Title 39
Postal Service

Revised as of July 1, 2017

Containing a codification of documents of general applicability and future effect

As of July 1, 2017

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Table of Contents

<table>
<thead>
<tr>
<th>Explanation</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>v</td>
</tr>
</tbody>
</table>

Title 39:

<table>
<thead>
<tr>
<th>Chapter I—United States Postal Service</th>
<th>3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter III—Postal Regulatory Commission</td>
<td>357</td>
</tr>
</tbody>
</table>

Finding Aids:

<table>
<thead>
<tr>
<th>Table of CFR Titles and Chapters</th>
<th>505</th>
</tr>
</thead>
<tbody>
<tr>
<td>Alphabetical List of Agencies Appearing in the CFR</td>
<td>525</td>
</tr>
<tr>
<td>List of CFR Sections Affected</td>
<td>535</td>
</tr>
</tbody>
</table>
Cite this Code: CFR

To cite the regulations in this volume use title, part and section number. Thus, 39 CFR 1.1 refers to title 39, part 1, section 1.
Explanations

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

- Title 1 through Title 16: as of January 1
- Title 17 through Title 27: as of April 1
- Title 28 through Title 41: as of July 1
- Title 42 through Title 50: as of October 1

The appropriate revision date is printed on the cover of each volume.

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To determine whether a Code volume has been amended since its revision date (in this case, July 1, 2017), consult the “List of CFR Sections Affected (LSA),” which is issued monthly, and the “Cumulative List of Parts Affected,” which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

EFFECTIVE AND EXPIRATION DATES

Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cutoff date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a date certain for expiration, an appropriate note will be inserted following the text.

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to display an OMB control number with their information collection request.
Many agencies have begun publishing numerous OMB control numbers as amendments to existing regulations in the CFR. These OMB numbers are placed as close as possible to the applicable recordkeeping or reporting requirements.

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Provisions of the Code that are no longer in force and effect as of the revision date stated on the cover of each volume are not carried. Code users may find the text of provisions in effect on any given date in the past by using the appropriate List of CFR Sections Affected (LSA). For the convenience of the reader, a “List of CFR Sections Affected” is published at the end of each CFR volume. For changes to the Code prior to the LSA listings at the end of the volume, consult previous annual editions of the LSA. For changes to the Code prior to 2001, consult the List of CFR Sections Affected compilations, published for 1949-1963, 1964-1972, 1973-1985, and 1986-2000.

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What is incorporation by reference? Incorporation by reference was established by statute and allows Federal agencies to meet the requirement to publish regulations in the Federal Register by referring to materials already published elsewhere. For an incorporation to be valid, the Director of the Federal Register must approve it. The legal effect of incorporation by reference is that the material is treated as if it were published in full in the Federal Register (5 U.S.C. 552(a)). This material, like any other properly issued regulation, has the force of law.

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(a) The incorporation will substantially reduce the volume of material published in the Federal Register.

(b) The matter incorporated is in fact available to the extent necessary to afford fairness and uniformity in the administrative process.

(c) The incorporating document is drafted and submitted for publication in accordance with 1 CFR part 51.

What if the material incorporated by reference cannot be found? If you have any problem locating or obtaining a copy of material listed as an approved incorporation by reference, please contact the agency that issued the regulation containing that incorporation. If, after contacting the agency, you find the material is not available, please notify the Director of the Federal Register, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740-6001, or call 202-741-6010.

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An index to the text of "Title 3—The President" is carried within that volume. The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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OLIVER A. POTTS,
Director,
Office of the Federal Register.
July 1, 2017.
THIS TITLE

Title 39—POSTAL SERVICE is composed of one volume. The contents of this volume represent all current regulations codified under this title of the CFR as of July 1, 2017.


