raised by the pleadings or the documentation described in § 955.5, are tried by express or implied consent of the parties, or by permission of the Board, they shall be treated in all respects as if they had been raised therein. In such instances, motions to amend the pleadings to conform to the proof may be entered, but are not required. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings or the documentation required pursuant to § 955.5 (which shall be deemed part of the pleadings for this purpose), it may be admitted within the proper scope of the appeal, provided, however, that the objecting party may be granted a continuance if necessary to enable him to meet such evidence.

§ 955.9 Hearing election.

Upon receipt of respondent's answer or the notice referred to in the last sentence of § 955.7(b), appellant shall advise whether he desires a hearing as prescribed in §§ 955.18 through 955.26, or whether, in the alternative, he elects to submit his case on the record without a hearing, as prescribed in § 955.12. In appropriate cases, the appellant shall also elect whether he desires the optional small claims (expedited) procedure or accelerated procedure prescribed in § 955.13.

[41 FR 7408, Feb. 18, 1976, as amended at 60 FR 57938, Nov. 24, 1995]

§ 955.10 Prehearing briefs.

Based on an examination of the documentation described in § 955.5, the pleadings, and a determination of whether the arguments and authorities addressed to the issues are adequately set forth therein, the Board may, in its discretion, require the parties to submit prehearing briefs in any case in which a hearing has been elected pursuant to § 955.9. In the absence of a Board requirement therefor, either party may, in its discretion and upon appropriate and sufficient notice to the other party, furnish a prehearing brief to the Board. In any case where a prehearing brief is submitted, it shall be furnished so as to be received by the Board at least 15 days prior to the date set for hearing, and a copy shall simultaneously be furnished to the other party as previously arranged.

§ 955.11 Prehearing or presubmission conference.

Whether the case is to be submitted pursuant to § 955.12, or heard pursuant to §§ 955.18 through 955.26, the Board may upon its own initiative or upon the application of either party, call upon the parties to appear before a Board Member for a conference to consider:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;

(c) The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; and

(e) Such other matters as may aid in the disposition of the appeal.

The results of the conference shall be reduced to writing by the Board Member and this writing shall thereafter constitute part of the record.

§ 955.12 Submission without a hearing.

Either party may elect to waive a hearing and to submit his case upon the record before the Board, as settled pursuant to § 955.14. Submission of the case without hearing does not relieve the parties from the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories, and stipulations may be employed to supplement other documentary evidence in the Board record. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs arranged in accordance with § 955.24.

§ 955.13 Optional small claims (expedited) and accelerated procedures.

(a) *The SMALL CLAIMS (EXPEDITED) Procedure.* (1) The SMALL

CLAIMS (EXPEDITED) procedure is available solely at the election of the appellant. Such election requires decision of the appeal, whenever possible, within 120 days after the Board receives written notice of the appellant's election to utilize this procedure.

(2) The appellant may elect this procedure when

(i) There is a monetary amount in dispute and that amount is $50,000 or less, or

(ii) There is a monetary amount in dispute and that amount is $150,000 or less and the appellant is a small business concern (as that term is defined in the Small Business Act and regulations promulgated under the Act).

(3) In cases proceeding under the SMALL CLAIMS (EXPEDITED) procedure, the respondent shall send the Board a copy of the contract, the contracting officer's final decision, and the appellant's claim letter or letters, if any, within ten days from the respondent's first receipt from either the appellant or the Board of a copy of the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure. If either party requests an oral hearing in accordance with § 955.9, the Board shall promptly schedule such a hearing for a mutually convenient time consistent with administrative due process and the 120-day limit for a decision, at a place determined under § 955.18. If a hearing is not requested by either party, the appeal shall be deemed to have been submitted under § 955.12 without a hearing.

(4) Promptly after receipt of the appellant's election of the SMALL CLAIMS (EXPEDITED) procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. Pleadings, discovery, and other prehearing activities may be restricted or eliminated at the Board's discretion as necessary to enable the Board to decide the appeal within 120 days after the Board has received the appellant's notice of election of the SMALL CLAIMS (EXPEDITED) procedure. In so doing, the Board may reserve whatever time up to 30 days it considers necessary for preparation of the decision.

(5) Written decision by the Board in cases processed under the SMALL CLAIMS (EXPEDITED) procedure will be short and contain only summary findings of fact and conclusions. Decisions will be rendered for the Board by a single Administrative Judge. If there has been a hearing, the Administrative Judge presiding at the hearing may, in his or her discretion, at the conclusion of the hearing and after entertaining such oral arguments as he or she deems appropriate, render on the record oral summary findings of fact, conclusions of law, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a printed copy of such oral decision for the record and payment purposes and for the establishment of the commencement date of the period for filing a motion for reconsideration under § 955.30.

(6) Decisions of the Board under the SMALL CLAIMS (EXPEDITED) procedure will not be published, will have no value as precedents, and in the absence of fraud, cannot be appealed.

(b) *The ACCELERATED Procedure.* (1) This procedure is available solely at the election of the appellant and shall apply only to appeals where there is a monetary amount in dispute and the amount in dispute is $100,000 or less. Such election requires decision of the appeal, whenever possible, within 180 days after the Board receives written notice of the appellant's election to utilize this procedure.

(2) Promptly after receipt of the appellant's election of the ACCELERATED procedure, the Board shall establish a schedule of proceedings that will allow for the timely resolution of the appeal. The Board, in its discretion, may shorten time periods prescribed elsewhere in these Rules as necessary to enable the Board to decide the appeal within 180 days after the Board has received the appellant's notice of election of the ACCELERATED procedure.

(3) Written decisions by the Board in cases processed under the ACCELERATED procedure will normally be short and contain only summary findings of fact and conclusions. Decisions will be

rendered for the Board by a single Administrative Judge with the concurrence of the Chairman or Vice Chairman or other designated Administrative Judge, or by a majority among these two and an additional designated member in case of disagreement. In cases where the amount in dispute is $50,000 or less and in which there has been a hearing, the single Administrative Judge presiding at the hearing may, with the concurrence of both parties, convert the appeal to a SMALL CLAIMS (EXPEDITED) proceeding and at the conclusion of the hearing, after entertaining such oral arguments as he or she deems appropriate, render on the record oral summary findings of fact, conclusions of law, and a decision of the appeal. Whenever such an oral decision is rendered, the Board will subsequently furnish the parties a printed copy of such oral decision for record and payment purposes and to establish the date of commencement of the period for filing a motion for reconsideration under § 955.30.

(c) At the request of Respondent, or on its own initiative, the Board may determine whether the amount in dispute and/or the appellant's status make the election of the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure inappropriate.

(d) *Motions for Reconsideration in Cases Arising Under § 955.13.* Motions for reconsideration of cases decided under either the SMALL CLAIMS (EXPEDITED) procedure or the ACCELERATED procedure need not be decided within the time periods prescribed by this § 955.13 for the initial decision of the appeal, but all such motions shall be processed and decided rapidly so as to fulfill the intent of this section.

(e) Except as herein modified, the rules of this part 955 otherwise apply in all aspects.

[72 FR 35622, June 29, 2007]

§ 955.14 Settling the record.

(a) The record upon which the Board's decision will be rendered consists of the appeal file described in § 955.5, and to the extent the following items have been filed, pleadings, prehearing conference memoranda or orders, prehearing briefs, depositions or interrogatories received in evidence, admissions, stipulations, transcripts of conferences and hearings, hearing exhibits, posthearing briefs, and documents which the Board has specifically designated be made a part of the record. The record will at all reasonable times be available for inspection by the parties at the office of the Board.

(b) Except as the Board may otherwise order in its discretion, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the record, after notification by the Board that the case is ready for decision.

(c) The weight to be attached to any evidence of record will rest within the sound discretion of the Board. The Board may in any case require either party, with appropriate notice to the other party, to submit additional evidence on any matter relevant to the appeal.

§ 955.15 Discovery—depositions.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) *When depositions permitted.* After an appeal has been docketed and complaint filed, the parties may mutually agree to, or the Board may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purpose of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) *Orders on depositions.* The time, place, and manner of taking depositions shall be as mutually agreed by

the parties, or failing such agreement, governed by order of the Board.

(d) *Use as evidence.* No testimony taken by depositions shall be considered as part of the evidence in the hearing of an appeal unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the Board may, in its discretion, receive depositions as evidence in supplementation of that record.

(e) *Expenses.* Each party shall bear its own expenses associated with the taking of any deposition.

§ 955.16 Interrogatories to parties, admission of facts, and production and inspection of documents.

(a) *Interrogatories to parties.* After an appeal has been filed with the Board, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Board will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by § 955.15.

(b) *Admission of facts.* After an appeal has been filed with the Board, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Board may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the Board shall specify just terms and conditions in making the inspection and taking the copies and photographs.

§ 955.17 Service of papers.

Papers shall be served personally or by mailing the same, addressed to the party upon whom service is to be made. Copies of complaints, answers and simultaneous briefs shall be filed directly with the Board. The party filing any other paper with the Board shall send a copy thereof to the opposing party, noting on the paper filed with the Board, or on the letter transmitting the same, that a copy has been so furnished.

HEARINGS

§ 955.18 Where and when held.

Hearings will ordinarily be held in the Arlington, VA, area, except that upon request seasonably made and upon good cause shown, the Board may set the hearing at another location. Hearings will be scheduled at the discretion of the Board with due consideration to the regular order of appeals and other pertinent factors. On request or motion by either party and upon good cause shown, the Board may, in its discretion, advance a hearing.

[41 FR 7408, Feb. 18, 1976, as amended at 60 FR 57938, Nov. 24, 1995; 63 FR 66050, Dec. 1, 1998]

§ 955.19 Notice of hearings.

The parties shall be given at least 15 days notice of the time and place set for hearings. In scheduling hearings, the Board will give due regard to the desires of the parties and to the requirement for just and inexpensive determination of appeals without unnecessary delay. Notices of hearing shall be promptly acknowledged by the parties.

§ 955.20 Unexcused absence of a party.

The unexcused absence of a party at the time and place set for hearing will not be occasion for delay. In the event of such absence, the hearing will proceed and the case will be regarded as submitted by the absent party as provided in § 955.12.

§ 955.21 Nature of hearings.

Hearings shall be as informal as may be reasonable and appropriate under the circumstances. Appellant and respondent may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the presiding officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. Letters or copies thereof, affidavits, or other evidence not ordinarily admissible under the generally accepted rules of evidence, may be admitted in the discretion of the presiding officer. The weight to be attached to evidence presented in any particular form will be within the discretion of the Board, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be regarded and used as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Board may in any case require evidence in addition to that offered by the parties.

§ 955.22 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the presiding officer shall otherwise order. If the testimony of a witness is not given under oath, the Board may warn the witness that his statements may be subject to the provisions of Title 18, U.S.C., sections 287 and 1001, and any other provisions of law imposing penalties for knowingly making false representations in connection with claims against the United States or in any matter within the jurisdiction of any department or agency thereof.

§ 955.23 Copies of papers.

When books, records, papers, or documents have been received in evidence, a true copy thereof or of such part thereof as may be material or relevant may be substituted therefor, during the hearing or at the conclusion thereof.

§ 955.24 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be agreed upon by the parties and the presiding officer at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, exchanged within 30 days after receipt of transcript.

§ 955.25 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the Reporter and the U.S. Postal Service.

§ 955.26 Withdrawal of exhibits.

After a decision has become final the Board may, upon request and after notice to the other party, in its discretion, permit the withdrawal of original exhibits, or any part thereof, by the party entitled thereto. The substitution of true copies of exhibits or any part thereof may be required by the Board in its discretion as a condition of granting permission for such withdrawal.

REPRESENTATION

§ 955.27 The appellant.

An individual appellant may appear before the Board in person, a corporation by an officer thereof, a partnership or joint venture by a member thereof, or any of these by an attorney at law duly licensed in any State, commonwealth, territory, or in the District of Columbia. An attorney representing an appellant shall file a written notice of appearance with the Board.

§ 955.28 The respondent.

Postal Service counsel, designated by the General Counsel, will represent the interest of the Government before the Board. Counsel shall file a notice of appearance with the Board, and notice thereof will be given appellant or his attorney in the form specified by the Board from time to time. Whenever at any time it appears that appellant and

Postal Service Counsel are in agreement as to disposition of the controversy, the Board may suspend further processing of the appeal: *Provided, however,* That if the Board is advised thereafter by either party that the controversy has not been disposed of by agreement, the case shall be restored to the Board's calendar without loss of position.

DECISIONS

§ 955.29 Decisions.

Decisions of the Board will be made in writing and authenticated copies thereof will be forwarded simultaneously to both parties. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board in Arlington, VA. Decisions of the Board will be made solely upon the record, as described in § 955.14.

[41 FR 7408, Feb. 18, 1976, as amended at 63 FR 66050, Dec. 1, 1998]

MOTION FOR RECONSIDERATION

§ 955.30 Motion for reconsideration.

A motion for reconsideration, if filed by either party, shall set forth specifically the ground or grounds relied upon to sustain the motion, and shall be filed within 30 days from the date of the receipt of a copy of the decision of the Board by the party filing the motion.

DISMISSALS

§ 955.31 Dismissal without prejudice.

In certain cases, appeals docketed before the Board are required to be placed in a suspense status and the Board is unable to proceed with disposition thereof for reasons not within the control of the Board. In any such case where the suspension has continued, or it appears that it will continue, for an inordinate length of time, the Board may, in its discretion, dismiss such appeals from its docket without prejudice to their restoration when the cause of suspension has been removed. Unless either party or the Board acts within three years to reinstate any appeal dismissed without prejudice, the dismissal shall be deemed with prejudice.

§ 955.32 Dismissal for failure to prosecute.

Whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Board, comply with orders of the Board, or otherwise indicates an intention not to continue the prosecution or defense of an appeal, the Board may issue an order requiring the offending party to show cause why the appeal should not be either dismissed or granted, as appropriate. If the offending party shall fail to show such cause, the Board may take such action as it deems reasonable and proper under the circumstances.

EX PARTE COMMUNICATIONS

§ 955.33 Ex parte communications.

No member of the Board or of the Board's staff shall entertain, nor shall any person directly or indirectly involved in an appeal submit to the Board or the Board's staff, off the record, any evidence, explanation, analysis, or advice, whether written or oral, regarding any matter at issue in an appeal. This provision does not apply to consultation among Board members nor to ex parte communications concerning the Board's administrative functions or procedures.

SANCTIONS

§ 955.34 Sanctions.

If any party fails or refuses to obey an order issued by the Board, the Board may make such order in regard to the failure as it considers necessary to the just and expeditious conduct of the appeal.

EFFECTIVE DATE AND APPLICABILITY

§ 955.35 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Administrative Judge to whom a case is assigned or who is otherwise designated by the Chairman may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or

transacts his business in person, or at another location convenient for him that is specifically determined by the Board;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers.* In addition to (1) and (2), the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) To secure voluntary attendance of desired third-party books, papers, documents, or tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

In its discretion the Board may honor requests for subpoenas not made within these time limitations.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books and papers sought.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Board may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Board may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the name of the Board and the title of the appeal and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Administrative Judge shall sign the subpoena and may in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Board as a sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(g) *Contumacy or refusal to obey a subpoena.* In case of contumacy or refusal to obey a subpoena by a person who resides, if found, or transacts business within the jurisdiction of a U.S. District Court, the Board will apply to the Court through the Attorney General of the United States for an order requiring the person to appear before the Board or a member thereof to give testimony or produce evidence or both. Any failure of any such person to obey the order of the Court may be punished by the Court as a contempt thereof.

[44 FR 13015, Mar. 9, 1979. Redesignated and amended at 60 FR 57939, Nov. 24, 1995]

§ 955.36 Effective Dates and Applicability.

The provisions of §§ 955.9 and 955.13 took effect on October 1, 1995. Pursuant to the Contract Disputes Acts of 1978 (41 U.S.C. 601–613), §§ 955.13 and 955.35 apply to appeals relating to contracts entered into on or after March 1, 1979. All other provisions of this part 955 took effect February 18, 1976. Except as otherwise directed by the Board, these rules shall not apply to appeals docketed prior to their effective dates.

[60 FR 57939, Nov. 24, 1995]

PART 956—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DISCIPLINARY ACTION FOR VIOLATION OF RESTRICTIONS ON POST-EMPLOYMENT ACTIVITY

Sec.

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AUTHORITY: 18 U.S.C. 207(j), 39 U.S.C. 204, 401.

SOURCE: 49 FR 40771, Oct. 17, 1984, unless otherwise noted.

§ 956.1 Authority for rules.