For this volume, Bonnie Fritts was Chief Editor. The Code of Federal Regulations publication program is under the direction of John Hyrum Martinez, assisted by Stephen J. Frattini.
Title 39—Postal Service

CHAPTER I—United States Postal Service ........................................ 1
CHAPTER III—Postal Regulatory Commission .............................. 3000
### CHAPTER I—UNITED STATES POSTAL SERVICE

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

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Postal policy [Article I]</td>
<td>9</td>
</tr>
<tr>
<td>2</td>
<td>General and technical provisions [Article II]</td>
<td>9</td>
</tr>
<tr>
<td>3</td>
<td>Board of Governors [Article III]</td>
<td>10</td>
</tr>
<tr>
<td>4</td>
<td>Officials [Article IV]</td>
<td>14</td>
</tr>
<tr>
<td>5</td>
<td>Committees [Article V]</td>
<td>16</td>
</tr>
<tr>
<td>6</td>
<td>Meetings [Article VI]</td>
<td>16</td>
</tr>
<tr>
<td>7</td>
<td>Public observation [Article VII]</td>
<td>18</td>
</tr>
<tr>
<td>8-9</td>
<td>Reserved</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>Rules of conduct for Postal Service Governors [Article X]</td>
<td>22</td>
</tr>
<tr>
<td>11</td>
<td>Advisory boards [Article XI]</td>
<td>23</td>
</tr>
</tbody>
</table>

#### SUBCHAPTER B—INTERNATIONAL MAIL

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>20</td>
<td>International Postal Service</td>
<td>24</td>
</tr>
</tbody>
</table>

#### SUBCHAPTER C—POST OFFICE SERVICES [DOMESTIC MAIL]

**GENERAL INFORMATION ON POSTAL SERVICE**

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>111</td>
<td>General information on Postal Service</td>
<td>26</td>
</tr>
<tr>
<td>121</td>
<td>Service standards for market-dominant mail products</td>
<td>28</td>
</tr>
<tr>
<td>122</td>
<td>Service standards for market-dominant special services products</td>
<td>35</td>
</tr>
</tbody>
</table>

#### SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>211</td>
<td>Application of regulations</td>
<td>37</td>
</tr>
<tr>
<td>221</td>
<td>General organization</td>
<td>38</td>
</tr>
<tr>
<td>222</td>
<td>Delegations of authority</td>
<td>41</td>
</tr>
<tr>
<td>223</td>
<td>Relationships and communication channels</td>
<td>42</td>
</tr>
</tbody>
</table>

**INSPECTION SERVICE REQUIREMENTS**

<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>230</td>
<td>Office of Inspector General</td>
<td>43</td>
</tr>
</tbody>
</table>
# 39 CFR Ch. I (7-1-17 Edition)

## Part Page

<table>
<thead>
<tr>
<th>Part</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>231</td>
<td>Protection of post offices</td>
</tr>
<tr>
<td>232</td>
<td>Conduct on postal property</td>
</tr>
<tr>
<td>233</td>
<td>Inspection Service authority</td>
</tr>
<tr>
<td>235</td>
<td>Defense Department liaison</td>
</tr>
<tr>
<td></td>
<td><strong>Post Office Organization and Administration</strong></td>
</tr>
<tr>
<td>241</td>
<td>Establishment classification, and discontinuance</td>
</tr>
<tr>
<td>242</td>
<td>Change of site</td>
</tr>
<tr>
<td>243</td>
<td>Conduct of offices</td>
</tr>
<tr>
<td></td>
<td><strong>General Postal Administration</strong></td>
</tr>
<tr>
<td>254</td>
<td>Postal Service standards for facility accessibility pursuant to the Architectural Barriers Act</td>
</tr>
<tr>
<td>255</td>
<td>Access of persons with disabilities to Postal Service programs, activities, facilities, and electronic and information technology</td>
</tr>
<tr>
<td>259</td>
<td>Services performed for other agencies</td>
</tr>
<tr>
<td></td>
<td><strong>Records and Information</strong></td>
</tr>
<tr>
<td>261</td>
<td>Records and information management</td>
</tr>
<tr>
<td>262</td>
<td>Records and information management definitions</td>
</tr>
<tr>
<td>263</td>
<td>Records retention and disposition</td>
</tr>
<tr>
<td>264</td>
<td>Vital records</td>
</tr>
<tr>
<td>265</td>
<td>Production or disclosure of material or information</td>
</tr>
<tr>
<td>266</td>
<td>Privacy of information</td>
</tr>
<tr>
<td>267</td>
<td>Protection of information</td>
</tr>
<tr>
<td>268</td>
<td>Privacy of information—employee rules of conduct</td>
</tr>
<tr>
<td>273</td>
<td>Administration of Program Fraud Civil Remedies Act</td>
</tr>
<tr>
<td></td>
<td><strong>Damage to or Destruction of Firm Mailings</strong></td>
</tr>
<tr>
<td>281</td>
<td>Firm mailings damaged or destroyed through transportation accidents or catastrophes</td>
</tr>
<tr>
<td></td>
<td><strong>Subchapter E—Restrictions on Private Carriage of Letters</strong></td>
</tr>
<tr>
<td>310</td>
<td>Enforcement of the private express statutes</td>
</tr>
<tr>
<td>320</td>
<td>Suspension of the private express statutes</td>
</tr>
<tr>
<td></td>
<td><strong>Subchapter F—Personnel</strong></td>
</tr>
<tr>
<td>447</td>
<td>Rules of conduct for postal employees</td>
</tr>
<tr>
<td>491</td>
<td>Garnishment of salaries of employees of the Postal Service and the Postal Rate Commission</td>
</tr>
</tbody>
</table>
United States Postal Service

<table>
<thead>
<tr>
<th>Part</th>
<th>Administrative wage garnishment from non-postal sources</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>492</td>
<td>........................................................................... 181</td>
<td></td>
</tr>
</tbody>
</table>

SUBCHAPTER G—POSTAGE PROGRAMS

<table>
<thead>
<tr>
<th>Part</th>
<th>Authorization to manufacture and distribute postage meters</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>501</td>
<td>........................................................................... 182</td>
<td></td>
</tr>
<tr>
<td>551</td>
<td>Semipostal stamp program ........................................ 199</td>
<td></td>
</tr>
</tbody>
</table>

SUBCHAPTER H—PROCUREMENT SYSTEM FOR THE U.S. POSTAL SERVICE; INTELLECTUAL PROPERTY RIGHTS OTHER THAN PATENTS

<table>
<thead>
<tr>
<th>Part</th>
<th>Purchasing of property and services</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>601</td>
<td>............................................. 204</td>
<td></td>
</tr>
<tr>
<td>602</td>
<td>Intellectual property rights other than patents ....... 214</td>
<td></td>
</tr>
</tbody>
</table>

SUBCHAPTER I [RESERVED]

SUBCHAPTER J—POSTAL SERVICE DEBT OBLIGATIONS; DISBURSEMENT POSTAL MONEY ORDERS

<table>
<thead>
<tr>
<th>Part</th>
<th>Applicability of Treasury Department regulations</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>760</td>
<td>.................................................................... 216</td>
<td></td>
</tr>
<tr>
<td>761</td>
<td>Book-entry procedures ...................................... 216</td>
<td></td>
</tr>
<tr>
<td>762</td>
<td>Disbursement postal money orders .................... 219</td>
<td></td>
</tr>
</tbody>
</table>

SUBCHAPTER K—ENVIRONMENTAL REGULATIONS

<table>
<thead>
<tr>
<th>Part</th>
<th>National Environmental Policy Act procedures ....... 224</th>
</tr>
</thead>
<tbody>
<tr>
<td>775</td>
<td>Floodplain and wetland procedures ........................ 234</td>
</tr>
</tbody>
</table>