The rules in this part are issued by the Judicial Officer of the Postal Service pursuant to authority delegated by the Postmaster General (39 U.S.C. 204, 401).

§ 956.2 Scope of rules.

The rules in this part shall be applicable in all formal proceedings before the Postal Service pertaining to proposed disciplinary action initiated under § 447.34(e) of this title.

§ 956.3 Definitions.

(a) The term *Ethical Conduct Officer* has the same meaning as in § 447.31 of this title and includes his authorized representative.

(b) *Respondent* means any individual who has been served a written notice of proposed disciplinary action pursuant to § 447.34 of this title.

(c) The *Recorder* means the Recorder of the U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[49 FR 40771, Oct. 17, 1984, as amended at 63 FR 66051, Dec. 1, 1998]

§ 956.4 Initiation of proceedings.

(a) The Ethical Conduct Officer shall initiate a proceeding by serving upon the proposed respondent a written notice of proposed disciplinary action in the manner hereinafter (§ 956.9(d)) provided for the service of all other papers.

(b) The notice shall:

(1) State that disciplinary action is being proposed;

(2) Inform the respondent of the subsection of section 207 (18 U.S.C. 207) that he is alleged to have violated and of the basis of the allegation;

(3) Inform the respondent of the disciplinary action which is proposed;

(4) Advise the respondent that he may oppose the proposed disciplinary action by filing an answer within 20 days following receipt of the notice;

(5) State that the disciplinary action will not become effective until after a final agency decision is issued;

(6) Inform the respondent of the rules in this part, a copy of which shall be enclosed with the notice.

(c) If no answer is filed within 20 days following the receipt of the notice, the proposed disciplinary action set forth in the notice shall become the final agency decision without further notice to the respondent.

§ 956.5 Answer.

Within 20 days from receipt of the notice of proposed disciplinary action, the respondent may file an answer setting forth simple, concise, and direct statements admitting, denying or explaining each of the allegations set forth in the notice.

§ 956.6 Hearing election.

Either party may, within, 10 days following the filing of the respondent's answer, request a hearing. If a timely request is not made, the case shall be submitted on the record without a hearing. Submission of the case without a hearing does not relieve the parties of the necessity of proving the facts supporting their allegations or defenses. Affidavits, depositions, admissions, answers to interrogatories and stipulations may be employed to supplement the pleadings which constitute the record. The presiding officer may permit such submission to be supplemented by oral argument (transcribed if requested) and by proposed findings of fact and conclusions of law.

§ 956.7 Notice of hearing.

(a) When a request for a hearing is filed, a notice of hearing, stating the time and place thereof and advising the respondent of the consequences of a failure to appear at the hearing, will be issued (see § 956.10). In setting a hearing date, due regard shall be given to the respondent's need for:

(1) Adequate time to prepare a defense properly; and

(2) An expeditious resolution of allegations that may be damaging to his or her reputation. Subject to those considerations, whenever practicable, the hearing date shall be within 30 days of the date of the notice of hearing.

(b) The notice of proposed disciplinary action and the answer together with the reply, if any, shall become the pleadings in any proceeding in which a hearing is held.

§ 956.8 Reply.

Not more than 15 days from the service of the answer, the Ethical Conduct Officer may submit a reply.

§ 956.9 Service and filing of documents for the record.

(a) Each party shall file with the Recorder pleadings, motions, orders and other documents for the record. The Recorder shall cause copies to be served promptly on other parties to the proceeding and on the presiding officer.

(b) The parties shall submit four copies of all documents unless otherwise ordered by the presiding officer. One copy shall be signed as the original.

(c) Documents shall be dated and shall state the docket number and title of the proceeding. Any pleading or other document required by these rules or by order of the presiding officer to be filed by a specified date shall be filed with the Recorder on or before such date. The filing date shall be entered thereon by the Recorder.

(d) Service of all papers shall be effected by mailing the same, postage prepaid registered or certified mail, return receipt requested, or by causing said notice to be personally served on the proposed respondent by an authorized representative of the Postal Service. In the case of personal service, the person making service shall, if possible, secure from the proposed respondent or his agent, a written acknowledgment of receipt of said notice, showing the date and time of such receipt. If the person upon whom service is made will not acknowledge receipt, the person effecting service shall execute a statement, showing the time, place and manner of service, which shall constitute evidence of service. The acknowledgment, statement, or return receipt, when service is effected by mail, shall be made a part of the record by the Ethical Conduct Officer. The date of delivery, as shown by the acknowledgment or statement of personal service or the return receipt, shall be the date of service.

§ 956.10 Respondent's failure to appear at the hearing.

If the respondent shall fail to appear at the hearing, the presiding officer

shall receive the Ethical Conduct Officer's evidence and render a decision without requirement of further notice to the respondent.

§ 956.11 Amendment of pleadings.

(a) By consent of the parties, a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing, provided that the proposed amendment is reasonably within the scope of the proceeding.

(b) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the notice of proposed disciplinary action are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments, as may be necessary to make the pleadings conform to the evidence and to raise such issues, shall be allowed at any time upon the motion of any party.

(c) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues framed by the pleadings, but fails to satisfy the presiding officer that an amendment of the pleadings would prejudice him on the merits, the presiding officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

(d) The presiding officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have transpired since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 956.12 Continuances and extensions.

Continuances and extensions will not be granted by the presiding officer except for good cause shown.

§ 956.13 Hearings.

(a) Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

(b) A party may, not later than 7 days prior to the scheduled date of a hearing, file a request that such hearing be held at a place other than that designated in the notice of hearing. He shall support his request with a statement outlining:

(1) The evidence to be offered in such place;

(2) The names and addresses of the witnesses who will testify;

(3) The reasons why such evidence cannot be produced at the place designated in the notice of hearing.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered.

[49 FR 40771, Oct. 17, 1984, as amended at 63 FR 66051, Dec. 1, 1998]

§ 956.14 Appearances.

(a) A respondent may appear and be heard in person or by attorney.

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see part 951 of this chapter).

(c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the notice of proposed disciplinary action shall be mailed to the attorney.

(d) All counsel shall promptly file notices of appearance. Changes of the respondent's counsel shall be recorded by notices from retiring and succeeding counsel and from the respondent.

(e) After an answer has been filed pursuant to the rules in this part, the Law Department shall represent the Ethical Conduct Officer in further proceedings relative to the hearing and shall in its notice of appearance identify the individual member of such department who has been assigned to handle the case on its behalf.

§ 956.15 Presiding officer.

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law. The Chief Administrative Law Judge shall assign cases under this part upon rotation so far as practicable. The Judicial Officer may, for good cause found, preside at the reception of evidence upon request of either party.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence, and matters of procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purposes of the settlement or simplification of issues by the parties;

(8) Permit oral argument by any party;

(9) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(10) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision;

(11) Take such other and further action as may be necessary properly to preside over the proceeding and render decision therein.

§ 956.16 Burden of proof and evidence.

(a) Each party may introduce and examine witnesses and submit physical evidence. The Ethical Conduct Officer has the burden of proof in any proceeding under this part and must establish a violation by a preponderance of the evidence.

(b) Except as otherwise provided in these rules, the Federal Rules of Evidence shall be applicable to the hearings conducted under this part. Such rules may be relaxed, however, to the extent that the presiding officer deems proper to insure a fair hearing.

(c) Testimony shall be under oath or affirmation, and witnesses shall be subject to cross-examination.

(d) Agreed statements of fact may be received in evidence.

(e) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(f) Each party may present oral argument.

§ 956.17 Discovery—depositions.

(a) The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the presiding officer may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense; and those orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents.

(b) After an answer has been filed, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of the testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(c) The time, place, and manner of taking depositions shall be mutually agreed by the parties or, failing such agreement, governed by order of the presiding officer.

(d) No testimony taken by depositions shall be considered as part of the evidence in a hearing unless and until such testimony is offered and received in evidence at such hearing. It will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the presiding officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(e) Each party shall bear its own expenses associated with the taking of any deposition.

§ 956.18 Interrogatories to parties, admission of facts, and production of documents.

(a) After an answer has been filed, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted. The scope and use of interrogatories will be controlled by § 956.17.

(b) After an answer has been filed, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(c) Upon motion of any party showing good cause therefore, and upon notice, the presiding officer may order the other party to produce and permit the inspection and copying or photocopying of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify just terms and conditions in making the inspection and making the copies and photographs.

§ 956.19 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings shall be supplied to the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 956.20 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to appear at the hearing may, unless the presiding officer orders otherwise, submit proposed findings of fact, conclusions of law and supporting reasons, either in oral or written form at the discretion of the presiding officer. The presiding officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless ordered otherwise by the presiding officer, the date set for filing of proposed findings of fact and conclusions of law shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings shall be the same for both parties. If not submitted by such date, or unless an extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

§ 956.21 Decisions.

(a) A written initial decision by an Administrative Law Judge shall be rendered with all due speed. The initial decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and an appropriate order. A tentative decision shall become the final decision of the Postal Service unless exceptions are filed in accordance with § 956.22.

(b) When the Judicial Officer presides at the hearing, he shall issue a final or a tentative decision. Such decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and an appropriate order. A tentative decision shall become the final decision of the Postal Service unless exceptions are filed in accordance with § 956.22.

§ 956.22 Exceptions to initial decision or tentative decision.

(a) A party in a proceeding presided over by an Administrative Law Judge, except a party who failed to file an answer, may appeal to the Judicial Officer by filing exceptions in a brief on

appeal within 15 days from the receipt of the Administrative Law Judge's written initial decision.

(b) A party in a proceeding presided over by the Judicial Officer, except one who has failed to file an answer, may file exceptions within 15 days from the receipt of the Judicial Officer's written tentative decision.

(c) Upon receipt of the brief on appeal from an initial decision of an Administrative Law Judge, the Recorder shall promptly transmit the record to the Judicial Officer. The date for filing the reply to a brief on appeal or to a brief in support of exceptions to a tentative decision by the Judicial Officer is 10 days after the receipt thereof. No additional briefs shall be received unless requested by the Judicial Officer.

(d) Briefs on appeal or in support of exceptions and replies thereto shall be filed in quadruplicate with the Recorder and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited, with page references.

(2) A concise abstract or statement of the case.

(3) Numbered exceptions to specific findings of fact or conclusions of law of the presiding officer.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of, or in opposition to, each exception taken, together with specific references to the pertinent part of the record and the legal or other authorities relied upon.

(e) Unless permission is granted by the Judicial Officer, no brief on appeal or in support of exceptions shall exceed 50 printed or 100 typewritten pages double spaced.

(f) The Judicial Officer will extend the time to file briefs only upon motion for good cause found. The movant shall be promptly notified of the Judicial Officer's decision on the motion.

§ 956.23 Judicial Officer.

The Judicial Office is authorized:

(a) To act as presiding officer at hearings;

(b) To render tentative decisions;

(c) To render final decisions of the Postal Service;

(d) To refer the record in any proceedings to the Postmaster General or the Deputy Postmaster General who will make the final decision of the Postal Service; and

(e) To revise or amend these rules of practice. In determining appeals from initial decisions or exceptions to tentative decisions, the entire official record will be considered before a final decision of the Postal Service is rendered. Before rendering a final decision of the Postal Service, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

§ 956.24 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of the final agency decision. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion. The Judicial Officer, in his discretion, may hold a hearing on the issues raised by the motion.

§ 956.25 Modification or revocation of orders.

A party against whom an order has been issued may file an application setting forth reasons which he believes warrant the modification or revocation of the order. The Recorder shall transmit a copy of the application to the Ethical Conduct Officer who shall file a written reply. A copy of the reply shall be sent to the applicant by the Recorder. The Judicial Officer, in his discretion, may hold a hearing on the issues raised by the application. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

§ 956.26 Computation of time.

A designated period of time under the rules of this part excludes the day the period begins and includes the last day of the period unless the last day is a Saturday or Sunday or legal holiday, in which event the period runs until

the close of business on the next business day.

§ 956.27 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding shall constitute the official record of the proceeding.

§ 956.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 957—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO DEBARMENT AND SUSPENSION FROM CONTRACTING

Sec.

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 36 FR 11574, June 16, 1971, unless otherwise noted.

§ 957.1 Authority for rules.

The rules in this part are issued by the Judicial Officer of the Postal Service pursuant to authority delegated by the Postmaster General (39 U.S.C. secs. 204, 401; chapter 3, section 7 of the Postal Service Purchasing Manual).

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998]

§ 957.2 Scope of rules.

The rules in this part shall be applicable in all formal proceedings before the Postal Service pertaining to hearings initiated under chapter 3, section 7 of the Postal Service Purchasing Manual.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998; 67 FR 62179, Oct. 4, 2002]

§ 957.3 Definitions.

(a) the term Vice President means a Vice President with purchasing authority in the Postal Service or the Vice President's representative for the purpose of carrying out the provisions of chapter 3, section 7 of the Postal Service Purchasing Manual.

(b) The term *General Counsel* includes the General Counsel's authorized representative.

(c) The term *Judicial Officer* includes the Acting Judicial Officer.

(d) *Debarment* means, in general, an exclusion from Government contracting and subcontracting for a reasonable, specified period of time commensurate with the seriousness of the offense or failure, or the inadequacy of performance.

(e) *Suspension* means a disqualification from Government contracting and subcontracting for a temporary period of time because a concern or individual is suspected upon adequate evidence of engaging in criminal, fraudulent, or seriously improper conduct.

(f) *Respondent* means any individual, firm or other entity which has been served a written notice of proposed debarment pursuant to chapter 3, section 7 of the Postal Service Purchasing Manual.

(g) The Recorder means the Recorder of the United States Postal Service,

2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[36 FR 11574, June 16, 1971, as amended at 38 FR 17217, June 29, 1973; 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998]

§957.4 Initiation of debarment proceedings.

(a) A Vice President shall initiate a debarment proceeding by serving upon the proposed Respondent a written notice of proposed debarment in the manner hereinafter (§957.8(d)) provided for the service of all other papers.

(b) The notice shall state:

(1) That debarment is being considered;

(2) The reasons for the proposed debarment;

(3) The period of debarment and the proposed effective date thereof;

(4) That the debarment will not become effective until after a hearing if such hearing is requested within 20 days following the receipt of the notice; and

(5) That the request for a hearing is to be submitted in the manner prescribed by the rules in this part, a copy of which shall be enclosed with the notice.

(c) If no hearing is requested within 20 days following the receipt of the notice, the action of the Vice President set forth in the notice shall become the final agency determination without further notice to the Respondent.

(d) The party against which a final agency determination has been entered pursuant to paragraph (c) of this section shall, however, at any time have the privilege of reopening a case for the limited purpose of contesting the issue of service. Such party's contentions on that issue shall be addressed to the Judicial Officer in the same manner as a request for a hearing (see §957.5). The Judicial Officer may require such additional showings or proof as the Judicial Officer may deem necessary on the issue of service and shall reopen any debarment proceeding previously closed pursuant to paragraph (c) of this section if the Judicial Officer shall find that service was incomplete or otherwise failed to adequately advise of the pendency of the proposed debarment.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§957.5 The request for a hearing.

A respondent may, within 20 days following the receipt of a written notice of proposed debarment, file a request for a hearing before the Judicial Officer. The request shall be addressed to the presiding officer through the Vice President who initiated the debarment proceeding and shall be accompanied by a concise statement admitting, denying or explaining each of the allegations set forth in the notice of proposed debarment and stating the relief desired.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§957.6 Order relative to hearing.

(a) The Judicial Officer shall issue an order granting the Respondent's request for a hearing, establishing the time and place thereof and advising the Respondent of the consequences of a failure to appear at the hearing (see §957.9). Whenever practicable, the hearing date shall be within 30 days of the date of the Judicial Officer's order relative to hearing.

(b) The notice of proposed debarment and the request for a hearing together with the reply, if any, shall become the pleadings in any proceeding in which the Judicial Officer orders a hearing to be held.

§957.7 Reply.

Not more than 15 days from the service of the request for a hearing, the General Counsel may submit a reply on behalf of the Vice President who initiated the debarment proceeding.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§957.8 Service and filing documents for the record.

(a) Each party shall file with the Recorder pleadings, motions, orders and other documents for the record. The Recorder shall cause copies to be served promptly on other parties to the proceeding and on the Judicial Officer.

(b) The parties shall submit four copies of all documents unless otherwise ordered by the Judicial Officer. One copy shall be signed as the original.

(c) Documents shall be dated and shall state the docket number and title of the proceeding. Any pleading or other document required by order of the Judicial Officer to be filed by a specified date shall be served upon the Recorder on or before such date. The date of such service shall be the filing date and shall be entered thereon by the Recorder.