SUBCHAPTER L—SPECIAL REGULATIONS

<table>
<thead>
<tr>
<th>Part</th>
<th>Relocation assistance and real property acquisition policies</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>777</td>
<td>........................................................................... 239</td>
<td></td>
</tr>
<tr>
<td>778</td>
<td>Intergovernmental review of Postal Service facility actions</td>
<td>258</td>
</tr>
</tbody>
</table>

SUBCHAPTER M [RESERVED]

SUBCHAPTER N—PROCEDURES

RULES OF PROCEDURE BEFORE THE OFFICE OF GENERAL COUNSEL

<table>
<thead>
<tr>
<th>Part</th>
<th>Procedures to adjudicate claims for personal injury or property damage arising out of the operation of the U.S. Postal Service</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>912</td>
<td>........................................................................................................ 262</td>
<td></td>
</tr>
<tr>
<td>913</td>
<td>Procedures for the issuance of administrative subpoenas under 39 U.S.C. 3016 ........................................ 265</td>
<td></td>
</tr>
</tbody>
</table>
## RULES OF PROCEDURE BEFORE THE MAIL PROCESSING DEPARTMENT

- **927** Rules of procedure relating to fines, deductions, and damages ......................................................... 267
- **931** Rules of procedure governing the compromise of obligations .......................................................... 269

## RULES OF PROCEDURE BEFORE THE POSTAL INSPECTION SERVICE

- **946** Rules of procedure relating to the disposition of stolen mail matter and property acquired by the Postal Inspection Service for use as evidence ..... 269

## RULES OF PROCEDURE BEFORE THE JUDICIAL OFFICER

- **951** Procedure governing the eligibility of persons to practice before the Postal Service ....................... 271
- **952** Rules of practice in proceedings relative to false representation and lottery orders ...................... 273
- **953** Rules of practice in proceedings relative to mailability ................................................................ 284
- **954** Rules of practice in proceedings relative to the denial, suspension, or revocation of periodicals mail privileges ................................................. 287
- **955** Rules of practice before the Postal Service Board of Contract Appeals .............................................. 293
- **956** [Reserved]
- **957** Rules of practice in proceedings relative to debarment from contracting ........................................ 305
- **958** Rules of practice in proceedings relative to civil penalties, clean-up costs and damages for violation of hazardous material regulations .................. 308
- **959** Rules of practice in proceedings relative to the private express statutes .................................................. 314
- **960** Rules relative to implementation of the Equal Access to Justice Act in Postal Service proceedings 322
- **961** Rules of practice in proceedings under section 5 of the Debt Collection Act ........................................ 328
- **962** Rules of practice in proceedings relative to the Program Fraud Civil Remedies Act ............................. 332
- **963** Rules of practice in proceedings relative to violations of the pandering advertisements statute, 39 U.S.C. 3008 ............................................................................. 340
- **964** Rules of practice governing disposition of mail withheld from delivery pursuant to 39 U.S.C. 3003, 3004 ........................................................................................................ 344
## United States Postal Service

<table>
<thead>
<tr>
<th>Part</th>
<th>Description</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>965</td>
<td>Rules of practice in proceedings relative to mail disputes</td>
<td>349</td>
</tr>
<tr>
<td>966</td>
<td>Rules of practice in proceedings relative to administrative offsets initiated against former employees of the Postal Service</td>
<td>351</td>
</tr>
<tr>
<td>967-999</td>
<td>[Reserved]</td>
<td></td>
</tr>
</tbody>
</table>
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.


Source: 73 FR 78983, Dec. 24, 2008, 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 1970, Public Law 91–375, 84 Stat. 719, as amended by the Postal Accountability and Enhancement Act of 2006 (PAEA), Public Law 109–435, 120 Stat. 3198, 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.

Authorities: 39 U.S.C. 202, 203, 205(c), 207, 401(2); 5 U.S.C. 552b(f), (g).

Source: 73 FR 78983, Dec. 24, 2008, 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 and responsibilities.