(d) Service of all papers shall be effected by mailing the same, postage prepaid registered, or certified mail, return receipt requested, or by causing said notice to be personally served on the proposed Respondent by an authorized representative of the Vice President. In the case of personal service the person making service shall secure from the proposed Respondent or his or her agent, a written acknowledgment of receipt of said notice, showing the date and time of such receipt. Said acknowledgment (or the return receipt where service is effectuated by mail) shall be made a part of the record by the Vice President initiating the debarment proceeding. The date of delivery, as shown by the acknowledgment of personal service or the return receipt, shall be the date of service.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.9 Respondent's failure to appear at the hearing.

If the Respondent shall fail to appear at the hearing, the Judicial Officer shall receive the Vice President's evidence and render a Postal Service Decision without requirement of further notice to the Respondent.

[36 FR 11574, June 16, 1971, as amended at 37 FR 23422, Nov. 3, 1972; 63 FR 66051, Dec. 1, 1998]

§ 957.10 Respondent already debarred by another Government agency.

(a) When a Vice President proposes to debar a firm or individual already debarred by another Government agency for a term concurrent with such debarment, the debarment proceedings before the Postal Service may be based entirely upon the record of facts obtained from such other agency or upon such facts and additional other facts. In such cases the facts obtained from the other agency shall be considered as established, but the party to be debarred shall have opportunity to present information to the Judicial Officer and to explain why the debarment by the Postal Service should not be imposed.

(b) Where the Vice President initiating the debarment proceeding relies:

(1) Upon the provisions of paragraph (a) of this section, or

(2) Upon all or part of the record of the proposed Respondent's previous debarment by another Government agency, in initiating such proceeding, the notice of proposed debarment shall contain a statement so stating in sufficient detail to apprise the Respondent of the extent of such reliance.

(c) The Vice President's reliance upon provisions of paragraph (a) of this section, stated in conformity with the directions set forth in paragraph (b) of this section does not deprive the Respondent of the right to request the Judicial Officer to grant a hearing pursuant to these rules, nor the Judicial Officer the full discretion to grant or deny such request.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.11 Amendment of pleadings.

(a) By consent of the parties a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing: *Provided,* That the proposed amendment is reasonably within the scope of the proceeding.

(b) When issues not raised by the pleadings but reasonably within the scope of the proceedings initiated by the notice of proposed debarment are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence and to raise such issues shall be allowed at any time upon the motion of any party.

(c) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues

framed by the pleadings, but fails to satisfy the Judicial Officer that an amendment of the pleadings would prejudice him on the merits, the Judicial Officer may allow the pleadings to be amended and may grant a continuance to enable the objecting party to rebut the evidence presented.

(d) The Judicial Officer may, upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions, occurrences, or events which have transpired since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§ 957.12 Continuances and extensions.

Continuances and extensions will not be granted by the Judicial Officer except for good cause shown.

§ 957.13 Hearings.

(a) Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the Judicial Officer.

(b) A party may, not later than 7 days prior to the scheduled date of a hearing, file a request that such hearing be held at a place other than that designated in the Judicial Officer's order relative to hearing. The party shall support his or her request with a statement outlining:

(1) The evidence to be offered in such place;

(2) The names and addresses of the witnesses who will testify;

(3) The reasons why such evidence cannot be produced at Arlington, VA. The Judicial Officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.14 Appearances.

(a) A Respondent may appear and be heard in person or by attorney.

(b) An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see part 951 of this chapter).

(c) When a Respondent is represented by an attorney, all pleadings and other papers subsequent to the notice of proposed debarment shall be mailed to the attorney.

(d) All counsel shall promptly file notices of appearance. Changes of Respondent's counsel shall be recorded by notices from retiring and succeeding counsel and from the Respondent.

(e) After a request for a hearing has been filed pursuant to the rules in this part, the Law Department shall represent the Vice President in further proceedings relative to the hearing and shall in its notice of appearance identify the individual member of such office who has been assigned to handle the case on its behalf.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.15 Conduct of the hearing.

The Judicial Officer shall have authority to:

(a) Administer oaths and affirmations;

(b) Examine witnesses;

(c) Rule upon offers of proof, admissibility of evidence, and matters of procedure;

(d) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(e) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(f) Require the filing of briefs or memoranda of law on any matter upon which the Judicial Officer is required to rule;

(g) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties;

(h) Order the proceeding reopened at any time prior to his or her decision for the receipt of additional evidence;

(i) Render a final agency decision;

(j) Take such other further action as may be necessary to properly preside over the debarment proceeding and render decision therein.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.16 Evidence.

(a) Except as otherwise provided in the rules in this part, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall

govern. However, such rules may be relaxed to the extent that the Judicial Officer deems proper to insure a fair hearing.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received in evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) The written statement of a competent witness may be received in evidence: *Provided,* That such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his or her opinion or knowledge concerning the matters in question.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.17 Witness fees.

The Postal Service does not pay fees and expenses for Respondent's witnesses or for depositions requested by Respondent.

§ 957.18 Depositions.

(a) Not later than 7 days prior to the scheduled date of the hearing any party may file application with the Recorder for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(b) If the application be granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken and any other necessary information.

(c) Each witness testifying upon deposition shall be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. The deposition officer shall put the witness on oath. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States or within a territory or insular possession, subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary

of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.19 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the Judicial Officer. Argument upon any matter may be excluded from the transcript by order of the Judicial Officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript may be obtained by the Respondent from the reporter upon the payment of a reasonable price therefor. Copies of parts of the official record other than the transcript may be obtained from the librarian of the Postal Service or the Recorder.

(b) Changes in the official transcript may be made only when they involve errors affecting substance and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, the party may file a motion requesting correction of the transcript. Opposing counsel shall, within such time as may be specified by the Judicial Officer, notify the Judicial Officer in writing of his or her concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the Judicial Officer shall by order specify the corrections to be made in the transcript. The Judicial Officer on his or her own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the Judicial Officer other than the agreement of the parties shall be subject to objection and exception.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.20 Proposed findings and conclusions.

(a) Each party to a proceeding, except one who fails to appear at the hearing may, unless at the discretion of the Judicial Officer such is not appropriate, submit proposed findings of fact, conclusions of law and supporting reasons either in oral or written form in the discretion of the Judicial Officer. The Judicial Officer may also require parties to any proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. Unless given orally the date set for filing of proposed findings of fact and conclusions of law shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings shall be the same for both parties. If not submitted by such date, or unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be separately stated.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.21 Decision.

The Judicial Officer shall issue a final agency decision. Such decision shall include findings and conclusions, with the reasons therefor, upon all the material issues of fact or law presented on the record, and the appropriate order.

§ 957.22 Motion for reconsideration.

Within 10 days from the date thereof, or such longer period as may be fixed by the Judicial Officer, either party may file a motion for reconsideration of the final agency decision. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

§ 957.23 Modification or revocation of orders.

A party against whom an order of debarment has been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the General Counsel, who shall file a written reply. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.24 Computation of time.

A designated period of time under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§ 957.25 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding shall constitute the official record of the proceeding.

§ 957.26 Public information.

The Librarian of the Postal Service shall maintain for public inspection in the Library copies of all final decisions. The Recorder maintains the complete official record of every proceeding.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

§ 957.27 Suspension.

(a) Any firm or individual suspended under chapter 3, section 7 of the Postal Service Purchasing Manual who believes that the suspension has not been in accordance with the provisions thereof, or with applicable laws or regulations, may appeal to the Judicial Officer for a review of the suspension.

(b) Any such appeal shall be addressed to the Judicial Officer through the Vice President who ordered the suspension within 20 days of the date upon which the respondent has been notified of the suspension. Such appeal shall concisely and in the manner of a pleading set forth the grounds upon which the suspension is contested and may be supported by a brief and such evidence as the respondent may desire to submit.

(c) Should the respondent desire oral argument or a hearing before the Judicial Officer in connection with the appeal, application therefor shall be included in the appeal. In the event that the Judicial Officer grants the respondent's application for a hearing the notice of suspension and the appeal shall constitute the pleadings defining the issues therein and the hearing shall be regulated in accordance with the rules in this part concerning debarment proceedings.

(d) The decision of the Judicial Officer in any appeal shall constitute the final agency determination of the issues presented thereby. Either party thereto may, however, file a motion for reconsideration thereof, in accordance with the provisions of § 957.22.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998]

§ 957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 958 [RESERVED]

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

Sec.
959.1 Authority for rules.
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959.31 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401; 39 CFR 224.1(c)(6)(ii)(D).

SOURCE: 39 FR 33213, Sept. 16, 1974, unless otherwise noted.

§959.1 Authority for rules.

These rules are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General.

§959.2 Scope of rules.

These rules apply to all Postal Service proceedings in which part 310 of this title authorizes appeals to the Judicial Officer from demands for postage for matter carried in violation of the Private Express Statutes, and in proceedings to revoke, as to any person, the suspension of provisions of the Private Express Statutes in accordance with part 320 of this title.

§959.3 Office, business hours.

The offices of the officials mentioned in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078 and are open Monday through Friday from 8:15 a.m. to 4:45 p.m.

[63 FR 66052, Dec. 1, 1998]

§959.4 Demands for payment of postage.

Final demands for payment of postage will be accompanied by a copy of these rules and will:

(a) State that the demand is final unless appealed under these rules within 15 days after receipt of the demand;

(b) Describe the transaction on which the demand is based and the provisions of law or regulation alleged to have been violated; and

(c) State the manner in which the amount of the demand is computed.

§959.5 Appeals from demands.

(a) A party upon whom a demand for postage has been made may appeal from the demand by filing a petition, in triplicate, with the Recorder, Judicial Officer Department, within 15 days after receipt of the demand.

(b) The petition shall:

(1) Be signed personally by an individual petitioner, by one of the partners of a partnership, or by an officer of a corporation or association;

(2) State the reasons why the person filing the petition (designated the ''Petitioner'' in these rules) believes the demand is not justified;

(3) Admit or deny each fact alleged in the demand and allege any facts upon which the Petitioner relies to show compliance with applicable laws and regulations; and,

(4) Be accompanied by a copy of the demand.

(c) Factual allegations that are not denied by the petition may be deemed to have been admitted. The demand and the petition (together with other documents authorized in this part) shall become the pleadings in appeals from demands.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.6 Revocations of suspension.

(a) The General Counsel, or a member of the General Counsel's staff as may be designated, may initiate a revocation of the suspension of the Private Express Statutes as provided in part 320 of this title as to any person, by filing, in triplicate, a petition with the Recorder which

(1) Names the person involved;

(2) States the legal authority under which the proceeding is initiated;

(3) States the facts in a manner sufficient to enable the person named to make answer thereto; and,

(4) Recommends the issuance of an appropriate order.

(b) *Answer.* (1) The person named in the petition (designated the ''Respondent'' in these rules) shall file an answer with the Recorder within 15 days after being served with a copy of the petition in accordance with § 959.8.

(2) The answer shall contain a concise statement admitting, denying, or explaining each of the allegations set forth in the petition.

(3) Any facts alleged in the petition which are not denied, or which are expressly admitted in the answer, may be considered as proved, and no further evidence regarding these facts need be adduced at the hearing.

(4) The answer shall be signed personally by an individual respondent, or in the case of a partnership, by one of the partners, or, in the case of a corporation or association, by an officer thereof.

(5) The answer shall set forth the respondent's address and the name and address of respondent's attorney, if respondent is represented by counsel.

(6) The answer shall affirmatively state whether the respondent will appear in person or by counsel at the hearing.

(7) If the respondent does not desire to appear at the hearing in person or by counsel, the matter shall be deemed submitted for determination pursuant to paragraph (b) of § 959.10.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.7 Notice of hearing.

When a petition is filed, the Recorder shall issue a notice of hearing, stating the time and place of the hearing and the date for filing an answer which shall not exceed 15 days from the date of service of the petition, and a reference to the effect of failure to file an answer or appear at the hearing. (See §§ 959.5(c), 959.6(b), and 959.10.) Whenever practicable, the hearing date shall be within 30 days of the date of the notice.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.8 Service of petition filed under § 959.6.

(a) The Recorder shall cause a notice of hearing and a copy of the petition to be transmitted to the postmaster at any office of address of the respondent in which the respondent is doing business, which shall be delivered to the respondent or respondent's agent by said postmaster or the postmaster's designee. A receipt acknowledging delivery of the notice shall be secured from the respondent or respondent's agent and forwarded to the Recorder, to become a part of the official record.

(b) If, after 5 days, the postmaster or the postmaster's designee, can find no person to accept service of the notice of hearing and petition pursuant to paragraph (a) of this section, the notice and copy of the petition may be delivered in the usual manner as other mail addressed to the respondent. A statement, showing the time and place of delivery, signed by the postal employee who delivered the notice of hearing and petition shall be forwarded to the Recorder and such statement shall constitute evidence of service.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.9 Filing documents for the record.

(a) Each party shall file with the Recorder pleadings, motions, orders and other documents for the record. The Recorder shall cause copies to be delivered promptly to other party(ies) to the proceeding and to the presiding officer.

(b) The parties shall submit three copies of all documents unless otherwise ordered by the presiding officer. One copy shall be signed as the original.

(c) Documents shall be dated and state the title of the proceeding and, except initial petitions, the docket number. Any pleading or other document required by order of the presiding officer to be filed by a specified date, shall be delivered to the Recorder on or before such date. The date of filing shall be entered thereon by the Recorder.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.10 Default.

(a) If the respondent fails to file an answer within the time specified in the notice of hearing, the respondent shall be deemed in default and to have waived hearing and further procedural steps. The Judicial Officer shall thereafter issue an order without further notice to the respondent.

(b) If the respondent files an answer but fails to appear at the hearing, the presiding officer shall receive petitioner's evidence and render an initial decision.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.11 Amendment of pleadings.

(a) Amendments proposed prior to the hearing shall be filed with the Recorder. Amendments proposed thereafter shall be filed with the presiding officer.

(b) By consent of the parties, a pleading may be amended at any time. Also, a party may move to amend a pleading at any time prior to the close of the hearing and, provided that the amendment is reasonably within the scope of the proceeding initiated by the petition, the presiding officer shall make such ruling on the motion as he or she deems fair and equitable to the parties.

(c) When issues not raised by the pleadings, but reasonably within the scope of the proceedings initiated by the petition, are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendments as may be necessary to make the pleadings conform to the evidence, and to raise such issues, shall be allowed at any time upon the motion of any party.

(d) If a party objects to the introduction of evidence at the hearing on the ground that it is not within the issues made by the pleadings, but fails to satisfy the presiding officer that an amendment of the pleadings would prejudice the objecting party on the merits, the presiding officer may allow the amendment and may grant a continuance to enable the objecting party to rebut the evidence presented.

(e) The presiding officer may, upon reasonable notice and upon such terms as are just, permit service of supplemental pleadings setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.12 Continuances and extensions.

Continuances and extensions will not be granted by the presiding officer except for good cause found.

§ 959.13 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

[63 FR 66052, Dec. 1, 1998]

§ 959.14 Change of place of hearings.

Not later than the date fixed for the filing of the answer, a party may file a written request that a hearing be held at a place other than that designated in the notice. The party shall support the request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify; and,

(c) The reasons why such evidence cannot be produced at Arlington, VA. The presiding officer shall give consideration to the convenience and necessity of the parties and the relevancy of the evidence to be offered.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.15 Appearances.

(a) A respondent may appear and be heard in person or by attorney.

(b) An attorney may practice before the Postal Service in accordance with the rules in part 951 of this title.

(c) When a respondent is represented by an attorney, all pleadings and other papers subsequent to the initial petition shall be mailed to the attorney.

(d) A respondent must promptly file a notice of change of attorney.

§ 959.16 Presiding officers.

(a) The presiding officer shall be either an Administrative Law Judge qualified in accordance with law, or the Judicial Officer. The Chief Administrative Law Judge shall assign cases to Administrative Law Judges upon rotation so far as practicable. The Judicial Officer may, for good cause found, preside at the reception of evidence in proceedings upon request of either party.

(b) The presiding officer shall have authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleading amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he or she is required to rule;

(7) Order prehearing conferences for the purpose of settlement or simplification of issues by the parties;

(8) Order the proceeding reopened at any time prior to his or her decision for the receipt of additional evidence; and,

(9) Render an initial decision if the presiding officer is an Administrative Law Judge, which becomes the final decision of the Postal Service unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.17 Evidence.

(a) Except as otherwise provided in these rules, the rules of evidence governing civil proceedings in matters not involving trial by jury in the District courts of the United States shall govern. However, such rules may be relaxed to the extent that the presiding officer deems proper to insure a fair hearing. The presiding officer shall exclude irrelevant, immaterial or repetitious evidence.

(b) Testimony shall be under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact may be received into evidence.

(d) Official notice or knowledge may be taken of the types of matters of which judicial notice or knowledge may be taken.

(e) The written statement of a competent witness may be received into evidence provided that such statement is relevant to the issues, that the witness shall testify under oath at the hearing that the statement is in all respects true, and, in the case of expert witnesses, that the statement correctly states his or her opinion or knowledge concerning the matters in question.

(f) A party who objects to the admission of evidence shall make a brief statement of the grounds for the objection. Formal exceptions to the rulings of the presiding officer are unnecessary.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.18 Subpoenas.

The Postal Service is not authorized by law to issue subpoenas requiring the attendance or testimony of witnesses or the production of documents. This does not affect the authority of the Chief Postal Inspector to issue subpoenas for the production of documents or information pursuant to § 233.1(c) of this chapter.

[39 FR 33213, Sept. 16, 1974, as amended at 56 FR 55825, Oct. 30, 1991]

§ 959.19 Witness fees.

The Postal Service does not pay fees and expenses for a respondent's witnesses or for depositions requested by a respondent.

§ 959.20 Depositions.

(a) Not later than 5 days after the filing of respondent's answer, any party

may file an application with the Recorder for the taking of testimony by deposition. In support of such application, the applicant shall submit under oath or affirmation, a statement containing the reasons why such testimony should be taken by deposition, the time and place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(b) If the application be granted, the order shall specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken, and any other necessary information.

(c) Each deponent shall first be duly sworn, and the adverse party shall have the right to cross-examine. The questions and answers, together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the deposition officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form or relevancy or materiality of the questions or answers, in the oath or affirmation, or in the conduct of the parties, and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(d) At the hearing, any part or all of the deposition may be offered into evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received into evidence, it shall not be considered as a part of the record. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(e) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy thereof for the official record, and shall serve one copy upon the opposing party.

(f) Within the United States, or within a territory or possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of the deposition.

(g) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the deposition officer, shall be present at the examination of the witness, which fact shall be certified by the deposition officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and cause the testimony to be reduced to writing in the witness' own words.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.21 Transcript.

(a) Hearings shall be stenographically reported by a contract reporter of the Postal Service under the supervision of the assigned presiding officer. Argument upon any matter may be excluded from the transcript by order of the presiding officer. A copy of the transcript shall be a part of the record and the sole official transcript of the proceeding. Copies of the transcript

shall be supplied to the parties by the reporter at rates not to exceed the maximum rates fixed by the contract between the Postal Service and the reporter. Copies of parts of the official record, other than the transcript, may be obtained by the respondent from the reporter upon the payment of a reasonable price therefor.

(b) Changes in the official transcript may be made only when they involve errors affecting substance, and then only in the manner herein provided. No physical changes shall be made in or upon the official transcript, or copies thereof, which have been filed with the record. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, a party may file a motion requesting correction of the transcript. The opposing party shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing of his or her concurrence or disagreement with the requested corrections. Failure to interpose timely objection to a proposed correction shall be considered to be concurrence. Thereafter, the presiding officer shall by order specify the corrections to be made in the transcript. The presiding officer on his or her own initiative may order corrections to be made in the transcript with prompt notice to the parties of the proceeding. Any changes ordered by the presiding officer other than by agreement of the parties shall be subject to objection and exception.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.22 Proposed findings and conclusions.

(a) Each party, except one who fails to answer the complaint or, having answered, either fails to appear at the hearing or indicates in the answer that he or she does not desire to appear, may submit proposed findings of fact, conclusions of law and supporting reasons either in oral or written form. The presiding officer may also require the parties to submit proposed findings of fact and conclusions of law with supporting reasons.

(b) Proposed findings of fact, conclusions of law and supporting reasons not presented orally before the close of the hearing, shall, unless otherwise directed by the presiding officer, be filed within 15 days after the delivery of the official transcript to the Recorder, who shall notify the parties of the date of its receipt. The proposed findings of fact, conclusions of law and supporting reasons shall be set forth in serially numbered paragraphs, and shall state with particularity, all pertinent evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion of law shall be separately stated.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.23 Decisions.

(a) *Oral decisions.* The presiding officer may, in his or her discretion, render an oral decision (an initial decision by an Administrative Law Judge, or a tentative or final decision by the Judicial Officer) at the close of the hearing. A party who desires an oral decision shall notify the presiding officer and the opposing party at least 5 days prior to the date set for the hearing. Either party may submit proposed findings of fact and conclusions of law either orally or in writing at the conclusion of the hearing.

(b) *Written initial decision by Administrative Law Judge.* A written initial decision shall be rendered with all due speed. The initial decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and an appropriate order. The initial decision shall become the final decision of the Postal Service unless an appeal is taken in accordance with § 959.24.

(c) *Written tentative or final decision by the Judicial Officer.* When the Judicial Officer presides at the hearing, he or she shall issue a final or a tentative decision. Such decision shall include findings of fact and conclusions of law, with the reasons therefor, upon all the material issues of fact or law presented on the record, and appropriate order. The tentative decision shall become the final decision of the Postal Service

unless exceptions are filed in accordance with § 959.24.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.24 Exceptions to initial decision or tentative decision.

(a) A party in a proceeding presided over by an Administrative Law Judge, except a party who failed to file an answer, may appeal to the Judicial Officer by filing exceptions in a brief on appeal within 15 days from the receipt of the Administrative Law Judge's written initial decision.

(b) A party in a proceeding presided over by the Judicial Officer, except one who has failed to file an answer, may file exceptions within 15 days from the receipt of the Judicial Officer's written tentative decision.

(c) When an initial or tentative decision is rendered orally at the close of the hearing, the presiding officer may then establish and orally give notice to the parties participating in the hearing of the time limit within which exceptions must be filed.

(d) Upon receipt of the brief on appeal from an initial decision of an Administrative Law Judge, the Recorder shall promptly transmit the record to the Judicial Officer. The date for filing the reply to a brief on appeal or to a brief in support of exceptions to a tentative decision by the Judicial Officer is 10 days after the receipt thereof. No additional briefs shall be received unless requested by the Judicial Officer.

(e) Briefs on appeal or in support of exceptions and replies thereto shall be filed in triplicate with the Recorder, and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited, with page references.

(2) A concise abstract or statement of the case.

(3) Numbered exceptions to specific findings of fact or conclusions of law of the presiding officer.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of, or in opposition to, each exception taken, together with specific references to the pertinent parts of the record and the legal or other authorities relied upon.

(f) Unless permission is granted by the Judicial Officer, no brief on appeal or in support of exceptions shall exceed 50 printed or 100 typewritten pages double spaced.

(g) The Judicial Officer will extend the time to file briefs only upon written motion for good cause found. The Recorder shall promptly notify the movant of the Judicial Officer's decision on the motion. If a brief is not filed within the time prescribed, the defaulting party will be deemed to have abandoned the appeal or waived the exceptions, and the initial or tentative decision shall become the final decision of the Postal Service.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.25 Judicial Officer.

The Judicial Officer is authorized (a) to act as presiding officer at hearings, (b) to render tentative decisions, (c) to render final decisions of the Postal Service, (d) to refer the record in any proceedings to the Postmaster General or the Deputy Postmaster General who will make the final decision of the Postal Service, and (e) to revise or amend these rules of practice. The entire official record will be considered before a final decision of the Postal Service is rendered. Before rendering a final decision of the Postal Service, the Judicial Officer may order the hearing reopened for the presentation of additional evidence by the parties.

§ 959.26 Motion for reconsideration.

A party may file a motion for reconsideration of a final decision of the Postal Service within 10 days after receiving it, or within such longer period as the Judicial Officer may fix. Each motion for reconsideration shall be accompanied by a brief clearly setting forth the points of fact and of law relied upon in support of said motion.

§ 959.27 Modification or revocation of orders.

A party against whom an order has been issued may file with the Recorder an application for modification or revocation, addressed to the Judicial Officer. The Recorder shall transmit a

copy of the application to the General Counsel, who shall file a written reply within 10 days after filing, or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application in whole or in part will be issued by the Judicial Officer.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.28 Computation of time.

A designated period of time excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

§ 959.29 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs and other documents filed in the proceedings shall constitute the official record of the proceeding.

§ 959.30 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative and final decisions of the Postal Service. The Recorder maintains the complete official record of every proceeding.

[39 FR 33213, Sept. 16, 1974, as amended at 63 FR 66052, Dec. 1, 1998]

§ 959.31 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

PART 960—RULES RELATIVE TO IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN POSTAL SERVICE PROCEEDINGS

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AUTHORITY: 5 U.S.C. 504 (c)(1); 39 U.S.C. 204, 401 (2).

SOURCE: 46 FR 45945, Sept. 16, 1981, unless otherwise noted.

Subpart A—General Provisions

§ 960.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called ''the Act'' in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called ''adversary adjudications'') before the Postal Service. An eligible party may receive an award when it prevails over the Postal Service, unless the Postal Service's position was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties eligible for awards and the proceedings that are covered. They also explain how to apply for awards, and the procedures and standards that the Postal Service will use to make them.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6797, Mar. 5, 1987]

§ 960.2 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Postal Service on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in subpart B of these rules, has been filed with the Postal Service within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

[52 FR 6797, Mar. 5, 1987]

§ 960.3 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Postal Service. These are:

(1) Adjudications under 5 U.S.C. 554 in which the position of the Postal Service is presented by an attorney or other representative who enters an appearance and participates in the proceeding (for the Postal Service, the types of proceedings generally covered are proceedings relative to false representation and cease and desist orders and mailability under chapter 30 of title 39, U.S.C., with the exception of proceedings under 39 U.S.C. 3008); and

(2) Appeals of decisions of contracting officers made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before the Postal Service Board of Contract Appeals as provided in section 8 of that Act. (41 U.S.C. 607).

(b) The Postal Service may also designate a proceeding not listed in paragraph (a) of this section as an adversary adjudication for purposes of the Act by so stating in an order initiating the proceeding or designating the matter for hearing. The failure to designate a proceeding as an adversary adjudication shall not preclude the filing of an application by a party who believes the proceeding is covered by the Act; whether the proceeding is covered will then be an issue for resolution in proceedings on the application.

(c) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987; 67 FR 62179, Oct. 4, 2002]

§ 960.4 Eligibility of applicants.

(a) To be eligible for an award of attorney fees and other expenses under the Act, the applicant must be a party to the adversary adjudication for which it seeks an award. The term ''party'' is defined in 5 U.S.C. 551(3). The applicant must show by clear and convincing evidence that it meets all conditions of eligibility set out in this subpart and in subpart B and must submit additional information to verify its eligibility upon order by the adjudicative officer.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $2 million;

(2) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interests, and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)) with not more than 500 employees; and

(5) Any other partnerships, corporation, association, unit of local government, or organization with a net worth of not more than $7 million and not more than 500 employees.

(c) For the purposes of eligibility, the net worth and number of employees of an applicant shall be determined as of the date the proceeding was initiated, which in proceedings before the Board of Contract Appeals is the date the applicant files its appeal to the Board.

(d) An applicant who owns an unincorporated business will be considered as an ''individual'' rather than a ''sole owner of an unincorporated business'' if the issues on which the applicant

prevails are related primarily to personal interests rather than to business interests.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. Any individual, corporation or other entity that directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or any corporation or other entity of which the applicant directly or indirectly owns or controls a majority of the voting shares or other interest, will be considered an affiliate for purposes of this part, unless the adjudicative officer determines that such treatment would be unjust and contrary to the purposes of the Act in light of the actual relationship between the affiliated entities. In addition, the adjudicative officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.5 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding, including expenses and fees incurred in filing for an award under the Act, or in a significant and discrete substantive portion of the proceeding, unless the position of the agency over which the applicant has prevailed was substantially justified. The position of the agency includes in addition to the position taken by the agency in the adversary adjudication, the action or failure to act by the agency upon which the adversary adjudication is based. The burden of proof that an award should not be made to an eligible prevailing applicant is on Postal Service counsel.

(b) An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding or if special circumstances make the award sought unjust.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.6 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant. Attorney fees may not be recovered by parties appearing *pro se* in postal proceedings.

(b) No award for the fee of an attorney or agent under these rules may exceed $125.00 per hour, or such rate as prescribed by 5 U.S.C. 504. No award to compensate an expert witness may exceed the highest rate at which the Postal Service pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or witness as a separate item, if the attorney, agent or witness ordinarily charges clients separately for such expenses.

(c) In determining the reasonableness of the fee sought for an attorney, agent or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent or witness is in private practice, his or her customary fee for similar services, or, if an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent or witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(d) The reasonable cost of any study, analysis, engineering report, test, project or similar matter prepared on behalf of a party may be awarded, to the extent that the charge for the service does not exceed the prevailing rate

for similar services, and the study or other matter was necessary for preparation of the applicant's case.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987; 66 FR 55577, Nov. 2, 2001]

§ 960.7 Rulemaking on maximum rates for attorney fees.

(a) If warranted by an increase in the cost of living or by special circumstances (such as limited availability of attorneys qualified to handle certain types of proceedings), the Postal Service may adopt regulations providing that attorney fees may be awarded at a rate higher than $125.00 per hour, or such rate as prescribed by 5 U.S.C. 504, in some or all of the types of proceedings covered by this part. The Postal Service will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedure Act.

(b) Any person may request the Postal Service to initiate a rulemaking proceeding to increase the maximum rate for attorney fees. The request should identify the rate the person believes the Postal Service should establish and the types of proceedings in which the rate should be used. It should also explain fully the reasons why the higher rate is warranted. The Postal Service will respond to the request within 60 days after it is filed, by determining to initiate a rulemaking proceeding, denying the request, or taking other appropriate action.

[46 FR 45945, Sept. 16, 1981, as amended at 66 FR 55577, Nov. 2, 2001]

§ 960.8 Official authorized to take final action under the Act.

The Postal Service official who renders the final agency decision in a proceeding under § 952.26 or § 953.15, or the panel that renders the decision in an appeal before the Board of Contract Appeals under part 955 procedures, as the case may be, is authorized to take final action on matters pertaining to the Equal Access to Justice Act as applied to the proceeding.

[52 FR 6798, Mar. 5, 1987]

Subpart B—Information Required From Applicants

§ 960.9 Contents of application.

(a) An application for an award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of the Postal Service in the proceeding that the applicant alleges was not substantially justified. Unless the applicant is an individual, the application shall also state the number of employees of the applicant and describe briefly the type and purpose of its organization or business.

(b) The application shall also include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants, including their affiliates.) However, an applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) or, in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under such section; or

(2) It states on the application that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 1141j(a)).

(c) The application shall state the amount of fees and expenses for which an award is sought.

(d) The application may also include any other matters that the applicant wishes the Postal Service to consider in determining whether and in what amount an award should be made.

(e) The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.10 Net worth exhibit.

(a) Each applicant except a qualified tax-exempt organization or cooperative association must provide with its application a detailed exhibit showing the net worth of the applicant and any affiliates (as defined in § 960.4(f)) when the proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's and its affiliates' assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The adjudicative officer may require an applicant to file additional information to determine its eligibility for an award.

(b) Ordinarily, the net worth exhibit will be included in the public record of the proceeding. However, an applicant that objects to public disclosure of information in any portion of the exhibit and believes there are legal grounds for withholding it from disclosure may submit that portion of the exhibit directly to the adjudicative officer in a sealed envelope labeled ''Confidential Financial Information'', accompanied by a motion to withhold the information from public disclosure. The motion shall describe the information sought to be withheld and explain, in detail, why it falls within one or more of the specific exemptions from mandatory disclosure under the Freedom of Information Act, 5 U.S.C. 552(b) (1) through (9), why public disclosure of the information would adversely affect the applicant, and why disclosure is not required in the public interest. The material in question shall be served on counsel representing the agency against which the applicant seeks an award, but need not be served on any other party to the proceeding. If the adjudicative officer finds that the information should not be withheld from disclosure, it shall be placed in the public record of the proceeding. Otherwise, any request to inspect or copy the exhibit shall be disposed of in accordance with the Postal Service's established procedures under the Freedom of Information Act, part 265 of this title.

§ 960.11 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of the fees and expenses, including the cost of any study, analysis, engineering report, test, project or similar matter, for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services provided. The adjudicative officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed. In addition, the Board of Contract Appeals may require an applicant to submit to an audit by the Postal Service of its claimed fees and expenses.