§ 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 221.7.

§ 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 Composition and 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.
3.9 Establishment of rates and classes of competitive products of general applicability.
3.10 Establishment of rates and classes of competitive products not of general applicability.


SOURCE: 73 FR 70963, Dec. 24, 2008, unless otherwise noted.
§ 3.1 Composition and 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 are specifically vested by statute in the 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)(1) 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) Adoption of, and amendments to, the bylaws of the Board.
(b) (1) Approval of the annual Postal Service Finance Plan;
(2) Approval of the annual Postal Service Operating Plan;
(3) Approval of the annual Postal Service Capital Plan.
(c) 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) Authorization of the Postal Service to request that the Postal Regulatory Commission 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.
(g) Approval of the terms and conditions of each series of obligations issued by the Postal Service under 39 U.S.C. 2005 and 39 U.S.C. 2011, 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.
(h) Approval of any use of the authority of the Postal Service to require the Secretary of the Treasury to purchasePostal 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).
(i) 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.
(j) Compensation and benefits of officers of the Postal Service whose positions are included in Level II of the Postal Career Executive Service.
(k) 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.
(l) 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.
(m) Approval and transmittal to the President and the Congress of the annual report of the Postmaster General under 39 U.S.C. 2402.
(n) Approval and transmittal to the Congress of the annual report of the Board under 5 U.S.C. 552b(j).
(o) Approval of the annual comprehensive statement of the Postal Service to Congress under 39 U.S.C. 2401(e).
(p) Approval and transmittal to the Congress of the semi-annual report of
§ 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 under 39 U.S.C. 202(c).


(c) Election of the Chairman under 39 U.S.C. 202(a)(1), and Vice Chairman of the Board of Governors.

(d) Establishment of rates and classes of competitive products of both general and not of general applicability under 39 U.S.C. 3632 in accordance with the procedures set out in sections 3.9 and 3.10 of these bylaws.

(e) Authorization of the Postal Service to adjust the rates and fees for market dominant products under 39 U.S.C. 3622.

(f) Authorization of the Postal Service to request that the Postal Regulatory Commission, under 39 U.S.C. 3642, change the lists of market dominant and competitive products by adding a product, removing a product, or transferring a product.

(g) Authorization of the Postal Service to file a notice with the Postal Regulatory Commission of substantive modifications to the product descriptions in the Mail Classification Schedule.

(h) Authorization of the Postal Service to file a request with the Postal Regulatory Commission for adjustment of rates on an expedited basis due to extraordinary or exceptional circumstances, as provided in 39 U.S.C. 3622(d)(1)(E).


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


(n) 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).

§ 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.

(a) 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:

(1) Mail volume by class;

(2) Income and expense by principal categories;
United States Postal Service

§ 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 or regulatory decision significantly impacting the Postal Service or involving a new, novel, or potentially controversial issue.

(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) Major or significant financial, operational and compliance reports or studies the Postal Service is required by statute or regulation to prepare.
§ 3.9 Establishment of rates and classes of competitive products of general applicability.

This section relates to changes in rates or classes of competitive products of general applicability.

(a) Prior to establishing changes in rates or classes of competitive products of general applicability, postal management shall furnish to the Governors the following:
   (1) The proposed rate and classification changes; and
   (2) Management analysis demonstrating compliance with the standards of 39 U.S.C. 3633(a).

(b) Pursuant to §6.6(f) of these bylaws, the Governors shall issue a written decision on any changes in rates or classes of competitive products not of general applicability, which shall include a statement as to when the decision becomes effective.

(c) The Secretary shall certify that the vote of the Governors met the condition set forth in section 6.6(f) of these bylaws.

(d) The Secretary shall cause any decision of the Governors under this section, along with the record of any proceedings of the Governors, and any supporting documentation required by 39 CFR Part 3015, to be filed with the Postal Regulatory Commission. The record of the proceedings of the Governors consists of the certification by the Secretary of the vote of the Governors.