(b) Where the case has been sustained in part and denied in part or where the applicant has prevailed in only a significant and discrete substantive portion of the case, the application must be limited to fees and expenses allocable to the portion of the case as to which the applicant was the prevailing party.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.12 When an application may be filed.

(a) An application may be filed whenever the applicant has prevailed in the proceeding or in a significant and discrete substantive portion of the proceeding, but in no case later than 30 days after the Postal Service's final disposition of the proceeding.

(b) If review or reconsideration is sought or taken of a decision as to which an applicant believes it has prevailed, proceedings for the award of fees shall be stayed pending final disposition of the underlying controversy.

(c) For purposes of this rule, final disposition means the later of (1) the date on which an initial decision or

other recommended disposition of the merits of the proceeding by an adjudicative officer or intermediate review board becomes administratively final;

(2) Issuance of an order disposing of any petitions for reconsideration of the Postal Service's final order in the proceeding;

(3) If no petition for reconsideration is filed, the last date on which such a petition could have been filed;

(4) Issuance of a final order or any other final resolution of a proceeding, such as a settlement or voluntary dismissal, which is not subject to a petition for reconsideration;

(5) In proceedings under 39 U.S.C. 3005, on the date that an Administrative Law Judge enters an order indefinitely suspending further proceedings on the basis of a compromise agreement entered into between the parties; or

(6) In proceedings before the Board of Contract Appeals, the Board of Contract Appeals decision on quantum. When the Board decides only entitlement and remands the issue of quantum to the parties, the final disposition occurs when the parties execute an agreement on quantum, or if the parties cannot agree on quantum and resubmit the quantum dispute to the Board, when the Board issues a decision on quantum.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

Subpart C—Procedures for Considering Applications

§960.13 Filing and service of documents.

Any application for an award or other pleading or document related to an application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding, except as provided in §960.11(b) for confidential financial information.

§960.14 Answer to application.

(a) Within 30 days after service of an application, counsel representing the Postal Service may file an answer to the application. Unless the Postal Service counsel requests an extension of time for filing or files a statement of intent to negotiate under paragraph (b) of this section, failure to file an answer within the 30-day period may be treated as a consent to the award requested.

(b) If the Postal Service counsel and the applicant believe that the issues in the fee application can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days, and further extensions may be granted by the adjudicative officer upon request by Postal Service counsel and the applicant.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the Postal Service's position. If the answer is based on any alleged facts not already in the record of the proceeding, the Postal Service shall include with the answer either supporting affidavits or a request for further proceedings under §960.19.

§960.15 Reply.

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the proceeding, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under §960.19.

§960.16 Comments by other parties.

Any party to a proceeding other than the applicant and Postal Service may file comments on an application within 30 days after it is served or on an answer within 15 days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

§960.17 Settlement.

The applicant and the Postal Service may agree on a proposed settlement of the award before final action on the application, either in connection with a

settlement of the underlying proceeding, or after the underlying proceeding has been concluded. If a prevailing party and Postal Service counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 960.18 Further proceedings.

(a) Ordinarily, the determination of an award will be made on the basis of the written record. However, on request of either the applicant or Postal Service counsel, or on his or her own initiative, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application, and shall be conducted as promptly as possible. Whether or not the position of the agency was substantially justified shall be determined on the basis of the entire administrative record that is made in the adversary adjudication for which fees and other expenses are sought.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought or the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.19 Decision.

(a) The adjudicative officer shall issue an initial decision on the application as promptly as possible after completion of proceedings on the application. The decision shall include written findings and conclusions on the applicant's eligibility and status as a prevailing party, and an explanation of the reasons for any difference between the amount requested and the amount awarded. The decision shall also include, if at issue, findings on whether the Postal Service's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. If the applicant has sought an award against the Postal Service and another agency, the decision shall allocate responsibility for payment of any award made between the Postal Service and the other agency, and shall explain the reasons for the allocation made.

(b) The Board of Contract Appeals shall issue its decision on the application as promptly as possible after completion of proceedings on the application. Whenever possible, the decision shall be made by the same Administrative Judge or panel that decided the contract appeal for which fees are sought. The decision shall be in the format described in paragraph (a) of this section.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.20 Further Postal Service review.

(a) Either the applicant or Postal Service counsel may seek review of the initial decision on the fee application, in accordance with § 952.25 or § 953.14. If neither the applicant nor the Postal Service counsel seeks review, the initial decision on the application shall become a final decision of the Postal Service 30 days after it is issued. If review is taken, the Judicial Officer will issue a final decision on the application or remand the application to the adjudicative officer for further proceedings.

(b) In Board of Contract Appeals proceedings, either party may seek reconsideration of the decision on the fee application in accordance with 39 CFR 955.30.

[46 FR 45945, Sept. 16, 1981, as amended at 52 FR 6798, Mar. 5, 1987]

§ 960.21 Judicial review.

A party other than the Postal Service may, within 30 days after a determination on the award is made, appeal the determination to the court of the United States having jurisdiction to review the merits of the underlying decision of the agency adversary adjudication in accordance with 5 U.S.C. 504(c)(2).

[52 FR 6799, Mar. 5, 1987]

§960.22 Payment of award.

An applicant seeking payment of an award shall submit to the Judicial Officer a copy of the Postal Service's final decision granting the award, accompanied by a statement that the applicant will not seek review of the decision in the United States courts. Requests for payment should be sent to: Judicial Officer, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The Judicial Officer shall submit certification for payment to the Postal Data Center. The Postal Service will pay the amount awarded to the applicant within 60 days, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

[46 FR 45945, Sept. 16, 1981, as amended at 63 FR 66052, Dec. 1, 1998]

PART 961—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO EMPLOYEE HEARING PETITIONS UNDER SECTION 5 OF THE DEBT COLLECTION ACT

Sec.

961.1 Authority for rules.
961.2 Scope of rules.
961.3 Definitions.
961.4 Employee petition for a hearing and supplement to petition.
961.5 Effect of Petition filing.
961.6 Filing, docketing and serving documents; computation of time; representation of parties.
961.7 Answer to Petition and Supplement to Petition.
961.8 Hearing Official authority and responsibilities.
961.9 Effect of Hearing Official's decision; motion for reconsideration.
961.10 Waiver of employee rights.
961.11 Ex parte communications.

AUTHORITY: 39 U.S.C. 204, 401; 5 U.S.C. 5514(a).

SOURCE: 51 FR 1251, Jan. 10, 1986, unless otherwise noted.

§961.1 Authority for rules.

These rules are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§961.2 Scope of rules.

The rules in this part apply to the hearing provided by section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514(a), on the Postal Service's determination of the existence or amount of an employee debt to the Postal Service, or of the terms of the employee's debt repayment schedule. In addition, these rules, as appropriate, apply to a hearing under section 5 of the Debt Collection Act when an Administrative Law Judge or an Administrative Judge in the Judicial Officer Department is designated as the Hearing Official for a creditor Federal agency other than the Postal Service pursuant to an agreement between the Postal Service and that agency.

§961.3 Definitions.

(a) *Employee* refers to a current employee of the Postal Service or another Federal agency who is alleged to be indebted to the Postal Service or another creditor Federal agency and whose hearing under section 5 of the Debt Collection Act is being conducted under these rules.

(b) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(c) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person not under the control or supervision of the Postmaster General, who is designated by the Judicial Officer to conduct the hearing under section 5 of the Debt Collection Act of 1982, as amended, 5 U.S.C. 5514(a).

(d) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service.

(e) *Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act* refers to the formal written notice required by section 5 of the Debt Collection Act before involuntary collection deductions can be taken from an employee's salary.

(f) *Postmaster/Installation Head* refers to the Postal Service official who is authorized under the Postal Service Employee and Labor Relations Manual to

make the initial determination of employee indebtedness and to issue the ''Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act.''

(g) Recorder refers to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[51 FR 1251, Jan. 10, 1986, as amended at 63 FR 66053, Dec. 1, 1998]

§ 961.4 Employee petition for a hearing and supplement to petition.

(a) If an employee desires a hearing, prescribed by section 5 of the Debt Collection Act, on the Postal Service's determination of the existence or amount of a debt, or on the involuntary repayment terms proposed by the Postal Service, the employee must file a written, signed petition with the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, on or before the fifteenth (15th) calendar day following the employee's receipt of the Postal Service's ''Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act.''

(b) The hearing petition is to include the following:

(1) The words, ''Petition for Hearing Under the Debt Collection Act,'' prominently captioned at the top of the first page:

(2) The name of the employee petitioner and the employee's work and home addresses, and work and home telephone numbers; or other address and telephone number where the employee may be contacted about the hearing proceedings;

(3) A statement of the date the employee received the ''Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act,'' *and* a copy of the Notice;

(4) A statement indicating whether the employee requests an oral hearing or a hearing based solely on written submissions;

(5) If the employee requests an oral hearing, a statement of the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the employee expects to call; the proposed city for the hearing site, with justification for holding the hearing in that city; and recommended alternative dates for the hearing; which should be within 40 days from filing the Petition;

(6) A statement of the grounds upon which the employee objects to the Postal Service's determination of the existence or amount of the debt, or to the proposed offset schedule. This statement should identify and explain with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which the employee believes support his or her position;

(7) Copies of all records in the employee's possession which relate to the debt; and

(8) If an employee contends that the Postal Service's proposed offset schedule would result in a severe financial hardship on the employee and his or her spouse and dependents, an alternative offset schedule, and a statement and supporting documents indicating for the employee and his or her spouse and dependents for the one year preceding the Postal Service's notice and for the repayment period proposed by the employee in his or her alternative offset schedule, their total income from all sources; assets; liabilities; number of dependents; and expenses for food, housing, clothing, transportation, medical care, and exceptional expenses, if any.

(c) The employee may, if necessary, file with the Recorder, additional information as a Supplement to the Petition on or before the thirtieth (30th) calendar day following the employee's receipt of the Postal Service's ''Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act.''

[51 FR 1251, Jan. 10, 1986, as amended at 63 FR 66053, Dec. 1, 1998]

§ 961.5 Effect of Petition filing.

Upon receipt and docketing of the employee's Petition for a hearing, the Recorder will notify the Postmaster/Installation Head and the General Counsel that the Petition has been filed and that pursuant to section 5 of the Debt Collection Act, a timely-filed Petition for a hearing stays further collection action.

§961.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing.* All documents relating to the Debt Collection Act hearing proceedings must be filed by the employee or the General Counsel with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or day-light saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.

(b) *Docketing.* The Recorder will maintain a docket record of Debt Collection Act hearing petition proceedings and will assign each employee Petition a docket number. After notification of the docket number, the employee and General Counsel should refer to it on any further filings regarding the Petition.

(c) *Time computation.* A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs until the close of business on the next business day.

(d) *Representation of parties.* After the filing of the Petition, further document transmittals for, or communications with, the Postmaster/Installation Head or Postal Service shall be through their representative, the General Counsel, or, if an appropriate notice of appearance is filed, the General Counsel's designee. If a notice of appearance by an attorney authorized to practice law in any of the United States or the District of Columbia or a territory of the United States is filed in behalf of an employee, further transmissions of documents and other communications with the employee shall be made through his or her attorney rather than directly with the employee.

§961.7 Answer to Petition and Supplement to Petition.

If the employee's Petition states reasons to support the employee's position, within 15 days from notice of the Petition, the General Counsel shall file an Answer to the Petition, and attach all available relevant records and documents in support of the Postal Service's claim, and a list of witnesses the Postal Service intends to call if an oral hearing is granted. If the employee files a Supplement to the Petition, the General Counsel, within ten (10) calendar days from the filing of the Supplement with the Recorder must file any Supplemental Answer and records to support the position of the Postal Service.

§961.8 Hearing Official authority and responsibilities.

The Hearing Official shall provide a full and fair hearing. The proceedings must be expedited to ensure issuance of the final decision no later than 60 days after the filing of the employee's hearing Petition. The Hearing Official's authority includes, but is not limited to, the following:

(a) Ruling on all offers, motions or requests by the parties;

(b) Issuing any notices, orders or memoranda to the parties concerning the hearing proceedings;

(c) Using telephone conferences with the parties to expedite the proceedings. A memorandum of a telephone conference will be transmitted to both parties;

(d) Determining if an oral hearing should be held; and setting the place, date and time for the hearing or the taking of testimony by telephone conference;

(e) Administering oaths or affirmations to witnesses, and conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(f) Establishing the record in the case;

(g) Issuing the final decision orally or in writing no later than sixty (60) days after the filing of the employee's hearing Petition. When an oral decision is rendered, a written confirmation will thereafter be sent to the parties. The decision must include the determination of the amount and validity of the alleged debt and, where applicable, the repayment schedule. It should also include findings and reasons.

§ 961.9 Effect of Hearing Official's decision; motion for reconsideration.

The Hearing Official's decision shall be the final administrative determination on the employee's debt or repayment schedule. No reconsideration of the decision will be allowed unless a motion for reconsideration is filed by either party within 10 days from receipt of the decision and shows good reasons for reconsideration. Reconsideration will be allowed only in the discretion of the Hearing Official. A motion for reconsideration by the employee will not operate to stay the collection action authorized by the Hearing Official's decision.

§ 961.10 Waiver of employee rights.

The Hearing Official may determine the employee has waived his or her right to a hearing and the employee's pay shall be offset in accordance with the Postal Service's offset schedule, if the employee:

(a) Files a Petition for hearing after the end of the 15-day period allowed by the Act for filing the Petition, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official, and the failure makes it difficult or impossible to hold the hearing or to issue the decision within the statutory time;

(d) Files a withdrawal of his or her Petition for a hearing with the Recorder.

§ 961.11 Ex parte communications.

Ex parte communications between a Hearing Official or his staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

PART 962—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

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962.27 Limitations.

AUTHORITY: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

SOURCE: 52 FR 12904, Apr. 20, 1987, unless otherwise noted.

§ 962.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801–3812).

§ 962.2 Definitions.

(a) *Attorney* refers to an individual authorized to practice law in any of the United States or the District of Columbia or a territory of the United States.

(b) *Complaint* refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to §273.8 of this title.

(c) *Initial Decision* refers to the written decision which the Presiding Officer is required by §962.20 to render, and includes a revised initial decision issued following a remand.

(d) *Investigating Official* refers to the Inspector General of the United States Postal Service or any designee within the Office of the Inspector General.

(e) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or for purposes other than specified in §962.21 any designee within the Judicial Officer Department.

(f) *Party* refers to the Postal Service or the Respondent.

(g) *Person* refers to any individual, partnership, corporation, association, or private organization.

(h) *Postmaster General* refers to the Postmaster General of the United States or his designee.

(i) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803.

(j) Recorder refers to the Recorder of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(k) *Representative* refers to an attorney or other advocate.

(l) *Respondent* refers to any person alleged to be liable for a civil penalty or assessment under 31 U.S.C. 3802.

(m) *Reviewing Official* refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate payable under section 5376 of title 5 of the United States Code.

[52 FR 12904, Apr. 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998; 67 FR 62179, Oct. 4, 2002]

§962.3 Petition for hearing.

Within 30 days of receiving the Postal Service's Complaint, issued pursuant to §273.8 of this title, alleging liability under 31 U.S.C. 3802, the Respondent may request a hearing under the Program Fraud Civil Remedies Act by filing a written Hearing Petition with the Recorder in accordance with §962.22(b). The Respondent's Petition must include the following:

(a) The words ''Petition for Hearing Under the Program Fraud Civil Remedies Act,'' or other words reasonably identifying it as such;

(b) The name of the Respondent as well as his or her work and home addresses, and work and home telephone numbers; or other address and telephone number where the Respondent may be contacted about the hearing proceedings;

(c) A statement of the date the Respondent received the Complaint issued by the Reviewing Official;

(d) A statement indicating whether the Respondent requests an oral hearing or a decision on the record;

(e) If the Respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the Respondent intends to rely.

§962.4 Referral of complaint.

(a) If the Respondent fails to request a hearing within the specified period, the Reviewing Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an initial decision based upon the information contained in the Complaint.

(b) If the Respondent files a Hearing Petition, the Reviewing Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

§962.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record (1) to determine whether the Respondent is liable under 31 U.S.C. 3802, and (2) if so, to determine the amount of any civil penalty or assessment to be imposed.

(b) The Postal Service must prove its case against a Respondent by a preponderance of the evidence.

(c) The parties may offer at a hearing on the merits such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and manner of presentation of such evidence. In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

§ 962.6 Notice of hearing.

(a) Within a reasonable time after receiving the Respondent's Hearing Petition and the Complaint, the Presiding Officer shall serve, in accordance with § 962.23, upon the Respondent and the Reviewing Official, a Notice of Hearing containing the information set forth in paragraph (b) of this section.