(e) Postal management is authorized to conclude agreements with customers concerning any rates or classes of competitive products not of general applicability, provided that any such rates are within the range, or such classes are within the scope, of a decision of the Governors then in effect.

§ 3.10 Establishment of rates and classes of competitive products not of general applicability.

This section relates to changes in rates and classes of competitive products not of general applicability.

(a) Prior to establishing rates or classes of competitive products not of general applicability, postal management shall furnish to the Governors the following:
   (1) The proposed changes in rates or ranges of rates, along with the proposed changes in classes; and
   (2) Management analysis demonstrating compliance with the standards of 39 U.S.C. 3633(a).

(b) Pursuant to §6.6(f) of these bylaws, the Governors shall issue a written decision on any changes in rates or classes of competitive products not of general applicability, which shall include a statement as to when the decision becomes effective.

(c) The Secretary shall certify that the vote of the Governors met the condition set forth in §6.6(f) of these bylaws.

(d) The Secretary shall cause any decision of the Governors under this section, along with the record of any proceedings of the Governors, and any supporting documentation required by 39 CFR Part 3015, to be filed with the Postal Regulatory Commission. The record of the proceedings of the Governors consists of the certification by the Secretary of the vote of the Governors.

(e) Postal management is authorized to conclude agreements with customers concerning any rates or classes of competitive products not of general applicability, provided that any such rates are within the range, or such classes are within the scope, of a decision of the Governors then in effect.
§ 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 to another position or location within the Postal Service, and shall include in resignation of the current Vice Chairman, whichever occurs first, and expires upon the election and installation of a successor Vice Chairman. In the event of the Vice Chairman’s death, departure or resignation prior to the election of a successor, the Board, as soon as practicable, shall elect a new Vice Chairman who shall serve a term that commences immediately upon election and expires upon the election and installation of a successor Vice Chairman.

§ 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 compensation and benefits of the Postmaster General by resolution, subject to 39 U.S.C. 1003(a) and 3686.

§ 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 compensation and benefits of the Deputy Postmaster General, subject to 39 U.S.C. 1003(a) and 3686.

§ 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 is elected at the Board’s regularly scheduled November meeting for a term that commences on December 1 of the calendar year in which the election occurred or upon the death, departure or resignation of the current Chairman, whichever occurs first, and expires upon the election and installation of a successor Chairman.

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

(3) Shall select and appoint the chairman, vice chairman (if any), and members of any committee properly established by the Board.

(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.

(c) In the event of the Chairman’s death, departure or resignation prior to the election of a successor, the Board, as soon as practicable, shall elect a new Chairman who shall serve a term that commences immediately upon election and expires upon the election and installation of a successor Chairman.

(d)(1) Upon the election and installation of a new Chairman of the Board, the immediate past Chairman shall become Chairman Pro Tempore of the Board, to preside during the absence of the Chairman and Vice Chairman at any meeting of the Board during the year or years following the immediate past Chairman’s tenure as Chairman and until another Chairman has been elected.

(2) The Chairman Pro Tempore shall, at the request of the Chairman or Vice Chairman, serve as the representative of the Board of Governors at conferences, trade shows, ceremonial functions and other meetings important to Postal Service business.
any such notification the reasons for such removal or transfer.

§ 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.

PART 5—COMMITTEES (ARTICLE V)

Sec. 5.1 Establishment and appointment.

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.

PART 6—MEETINGS (ARTICLE VI)

Sec. 6.1 Regular meetings, annual meeting.

The Board shall meet regularly on a schedule established by the Board. The first regular meeting of each calendar year is designated as the annual meeting. Consistent with the provisions of §§ 6.6 and 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.

§ 6.2 Special meetings.