(b) The Notice of Hearing required by paragraph (a) of this section must include:

(1) The tentative hearing site, date, and time;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The nature of the hearing;

(4) The matters of fact and law to be decided;

(5) A description of the procedures governing the conduct of the hearing; and

(6) Such other information as the Presiding Officer deems appropriate.

§ 962.7 Hearing location.

An oral hearing under this part shall be held

(a) In the judicial district of the United States in which the Respondent resides or transacts business; or

(b) In the judicial district of the United States in which the claim or statement upon which the allegation of liability under 31 U.S.C. 3802 was made, presented, or submitted; or

(c) In such other place as may be agreed upon by the Respondent and the Presiding Officer.

§ 962.8 Rights of parties.

Any party to a hearing under this part shall have the right

(a) To be accompanied, represented, and advised, by a representative of his own choosing;

(b) To participate in any prehearing or post-hearing conference held by the Presiding Officer;

(c) To agree to stipulations of fact or law, which shall be made part of the record;

(d) To make opening and closing statements at the hearing;

(e) To present oral and documentary evidence relevant to the issues at the hearing;

(f) To submit rebuttal evidence;

(g) To conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(h) To submit written briefs, proposed findings of fact, and proposed conclusions of law.

§ 962.9 Responsibilities and authority of presiding officer.

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid delay, maintain order, and assure that a record of the proceeding is made.

(b) The Presiding Officer's authority includes, but is not limited to, the following:

(1) Establishing, upon adequate notice to all parties, the date and time of the hearing, as well as, in accordance with § 962.7, selecting the hearing site;

(2) Holding conferences, by telephone or in person, to identify or simplify the issues, or to consider other matters that may aid in the expeditious disposition of the proceeding;

(3) Continuing or recessing the hearing in whole or in part for a reasonable period of time;

(4) Administering oaths and affirmations to witnesses;

(5) Issuing subpoenas, requiring the attendance and testimony of witnesses and the production of all information, documents, reports, answers, records, accounts, papers, and other data and

documentary evidence which the Presiding Officer considers relevant and material to the hearing;

(6) Ruling on all offers, motions, requests by the parties, and other procedural matters;

(7) Issuing any notices, orders, or memoranda to the parties concerning the proceedings;

(8) Regulating the scope and timing of discovery;

(9) Regulating the course of the hearing and the conduct of the parties and their representatives;

(10) Examining witnesses;

(11) Receiving, ruling on, excluding, or limiting evidence in order to assure that relevant, reliable and probative evidence is elicited on the issues in dispute, but irrelevant, immaterial or repetitious evidence is excluded;

(12) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;

(13) Establishing the record in the case; and

(14) Issuing a written initial decision containing findings of fact, conclusions of law, and determinations with respect to whether a penalty or assessment should be imposed, and if so, the amount of such penalty or assessment.

§ 962.10 Prehearing conferences.

(a) At a reasonable time in advance of the hearing, and with adequate notice to all parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conference to discuss the following:

(1) Simplification of the issues;

(2) The necessity or desirability of amendments to the pleadings, including the need for a more definite statement;

(3) Stipulations or admissions of fact or as to the contents and authenticity of documents;

(4) Limitation of the number of witnesses;

(5) Exchange of witness lists, copies of prior statements of witnesses, and copies of hearing exhibits;

(6) Scheduling dates for the exchange of witness lists and of proposed exhibits;

(7) Discovery;

(8) Possible changes in the scheduled hearing date, time or site; and

(9) Any other matters related to the proceeding.

(b) Within a reasonable time after the completion of a prehearing conference, the Presiding Officer shall issue an order detailing all matters agreed upon by the parties, or ordered by the Presiding Officer, at such conference.

§ 962.11 Respondent access to information.

(a)(1) Except as provided in paragraph (a)(2) of this section, the Respondent, at any time after receiving the Notice of Hearing required by § 962.6, may review, and upon payment of a duplication fee established under § 265.8(c) of this title, may obtain a copy of, all relevant and material documents, transcripts, records, and other materials, which relate to the allegations of liability, and upon which the findings and conclusions of the Investigating Official under § 273.5 of this title are based.

(2) The Respondent is not entitled to review or obtain a copy of any document, transcript, record, or other material which is privileged under Federal law.

(b) At any time after receiving the Notice of Hearing required by § 962.6, the Respondent shall be entitled to obtain all exculpatory information in the possession of the Investigating Official or the Reviewing Official relating to the allegations or liability under 31 U.S.C. 3802. Paragraph (a)(2) of this section does not apply to any document, transcript, record, or other material, or any portion thereof, in which such exculpatory information is contained.

(c) Requests to review or copy material under this section must be directed to the Reviewing Official who must respond within a reasonable time.

§ 962.12 Depositions; interrogatories; admission of facts; production and inspection of documents.

(a) *General Policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the Presiding Officer may issue

any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a Notice of Hearing described in § 962.6, the parties may mutually agree to, or the Presiding Officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the Presiding Officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted for a decision on the record, the Presiding Officer may, in his discretion, receive depositions as evidence in supplementation of that record.

(c) *Interrogatories to parties.* After the issuance of a Notice of Hearing described in § 962.6, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 30 days. Upon timely objection by the party, the Presiding Officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* After the issuance of a Notice of Hearing described in § 962.6, a party may serve upon the other party a request for the admission of specified facts. Within 30 days after service, the party served shall answer each requested fact or file objections thereto. The factual propositions set out in the request shall be deemed admitted upon the failure of a party to respond to the request for admission.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the Presiding Officer may order the other party to produce and permit the inspection and copying or photographing of any designated documents or objects, not privileged, specifically identified, and their relevance and materiality to the cause or causes in issue explained, which are reasonably calculated to lead to the discovery or admissible evidence. If the parties cannot themselves agree thereon, the Presiding Officer shall specify just terms and conditions in making the inspection and taking the copies and photographs.

(f) *Limitations.* Under no circumstances may a discovery procedure be used to reach

(1) Documents, transcripts, records, or other material which a person is not entitled to review pursuant to § 962.11;

(2) The notice sent to the Attorney General from the Reviewing Official under § 273.6 of this title; or

(3) Other documents which are privileged under Federal law.

[52 FR 12904, Apr. 20, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 962.13 Subpoenas.

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the Presiding Officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where he resides or is employed or transacts his business in person, or at another location convenient for him that is specifically determined by the Presiding Officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of books and papers.* In addition to paragraphs (a)(1) and (a)(2)

of this section, the production by the witness at the deposition or hearing of books and papers designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected (1) to cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and (2) to secure voluntary attendance of desired third-party books, papers, documents, or other tangible things whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall normally be filed at least:

(i) 15 days before a scheduled deposition where the attendance of a witness at a deposition is sought;

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any books, papers, documents, or other tangible things sought.

(3) The Presiding Officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the Presiding Officer may (1) quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or (2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed books and papers. Where circumstances require, the Presiding Officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 31 U.S.C. 3804(b) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified books and papers at a time and place therein specified. In issuing a subpoena to a requesting party, the Presiding Officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) Where the witness is located in a foreign country, a letter rogatory or subpoena may be issued and served under the circumstances and in the manner provided in 28 U.S.C. 1781–1784.

(f) *Service.* (1) The party requesting issuance of a subpoena shall arrange for service.

(2) A subpoena requiring the attendance of a witness at a deposition or hearing may be served at any place. A subpoena may be served by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by personally delivering a copy to that person and tendering the fees for one day's attendance and the mileage provided by 28 U.S.C. 1821 or other applicable law.

(3) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the Presiding Officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

[52 FR 12904, Apr. 20, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 962.14 Enforcement of subpoenas.

In the case of contumacy or refusal to obey a subpoena issued pursuant to §§ 962.9(b)(5) and 962.13, the district courts of the United States have jurisdiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section, the Postal Service shall request the Attorney General to petition the district court for the district in which a hearing under this part is being conducted or in which the person receiving the subpoena resides or conducts business to issue such an order.

§ 962.15 Sanctions.

(a) The Presiding Officer may sanction a person, including any party or representative, for

(1) Failing to comply with a lawful order or prescribed procedure;

(2) Failing to prosecute or defend an action; or

(3) Engaging in other misconduct that interferes with the speedy, orderly, or fair conduct of the hearing.

(b) Any such sanction, including but not limited to those listed in paragraphs (c), (d), and (e) of this section, shall reasonably relate to the severity and nature of the failure or misconduct.

(c) Failure to comply with an order. When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, or a request for admission, the Presiding Officer may:

(1) Draw an inference in favor of the requesting party with regard to the information sought;

(2) Prohibit such party from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought;

(3) Permit the requesting party to introduce secondary evidence concerning the information sought; and

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(d) Failure to prosecute or defend. If a party fails to prosecute or defend an action under this part commenced by service of a Complaint, the Presiding Officer may dismiss the action or enter an order of default.

(e) Failure to make timely filing. The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 962.16 Disqualification of reviewing official or presiding official.

If a Respondent believes, in good faith, that the Reviewing Official or Presiding Officer should be disqualified because of personal bias, or other reason, the Respondent may file a timely and sufficient affidavit alleging such belief with supporting evidence. If the Presiding Officer finds that such allegations concerning the Reviewing Official are meritorious, he may direct the Reviewing Official to disqualify himself and request the appointment of a new Reviewing Official. Where a Respondent seeks the disqualification of a Presiding Officer, such Presiding Officer, may, in his discretion, disqualify himself at any time during the proceeding. In the event a Reviewing Official or Presiding Officer withdraws from a hearing, the proceeding shall be stayed until the assignment of a new Reviewing Official or Presiding Officer.

§ 962.17 Ex parte communications.

Communications between a Presiding Officer and a party shall not be made on any matter in issue unless on notice and opportunity for all parties to participate. This prohibition does not apply to procedural matters. A memorandum of any communication between the Presiding Officer and a party shall be transmitted by the Presiding Officer to all parties.

§ 962.18 Post-hearing briefs.

Post-hearing briefs and reply briefs may be submitted upon such terms as established by the Presiding Officer at the conclusion of the hearing.

§ 962.19 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Presiding Officer orders otherwise. Transcripts or copies of the proceedings may be obtained by the parties at such rates as may be fixed by contract between the reporter and the Postal Service.

§ 962.20 Initial decision.

(a) After the conclusion of the hearing, and the receipt of briefs, if any, from the parties, the Presiding Officer shall issue a written initial decision, including his or her findings and determinations. Such decision shall include the findings of fact and conclusions of law which the Presiding Officer relied upon in determining whether the Respondent is liable under 31 U.S.C. 3802, and, if liability is found, shall set forth the amount of any penalties and assessments imposed.

(b) The Presiding Officer shall promptly send to each party a copy of

his or her initial decision, and a statement describing the right of any person determined to be liable under 31 U.S.C. 3802, to appeal, in accordance with § 962.21, the decision of the Presiding Officer to the Judicial Officer.

(c) Unless the Respondent appeals the Presiding Officer's initial decision, such decision, including the findings and determinations, is final.

§ 962.21 Appeal of initial decision to judicial officer.

(a) *Notice of appeal and supporting brief.* (1) A Respondent may appeal an adverse initial decision by filing, within 30 days after the Presiding Officer issues an initial decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period if the Respondent files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(2) The Respondent's Notice of Appeal must be accompanied by a written brief specifying the Respondent's exceptions, and any reasons for such exceptions, to the Presiding Officer's initial decision.

(3) Within 30 days of receiving the Respondent's brief, the Reviewing Official may file with the Judicial Officer a response to the Respondent's specified exceptions to the Presiding Officer's initial decision.

(b) *Form of review.* (1) Review by the Judicial Officer will be based entirely on the record and written submissions.

(2) The Judicial Officer may affirm, reduce, reverse, or remand any penalty or assessment determined by the Presiding Officer.

(3) The Judicial Officer shall not consider any objection that was not raised in the hearing unless the interested party demonstrates that the failure to raise the objection before the Presiding Officer was caused by extraordinary circumstances.

(4) If any party demonstrates to the satisfaction of the Judicial Officer that additional evidence not presented at the hearing is material and that there were reasonable grounds for the failure to present such evidence, the Judicial Officer shall remand the matter to the Presiding Officer for consideration of such additional evidence.

(c) *Decision of judicial officer.* (1) The Judicial Officer shall promptly serve each party to the appeal with a copy of his decision and a statement describing the right to judicial review under 31 U.S.C. 3805 of any Respondent determined to be liable under 31 U.S.C. 3802.

(2) The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties 60 days after it is issued unless a petition for judicial review is filed.

[52 FR 12904, Apr. 20, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 962.22 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must

(1) Contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), and a designation of the document (e.g., ''Motion to Quash Subpoena'');

(2) Contain the name, address, and telephone number of the party or other person on whose behalf the paper was filed, or the name, address and telephone number of the representative who prepared such paper; and

(3) Be signed by the party or other person submitting the document, or by such party's or person's representative.

(b) The original and three copies of all pleadings and documents in a proceeding conducted under this part shall be filed with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. Normal Recorder business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time. The Recorder will transmit a copy of each document filed to the other party, and the original to the Presiding Officer.

(c) Pleadings or document transmittals to, or communications with, the Postal Service, other than to the Recorder under paragraph (b) of this section, shall be made through the Reviewing Official or designated Postal

Service attorney. If a notice of appearance by a representative is filed on behalf of a Respondent, pleadings or document transmittals to, or communications with, the Respondent shall be made through his representative.

[52 FR 12904, Apr. 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 962.23 Service of notice of hearing, other documents.

Unless otherwise specified, service of a Notice of Hearing or any other document under this part must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the party or other person sought to be served, or his or her agent, a written acknowledgement of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

§ 962.24 Computation of time.

(a) In computing any period of time provided for by this part, or any order issued pursuant to this part, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or legal holiday observed by the Federal Government, in which event it includes the next business day.

(b) When the applicable period of time is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal Government shall be excluded from the computation.

§ 962.25 Continuances and extensions.

Continuances and extensions may be granted under these rules for good cause shown.

§ 962.26 Settlement.

(a) Either party may make offers of settlement or proposals of adjustment at any time.

(b) The Reviewing Official has the exclusive authority to compromise or settle any allegations or determinations of liability under 31 U.S.C. 3802 without the consent of the Presiding Officer, except during the pendency of an appeal to the appropriate United States district court pursuant to 31 U.S.C. 3805 or during the pendency of an action to collect any penalties or assessments pursuant to 31 U.S.C. 3806.

(c) The Attorney General has the exclusive authority to compromise or settle any penalty or assessment the determination of which is the subject of a pending petition for judicial review, or a pending action to recover such penalty or assessment.

(d) The Reviewing Official may recommend settlement terms to the Attorney General, as appropriate.

[59 FR 51860, Oct. 13, 1994]

§ 962.27 Limitations.

A hearing under this part concerning a claim or statement allegedly made, presented, or submitted in violation of 31 U.S.C. 3802 shall be commenced within six years after the date on which such claim or statement is made, presented, or submitted.

PART 963—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO VIOLATIONS OF THE PANDERING ADVERTISEMENTS STATUTE, 39 U.S.C. 3008

Sec.

963.1 Authority for the rules.
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963.3 Petition; notice of hearing; answer; filing and copies of documents; summary judgment.
963.4 Presiding Officer.
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AUTHORITY: 39 U.S.C. 204, 401, 3008.

SOURCE: 52 FR 18912, May 20, 1987, unless otherwise noted.

§ 963.1 Authority for the rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 226.2(e)(1)).

[52 FR 18912, May 20, 1987, as amended at 59 FR 10751, Mar. 8, 1994]

§ 963.2 Scope of the rules.

These rules of practice are applicable to cases in which the Prohibitory Order Processing Center Manager (hereinafter, ''Manager'') has issued a complaint, pursuant to 39 U.S.C. 3008(d), alleging violation of a prohibitory order, and in which the alleged violator has petitioned for a hearing in the matter. As provided in 39 U.S.C. 3008(h), subchapter II of chapter 5 (relating to administrative procedure) and chapter 7 (relating to judicial review) of part I of title 5, U.S.C., do not apply to the hearings authorized by 39 U.S.C. 3008(d).

[52 FR 18912, May 20, 1987, as amended at 59 FR 10751, Mar. 8, 1994, 62 FR 4459, Jan. 30, 1997]

§ 963.3 Petition; notice of hearing; answer; filing and copies of documents; summary judgment.

(a) *Petition.* Anyone against whom a complaint has been issued pursuant to 39 U.S.C 3008(d) may submit to the Manager a petition for hearing on the alleged violation. The petition must be in writing, signed by the petitioner or his or her attorney, and filed with the Manager on or before the 15th day after receipt of the complaint. The petition shall state the reasons why the petitioner believes the complaint to be erroneous. No petition received after the 15th day will be considered to have been filed on time, unless it was duly sent to the Manager via certified mail, deposited in the U.S. mail on or before the 15th day. The Manager will forward each timely petition to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(b) *Notice of hearing.* Upon receiving a petition, the Recorder shall schedule a hearing for a date not later than 30 days after the date of receipt, issue and send a notice of hearing to the parties, and send a copy of the petition to the General Counsel of the U.S. Postal Service.

(c) *Answer.* The General Counsel shall file with the Recorder an answer to the petition within 15 days after the date of receiving a copy thereof. A certified copy of the material documents from the Manager's case file (i.e., of the PS Forms 1500, *Application for Listing and/or Prohibitory Order,* 2152, *Prohibitory Order,* and 2153, *Complaint,* underlying mail pieces, and pertinent return receipts) shall be appended to the answer.

(d) *Filing and copies of documents.* With the exception of the initial petition, all documents shall be filed with the Recorder in triplicate at the address set forth above. The Recorder shall promptly provide copies to the other party to the proceeding and to the presiding officer.

(e) *Summary Judgment.* Upon motion of either the General Counsel or the petitioner, or on his or her own initiative, the presiding officer may find that the petition and answer present no genuine and material issues of fact requiring an evidentiary hearing, and thereupon may render an initial decision upholding or dismissing the complaint. The initial decision shall become the final agency decision if a timely appeal is not taken.

[52 FR 18912, May 20, 1987; 52 FR 20599, June 2, 1987, as amended at 59 FR 10752, Mar. 8, 1994; 62 FR 4459, Jan. 30, 1997; 63 FR 66053, Dec. 1, 1998]

§ 963.4 Presiding Officer.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his or her own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary properly to preside over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

§ 963.5 Appearances.

(a) *Petitioner.* A petitioner may appear and be heard in person or by attorney. An attorney may practice before the Postal Service in accordance with applicable rules issued by the Judicial Officer (see Part 951 of this chapter). When a petitioner is represented by an attorney, all pleadings and other papers to be served on petitioner after entry of the attorney's appearance shall be mailed to the attorney. A petitioner must promptly file notice of any change of attorney.

(b) *Postal Service.* The Postal Service will be represented by its General Counsel or any attorney designated by the General Counsel.

§ 963.6 Computation of time.

A designated period of time under these rules means calendar days, excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the close of business on the next business day.

§ 963.7 Location of hearing.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer.

[63 FR 66053, Dec. 1, 1998]

§ 963.8 Change of place of hearing.

Not later than the date fixed for the filing of the answer, a party may file a request that a hearing be held to receive evidence in his or her behalf at a place other than that designated for hearing in the notice. The party shall support his or her request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify;

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall consider the convenience and necessity of the parties and the relevance of the evidence to be offered.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997; 63 FR 66053, Dec. 1, 1998]

§ 963.9 Election as to hearing.

If both parties elect, an oral hearing may be waived and the matter submitted for decision on the basis of the petition and answer, and of any documentary evidence or briefs requested by the presiding officer. The written election to waive oral hearing must be received by the Recorder no later than 10 days prior to the scheduled hearing date.

§ 963.10 Continuances and extensions.

Continuances and extensions will be granted by the presiding officer for good cause shown.

§ 963.11 Default.

If a petitioner, without notice or cause satisfactory to the presiding officer, fails to appear at the hearing or comply with any of the provisions of these rules or an order issued by the presiding officer, the petitioner may be deemed to have abandoned his or her petition and to have acquiesced in the allegations of the complaint. The presiding officer thereupon may find the petitioner to be in default and refer the matter to the Judicial Officer for dismissal of the petition.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

§ 963.12 Settlement agreements.

These rules do not preclude the disposition of any matter by agreement between the parties at any stage of the proceeding.

§ 963.13 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a petitioner's witnesses or for depositions requested by a petitioner.

§ 963.14 Discovery.

Discovery is to be conducted on a voluntary basis to the extent possible. The presiding officer may, upon application of either party, order such discovery as he or she deems reasonable and necessary. Discovery may include one or more of the following: production of documents, requests for admissions, interrogatories, depositions, and witness lists. The presiding officer will establish the terms upon which requested discovery will be allowed.

[52 FR 18912, May 20, 1987, as amended at 62 FR 4459, Jan. 30, 1997]

§ 963.15 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements of fact are encouraged and may be received in evidence.

§ 963.16 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

§ 963.17 Proposed findings of fact and conclusions of law.

(a) Each party who participates in the hearing may, unless the presiding officer orders otherwise, submit proposed findings of fact, conclusions of law, orders, and supporting reasons, either in writing or orally at the discretion of the presiding officer. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders, and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder, who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders, and supporting reasons shall be the same for both parties. If not submitted by such date, unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed findings. Each proposed conclusion shall be stated separately.

[52 FR 18912, May 20, 1987; 52 FR 20599, June 2, 1987]

§ 963.18 Initial decision.

Unless given orally at the conclusion of the hearing, the presiding officer shall render an initial decision as expeditiously as practicable following the conclusion of the hearing and the receipt of the proposed findings and conclusions, if any. The initial decision becomes the final agency decision if a timely appeal is not taken.

§ 963.19 Appeal.

Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after the receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues de novo.

§ 963.20 Final agency decision.

The Judicial Officer, or by delegation the Associate Judicial Officer, renders

the final agency decision which will be served upon the parties. If the decision is that the Postal Service's prohibitory order was violated, the Recorder shall provide a certified copy of the record to the General Counsel for use in seeking court enforcement of the order.

§ 963.21 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

§ 963.22 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[52 FR 18912, May 20, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

PART 964—RULES OF PRACTICE GOVERNING DISPOSITION OF MAIL WITHHELD FROM DELIVERY PURSUANT TO 39 U.S.C. 3003, 3004

Sec.

964.1 Authority for rules.
964.2 Scope of rules.
964.3 Customer petitions; notice of hearing; answer; summary judgment.
964.4 Hearings.
964.5 Election as to hearing.
964.6 Default.
964.7 Presiding officers.
964.8 Subpoenas and witness fees not authorized.
964.9 Discovery; interrogatories; admission of facts; production; and inspection of documents.
964.10 Evidence.
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964.16 Appeal.
964.17 Final agency decision.
964.18 Compromise and informal disposition.
964.19 Orders.
964.20 Modification or revocation of orders.
964.21 Official record.
964.22 Public information.
964.23 Ex Parte communications.

AUTHORITY: 39 U.S.C. 204, 401, 3003, 3004.

SOURCE: 52 FR 36763, Oct. 1, 1987, unless otherwise noted.

§ 964.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the United States Postal Service pursuant to authority delegated by the Postmaster General (39 CFR 224.1(c)(4)).

[52 FR 36763, Oct. 1, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 964.2 Scope of rules.

The rules in this part provide for administrative review of cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3003(a), has withheld from delivery mail which he believes is involved in a scheme described in section 3003(a), and cases in which the Chief Postal Inspector or his delegate, acting pursuant to 39 U.S.C. 3004, determines that letters or parcels sent in the mail are addressed to places not the residence or regular business address of the person for whom they are intended to enable the person to escape identification.

[52 FR 36763, Oct. 1, 1987, as amended at 67 FR 62179, Oct. 4, 2002]

§ 964.3 Customer petitions; notice of hearing; answer; summary judgment.

(a) *Petition*. Any addressee who receives notice from the Chief Postal Inspector or his delegate that his mail has been withheld pursuant to 39 U.S.C. 3003(a) or 3004 may oppose such action by filing with the Judicial Officer a written Petition stating the reasons for his or her opposition. The Petition, signed by the Petitioner or his attorney, shall be filed by sending the Petition via certified mail to the Recorder, Judicial Officer Department, U.S. Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The Petition must be postmarked within 14 days of the date upon which the Petitioner received the notice. The failure of an addressee who has received notice of withheld mail to file a Petition opposing such action with the Judicial Officer shall constitute a waiver of hearing and further procedural steps by the addressee. The Chief Postal Inspector or his or her designee of the Postal Service shall thereupon file the matter

with the Judicial Officer for issuance of a final order pursuant to §964.19. Such referral shall contain a statement of the basis for the detention, evidence that the notice of the detention and the addressee's right to petition for review under this part were served on the addressee in person or by mailing a copy to the address to which the detained mail is directed, the date of such service, and a copy of the proposed order sought by the Chief Postal Inspector or his or her designee.

(b) *Notice of hearing.* On receipt of the Petition, the Recorder shall schedule a hearing on a date not later than 28 days after the date of receipt. A Notice of Hearing shall be sent to the Petitioner. A copy of the Notice of Hearing and the Petition shall be sent to the Chief Postal Inspector or his or her designee of the U.S. Postal Service.

(c) *Answer.* The Chief Postal Inspector or his or her designee of the Postal Service shall file an Answer to the Petition within 10 days of receipt of the Petition from the Recorder.

(d) *Summary judgment.* Upon motion of either the Chief Postal Inspector or his or her designee or the Petitioner, or upon his own initiative, the presiding officer may find that the Petition and Answer present no material issues of fact requiring an evidentiary hearing and thereupon may render an initial decision granting or dismissing the Petition. The initial decision shall become the final agency decision if a timely appeal is not taken pursuant to §964.16 of this part.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988; 63 FR 66053, Dec. 1, 1998; 71 FR 53972, Sept. 13, 2006]

§964.4 Hearings.

Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or other locations designated by the presiding officer. Not later than 10 days prior to the date fixed for the hearing, a party may file a request that a hearing be held to receive evidence in his behalf at a place other than that designated for hearing in the notice. He shall support his request with a statement outlining:

(a) The evidence to be offered in such place;

(b) The names and addresses of the witnesses who will testify; and

(c) The reasons why such evidence cannot be produced at Arlington, VA.

The presiding officer shall give consideration to the convenience and necessity of the parties and the relevance of the evidence to be offered

[52 FR 36763, Oct. 1, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§964.5 Election as to hearing.

If both parties elect, they may waive an oral hearing and submit the matter for decision on the basis of the Petition and Answer, subject to the authority of the presiding officer to require the parties to furnish such further evidence or such briefs as necessary. The request to waive oral hearing should be filed not later than 10 days prior to the date set for hearing.

§964.6 Default.

If a Petitioner fails to appear at the hearing without notice or without adequate cause the presiding officer may issue an order dismissing the Petition and refer the matter to the Judicial Officer for issuance of the order provided for under §964.19. An order of dismissal issued under this section may be appealed to the Judicial Officer within 10 days from the date of the order.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§964.7 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law. The Judicial Officer shall assign cases upon rotation as far as practicable. The Judicial Officer may on his own initiative or for good cause shown, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Administer oaths and affirmations;

(2) Examine witnesses;

(3) Rule upon offers of proof, admissibility of evidence and matters of procedure;

(4) Order any pleadings amended upon motion of a party at any time prior to the close of the hearing;

(5) Maintain discipline and decorum and exclude from the hearing any person acting in an indecorous manner;

(6) Require the filing of briefs or memoranda of law on any matter upon which he is required to rule;

(7) Order prehearing conferences for the purpose of the settlement or simplification of issues by the parties or for any other purpose he believes will facilitate the processing of the proceeding;

(8) Order the proceeding reopened at any time prior to his decision for the receipt of additional evidence;

(9) Render an initial decision, which becomes the final agency decision unless a timely appeal is taken: The Judicial Officer may issue a tentative or a final decision;

(10) Rule upon applications and requests filed under § 964.9 of this part.

§ 964.8 Subpoenas and witness fees not authorized.

The Postal Service is not authorized to issue subpoenas requiring the attendance or testimony of witnesses, nor to pay fees and expenses for a Petitioner's witnesses or for depositions requested by a Petitioner.

§ 964.9 Discovery; interrogatories; admission of facts; production and inspection of documents.

(a) *General policy and protective orders.* The parties are encouraged to engage in voluntary discovery procedures. In connection with any discovery procedure permitted under this part, the presiding officer may issue any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. Such orders may include limitations on the scope, method, time and place for discovery, and provisions for protecting confidential information or documents from unwarranted public disclosure. Each party shall bear its own expenses relating to discovery.

(b) *Depositions.* (1) After the issuance of a notice of hearing described in § 964.3 of this part, the parties may mutually agree to, or the presiding officer may, upon application of either party and for good cause shown, order the taking of testimony of any person by deposition upon oral examination or written interrogatories before any officer authorized to administer oaths at the place of examination, for use as evidence or for purposes of discovery. The application for order shall specify whether the purpose of the deposition is discovery or for use as evidence, or both.

(2) The time, place, and manner of taking depositions shall be as mutually agreed by the parties, or failing such agreement, governed by order of the presiding officer.

(3) No testimony taken by depositions shall be considered as part of the evidence in the hearing unless and until such testimony is offered and received in evidence at such hearing. Depositions will not ordinarily be received in evidence if the deponent is present and can testify personally at the hearing. In such instances, however, the deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the record, the presiding officer may, in his discretion, receive depositions as evidence in supplementation of the record.

(c) *Interrogatories to parties.* Not later than 5 days after the filing of the Answer described in § 964.3, a party may serve on the other party written interrogatories to be answered separately in writing, signed under oath and returned within 10 days. Upon timely objection by the party, the presiding officer will determine the extent to which the interrogatories will be permitted.

(d) *Admission of facts.* Not later than 5 days after the filing of the Answer described in § 964.3, a party may serve upon the other party a request for the admission of specified facts. Within 10 days after receipt of the request for admissions, the party served shall admit or answer each specified fact or file objections thereto. Any factual propositions set out in the request to which a party fails to respond shall be deemed admitted.

(e) *Production and inspection of documents.* Upon motion of any party showing good cause therefor, and upon notice, the presiding officer may order the other party to produce and permit the inspection and copying or

photographing of any designated documents and or objects, provided that such documents and objects are not privileged, their relevance to the cause or causes in issue is explained, and they are reasonably calculated to lead to the discovery of admissible evidence. If the parties cannot themselves agree thereon, the presiding officer shall specify the terms and conditions for making the inspection and taking the copies and photographs.

§ 964.10 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses shall be subject to cross-examination.

(c) Agreed statements of fact are encouraged and may be received in evidence.

§ 964.11 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer orders otherwise. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service. Any party desiring a copy of the transcript shall order it from the contract reporter in a timely manner to avoid delay in filing briefs.

§ 964.12 Computation of time.

A designated period of time under these rules means calendar days, excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which case the period runs until the close of business on the next business day.

§ 964.13 Continuances and extensions.

Continuances and extensions will be granted by the presiding officer for good cause shown.

§ 964.14 Proposed findings of fact and conclusions of law.

(a) Each party to a proceeding, except one who fails to answer the Petition or, having answered, either fails to appear at the hearing or indicates in the answer that he does not desire to appear, may, unless at the discretion of the presiding officer such is not appropriate, submit proposed findings of fact, conclusions of law, orders and supporting reasons either in oral or written form in the discretion of the presiding officer. The presiding officer may also require parties to submit proposed findings of fact, conclusions of law, orders, and supporting reasons. Unless given orally, the date set for filing of proposed findings of fact, conclusions of law, orders and supporting reasons shall be within 15 days after the delivery of the official transcript to the Recorder who shall notify both parties of the date of its receipt. The filing date for proposed findings of fact, conclusions of law, orders and supporting reasons shall be the same for both parties. If not submitted by such date, unless extension of time for the filing thereof is granted, they will not be included in the record or given consideration.

(b) Except when presented orally before the close of the hearing, proposed findings of fact shall be set forth in serially numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits supporting the proposed finding. Each proposed conclusion shall be separately stated.

§ 964.15 Decisions.

(a) *Initial decision by Administrative Law Judge.* A written initial decision shall be rendered by an Administrative Law Judge with all due speed. The initial decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented in the record, and the appropriate orders or denial thereof. The initial decision shall become the final agency decision unless an appeal is taken in accordance with § 964.16.

(b) *Tentative or final decision by the Judicial Officer.* When the Judicial Officer presides at the hearing he shall

issue a final or a tentative decision. Such decision shall include findings and conclusions with the reasons therefor upon all the material issues of fact or law presented in the record, and the appropriate orders or denial thereof. The tentative decision shall become the final agency decision unless exceptions are filed in accordance with § 964.16.

§ 964.16 Appeal.

(a) Either party may file exceptions in a brief on appeal to the Judicial Officer within 15 days after receipt of the initial or tentative decision unless additional time is granted. A reply brief may be filed within 15 days after receipt of the appeal brief by the opposing party. The Judicial Officer has all powers of a presiding officer and is authorized to decide all issues *de novo.*

(b) Briefs upon appeal or in support of exceptions to a tentative decision by the Judicial Officer and replies thereto shall be filed in triplicate with the Recorder and contain the following matter in the order indicated:

(1) A subject index of the matters presented, with page references; a table of cases alphabetically arranged; a list of statutes and texts cited with page references.

(2) A concise abstract or statement of the case in briefs on appeal or in support of exceptions.

(3) Numbered exceptions to specific findings and conclusions of fact, conclusions of law, or recommended orders of the presiding officer in briefs on appeal or in support of exceptions.

(4) A concise argument clearly setting forth points of fact and of law relied upon in support of or in opposition to each exception taken, together with specific references to the parts of the record and the legal or other authorities relied upon.

§ 964.17 Final agency decision.

The Judicial Officer renders the final agency decision and order which will be served upon the parties and upon the postmaster at the office where the mail at issue is being held.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§ 964.18 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 964.19 Orders.

If an order is issued by the Judicial Officer which prohibits delivery of mail to a Petitioner it shall be incorporated in the record of the proceeding. The Recorder shall cause notice of the order to be published in the *Postal Bulletin* and cause the order to be transmitted to such postmasters and other officers and employees of the Postal Service as may be required to place the order into effect.

[52 FR 36763, Oct. 1, 1987, as amended at 53 FR 4849, Feb. 18, 1988]

§ 964.20 Modification or revocation of orders.

A party against whom an order or orders have been issued may file an application for modification or revocation thereof. The Recorder shall transmit a copy of the application to the Chief Postal Inspector or his or her designee, who shall file a written reply within 10 days after receipt or such other period as the Judicial Officer may fix. A copy of the reply shall be sent to the applicant by the Recorder. Thereafter an order granting or denying such application will be issued by the Judicial Officer.

[52 FR 36763, Oct. 1, 1987, as amended at 71 FR 53972, Sept. 13, 2006]

§ 964.21 Official record.

The transcript of testimony together with all pleadings, orders, exhibits, briefs, and other documents filed in the proceeding constitute the official record of the proceeding.

§ 964.22 Public information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders.

The Recorder maintains the complete official record of every proceeding.

[52 FR 36763, Oct. 1, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§964.23 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications are made applicable to proceedings under these rules of practice.

PART 965—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO MAIL DISPUTES

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AUTHORITY: 39 U.S.C. 204, 401.

SOURCE: 52 FR 29012, Aug. 5, 1987, unless otherwise noted.

§965.1 Authority for rules.

These rules of practice are issued by the Judicial Officer of the U.S. Postal Service pursuant to authority delegated by the Postmaster General. (39 CFR 224.1(c)(4)).

§965.2 Scope of rules.

The rules in this part shall be applicable to mail dispute cases forwarded to the Judicial Officer Department by the chief field counsel pursuant to Postal Operations Manual section 616.21.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§965.3 Notice to parties.

Upon receipt of a mail dispute case from the chief field counsel, the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington VA 22201–3078, will send a notice of docketing and submittal due date to the parties together with a copy of these rules.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998; 67 FR 62179, Oct. 4, 2002]

§965.4 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge or an Administrative Judge qualified in accordance with law. The Judicial Officer assigns cases under this part. Judicial Officer includes Associate Judicial Officer upon delegation thereto. The Judicial Officer may, on his own initiative or for good cause found, preside at the reception of evidence.

(b) The presiding officer has authority to:

(1) Take such action as may be necessary to preside properly over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer, which becomes the final agency decision unless a timely appeal is taken; the Judicial Officer may issue a tentative or a final decision.

§965.5 Submittals by parties.

Within 15 days after receipt of the Recorder's notice, each party shall file with the Recorder a sworn statement of the facts supporting its claim to receipt of the mail together with a copy of each document on which it relies in making such claim. All such submittals shall be in duplicate. Upon receipt of such evidence, the Recorder shall send a copy of each submittal to the opposing party.

§965.6 Comments by parties.

Within 10 days of receipt of the other party's evidence, each party may file with the Recorder a statement setting forth in detail its disagreements, if any, with its opponent's statement and documents. The Recorder will send to each party a copy of the other party's comments.

§965.7 Default.

A party who fails to file the submittal required by §965.5 may be held in default and the presiding officer may issue an initial decision that mail be delivered to the other party.

§ 965.8 Hearings.

(a) In the discretion of the presiding officer an oral hearing may be granted at the request of either, or both, parties or on the presiding officer's own initiative if there is a dispute as to a material issue of fact which can only be resolved by examination of witnesses.

(b) Hearings are held at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078, or such other place as may be designated by the presiding officer.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

§ 965.9 Evidence.

(a) In general, admissibility will hinge on relevancy and materiality. However, relevant evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Testimony shall be given under oath or affirmation and witnesses are subject to cross-examination.

(c) Agreed statements to fact are encouraged and may be received in evidence.

§ 965.10 Transcript.

Testimony and argument at hearings shall be reported verbatim, unless the presiding officer otherwise orders. Transcripts or copies of the proceedings are supplied to the parties at such rate as may be fixed by contract between the reporter and Postal Service.

§ 965.11 Initial decision.

The presiding officer shall render an initial decision in writing, based on the record, as expeditiously as possible, but to the extent practicable within 10 working days of closing of the record. The decision will be brief, containing summary findings of fact, conclusions of law, and reasons therefor. If there has been a hearing the presiding officer may in his discretion render an oral decision. A typed copy of such oral decision will subsequently be furnished to the parties to establish the date for commencement of time for requesting review of the initial decision.

§ 965.12 Appeal.

The initial or tentative decision will become final 10 days after its issuance and receipt by the parties unless the Judicial Officer, or by delegation the Associate Judicial Officer, in his sole discretion, grants review upon appeal of either party filed within that period, or on his own motion within that period. If an appeal is denied, the initial or tentative decision becomes the final agency decision on the issuance of such denial. The judicial Officer's decision on appeal is the final agency decision with no further agency review or appeal rights.

§ 965.13 Compromise and informal disposition.

Nothing in these rules precludes the compromise, settlement, and informal disposition of proceedings initiated under these rules at any time prior to the issuance of the final agency decision.

§ 965.14 Public Information.

The Librarian of the Postal Service maintains for public inspection in the Library copies of all initial, tentative, and final agency decisions and orders. The Recorder maintains the complete official record of every proceeding.

[52 FR 29012, Aug. 5, 1987, as amended at 63 FR 66053, Dec. 1, 1998]

PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED AGAINST FORMER EMPLOYEES OF THE POSTAL SERVICE

Sec.

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AUTHORITY: 39 U.S.C. 204, 401, 2601.

SOURCE: 62 FR 63279, Nov. 28, 1997, unless otherwise noted.

§ 966.1 Authority for rules.

These rules of practice are issued by the Judicial Officer pursuant to authority delegated by the Postmaster General.

§ 966.2 Scope of rules.

The rules in this part apply to any petition filed by a former postal employee:

(a) To challenge the Postal Service's determination that he or she is liable to the Postal Service for a debt incurred in connection with his or her Postal Service employment; and/or

(b) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

§ 966.3 Definitions.

(a) *Administrative offset* refers to the withholding of money payable by the Postal Service or the United States to, or held by the Postal Service or the United States for, a former employee in order to satisfy a debt determined to be owed by the former employee to the Postal Service.

(b) *Debt* refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee.

(c) *Former employee* refers to an individual whose employment with the Postal Service has ceased. An employee is considered formally separated from the Postal Service rolls as of close of business on the effective date of his or her separation. Postal Service Form 50.

(d) *General Counsel* refers to the General Counsel of the Postal Service, and includes a designated representative.

(e) *Hearing Official* refers to an Administrative Law Judge qualified to hear cases under the Administrative Procedure Act, an Administrative Judge appointed under the Contract Disputes Act of 1978, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a hearing conducted pursuant to this part.

(f) *Judicial Officer* refers to the Judicial Officer, Associate Judicial Officer, or Acting Judicial Officer of the Postal Service.

(g) *Postmaster/Installation Head* refers to the top management official at a particular post office or installation when an alleged debt owed by a former employee was incurred, or to that official's successor, or to the department head who had general supervisory responsibility for a former employee at Area Offices or National Headquarters when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was a Postmaster/Installation Head, the term refers to the official to whom the Postmaster/Installation Head reported when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was in the Inspection Service, the term refers to the former employee's immediate supervisor when an alleged debt owed by that former employee was incurred, or to that official's successor. Where the former employee was in the Office of Inspector General, the term refers to the Inspector General, or to the Inspector General's delegate.

(h) *Reconsideration* refers to the review of an alleged debt and/or the proposed offset schedule conducted by the Postmaster/Installation Head at the request of a former employee alleged to be indebted to the Postal Service.

(i) *Recorder* refers to the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

[62 FR 63279, Nov. 28, 1997, as amended at 63 FR 66053, Dec. 1, 1998]

§ 966.4 Petition for a hearing and supplement to petition.

(a) A former employee who is alleged to be responsible for a debt to the Postal Service may petition for a hearing under this part, provided:

(1) Liability for the debt and/or the proposed offset schedule has not been established under Part 452.3 or Part 462.3 of the Employee & Labor Relations Manual;

(2) He or she has received a Notice from the Minneapolis Accounting Service Center (or its successor installation) informing him or her of the debt

and an offset schedule to satisfy the debt and of the right to request reconsideration by the Postmaster/Installation Head; and

(3) He or she has requested and received reconsideration of the existence or amount of the alleged debt and/or the offset schedule proposed by the Postal Service.

(b) Within thirty (30) calendar days after the date of receipt of the Postmaster/Installation Head's written decision upon reconsideration, the former employee must file a written, signed petition, requesting a written or oral hearing, with the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.

(c) The petition must include the following:

(1) The words, ''Petition for Review Under 39 CFR Part 966'';

(2) The former employee's name and social security number;

(3) The former employee's home address and telephone number, and any other address and telephone number at which the former employee may be contacted about these proceedings;

(4) A statement of the date the former employee received the Postmaster/Installation Head's written decision upon reconsideration of the alleged debt, and a copy of the decision;

(5) A statement indicating whether the former employee requests an oral hearing or a decision based solely on written submissions;

(6) If the former employee requests an oral hearing, a statement describing the evidence he or she will produce which makes an oral hearing necessary, including a list of witnesses, with their addresses, whom the former employee expects to call; a summary of the testimony the witnesses are expected to present; the city requested for the hearing site, with justification for holding the hearing in that city; and at least three proposed dates for the hearing at least forty-five (45) days after the filing of the petition;

(7) A statement of the grounds upon which the former employee objects to the Postal Service's determination of the debt or to the administrative offset schedule proposed by the Postal Service for collecting any such debt. This statement should identify with reasonable specificity and brevity the facts, evidence, and legal arguments, if any, which support the former employee's position; and

(8) Copies of all records in the former employee's possession which relate to the debt and which the former employee may enter into the record of the hearing.

(d) The former employee may, if necessary, file with the Recorder additional information as a supplement to the petition at any time prior to the filing of the answer to the petition under § 966.7, or at such later time as permitted by the Hearing Official upon a showing of good cause.

[62 FR 63279, Nov. 28, 1997, as amended at 63 FR 66053, Dec. 1, 1998]

§ 966.5 Effect of petition filing.

Upon receipt and docketing of the former employee's petition, the Recorder will notify the General Counsel that the petition has been filed and that a timely filed petition stays further collection action.

§ 966.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) *Filing.* All documents required under this part must be filed by the former employee or the General Counsel in triplicate with the Recorder. (Normal Recorder office business hours are between 8:15 a.m. and 4:45 p.m., eastern standard or daylight saving time as appropriate during the year.) The Recorder will transmit a copy of each document filed to the other party, and the original to the Hearing Official.

(b) *Docketing.* The Recorder will maintain a docket record of proceedings under this part and will assign each petition a docket number. After notification of the docket number, the former employee and General Counsel should refer to it on any further filings regarding the petition.

(c) *Time computation.* A filing period under the rules in this part excludes the day the period begins, and includes the last day of the period unless the last day is a Saturday, Sunday, or legal holiday, in which event the period runs

until the close of business on the next business day.

(d) *Representation of parties.* After the filing of the petition, further document transmittals for, or communications with, the Postal Service shall be through its representative, the General Counsel. If a former employee is represented by an attorney authorized to practice law in any of the United States or the District of Columbia or a territory of the United States, further transmissions of documents and other communications with the former employee shall be made through his or her attorney rather than directly with the former employee.

§ 966.7 Answer to petition.

Within thirty (30) days after the date of receipt of the petition, the General Counsel shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service's claim, or the administrative offset schedule proposed by the Postal Service for collecting any such claim; a statement of whether the Postal Service concurs in, or objects to, an oral hearing, if the former employee requests one, with the reason(s) for the Postal Service's objection; a list of witnesses the Postal Service intends to call if an oral hearing is requested and the request is granted; a synopsis of the testimony of each witness; a statement of concurrence or objection to the proposed location and dates for the oral hearing; and a statement of the basis for the determination of debt or offset schedule if not contained in the relevant records or documents. If the former employee files a supplement to the petition, the General Counsel may file any supplemental answer and records to support the position of the Postal Service within twenty (20) calendar days from the date of receipt of the supplement filed with the Recorder.

§ 966.8 Authority and responsibilities of Hearing Official or Judicial Officer.

(a) In processing a case under this part, the Hearing Official's authority includes, but is not limited to, the following:

(1) Ruling on all offers, motions, or requests by the parties;

(2) Issuing any notices, orders, or memoranda to the parties concerning the hearing procedures;

(3) Conducting telephone conferences with the parties to expedite the proceedings (a memorandum of a telephone conference will be transmitted to both parties);

(4) Determining if an oral hearing is necessary, the type of oral hearing that would be appropriate, and setting the place, date, and time for such hearing;

(5) Administering oaths or affirmations to witnesses;

(6) Conducting the hearing in a manner to maintain discipline and decorum while assuring that relevant, reliable, and probative evidence is elicited on the issues in dispute, and that irrelevant, immaterial, or repetitious evidence is excluded;

(7) Establishing the record in the case;

(8) Issuing an initial decision or one on remand; and

(9) Granting, at the request of either party, reasonable time extensions.

(b) The Judicial Officer, in addition to possessing such authority as is described elsewhere in this part, shall possess all of the authority and responsibilities of a Hearing Official.

§ 966.9 Opportunity for oral hearing.

An oral hearing generally will be held only in those cases which, in the opinion of the Hearing Official, cannot be resolved by a review of the documentary evidence, such as when the existence, or amount, of a debt turns on issues of credibility or veracity. An oral hearing includes an in-person hearing, a telephonic hearing, or a hearing by video conference. When the Hearing Official determines that an oral hearing is not necessary, the decision shall be based solely on written submissions.

§ 966.10 Initial decision.

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of any post-hearing briefs, the Hearing Official shall issue a written initial decision, including findings of fact and conclusions of law, which the Hearing Official

relied upon in determining whether the former employee is indebted to the Postal Service, or in upholding or revising the administrative offset schedule proposed by the Postal Service for collecting a former employee's debt. When the Judicial Officer presides at a hearing he or she shall issue a final or a tentative decision.

(b) The Hearing Official shall promptly send to each party a copy of the initial or tentative decision, and a statement describing the right of appeal to the Judicial Officer in accordance with § 966.11.

§ 966.11 Appeal.

The initial or tentative decision will become final and an order to that effect will be issued by the Judicial Officer thirty (30) days after issuance and receipt by the parties of the initial or tentative decision unless the Judicial Officer, in his discretion, grants review upon appeal by either party, or on his own motion. If an appeal is denied, the initial or tentative decision becomes the final agency decision upon the issuance of such denial. The Judicial Officer's decision on appeal is the final agency decision with no further right of appeal within the agency.

§ 966.12 Waiver of rights.

The Hearing Official may determine the former employee has waived his or her right to a hearing and administrative offset may be initiated if the former employee:

(a) Files a petition for hearing after the end of the prescribed thirty (30) day period, and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay;

(b) Has received notice to appear at an oral hearing but fails to do so without showing circumstances beyond the former employee's control;

(c) Fails to file required submissions or to comply with orders of the Hearing Official; or

(d) Files a withdrawal of his or her petition for a hearing with the Recorder.

§ 966.13 Ex parte communications.

Ex parte communications between a Hearing Official or his or her staff and a party shall not be made. This prohibition does not apply to procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.