The Board shall meet regularly on a schedule established by the Board. The first regular meeting of each calendar year is designated as the annual meeting. Consistent with the provisions of §§ 6.6 and 7.5 of these bylaws, the Chairman 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. Consistent with the
provisions of §§6.6 and 7.5 of these bylaws, 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, written, or e-mail 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 or e-mail notice. Written notice to a member may be delivered by mail addressed to the member’s mailing address of record filed with the Secretary. Notice by e-mail may be addressed to the member’s e-mail address of record filed with the Secretary. Except for written or e-mail notice confirming a previous oral notice, a written or e-mail notice must be sent in sufficient time to reach the address of record 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. No notice—whether oral, written, or e-mail—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.

For regularly scheduled meetings of the Board, members are expected to attend in person. Unless prohibited by law or by these bylaws, however, a member of the Board, under exceptional circumstances, 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 a member of the Board may be paid for his or her participation provided such meeting addresses substantive, as opposed to procedural or administrative, matters on which the Board has decisionmaking authority.

§ 6.5 Minutes of meetings.

The Secretary shall preserve the minutes of Board meetings prepared under §4.6 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 Corporate 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), and except for routine, non-controversial, and administrative matters considered through the notation voting process described in §6.7, the Board acts by resolution upon a majority vote of those members who attend a meeting in person or by teleconference. 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 and benefits 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 and benefits 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 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
(e) 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.
(f) In establishing rates or classes of competitive products of both general and not of general applicability in §§3.9 and 3.10 of these bylaws, 39 U.S.C. 3632(a) requires the concurrence of a majority of all of the Governors then holding office.
(g) In removing the Inspector General for cause, 39 U.S.C. 202(e) requires the written concurrence of at least 7 Governors.


§ 6.7 Notation voting.

(a) General. Notation voting consists of the circulation of written memoranda and voting sheets to each member of the Board simultaneously and the tabulation of submitted responses. Notation voting may be used only for routine, non-controversial, and administrative matters.
(b) Administrative Responsibility. The Secretary of the Board is responsible for:
(1) Distributing notation voting memoranda and voting sheets;
(2) Establishing deadlines for notation voting sheets to be completed and returned;
(3) Processing and tabulating all notation voting sheets;
(4) Determining whether further action is required.
(c) Veto of notation voting. In view of the public policy for openness reflected in the Government in the Sunshine Act and in these bylaws, each Board member is authorized to veto the use of notation voting for the consideration of any matter. If a Board member vetoes the use of notation voting, the Secretary must notify all members of such action, and must promptly take action to place the particular matter on the agenda of the next regularly scheduled Board meeting following the date of the veto, or to schedule a teleconference to consider the matter, as appropriate.
(d) Disclosure of result. The Secretary shall maintain all records pertaining to Board actions taken pursuant to the notation voting process, and shall make such records available for public inspection, consistent with the Freedom of Information Act, 5 U.S.C. 552.

[77 FR 17334, Mar. 26, 2012]

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.


SOURCE: 73 FR 78983, Dec. 24, 2008, 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 §6.6 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 the bylaws in this chapter, or the notation voting process described in §6.7 of the bylaws in this chapter.

§ 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 Part 232, 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;
3. 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,
4. 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;
5. 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;
6. Involve accusing any person of a crime, or formally censuring any person;
7. 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;
8. 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
§ 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.

§ 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.
§ 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.

PARTS 8–9 [RESERVED]

PART 10—RULES OF CONDUCT FOR POSTAL SERVICE GOVERNORS (ARTICLE X)

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

SOURCE: 73 FR 78983, Dec. 24, 2008, 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.

§ 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.

§ 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 section 10.2(b).

§ 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.

PART 11—ADVISORY BOARDS

(ARTICLE XI)


§ 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.

[73 FR 78983, Dec. 24, 2008]
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]


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 and 39 U.S.C. 410(b)(1), and as provided in this part, the Postal Service hereby incorporates by reference its International Mail Manual (IMM), issued January 22, 2017. 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 Table 1:

<table>
<thead>
<tr>
<th>International Mail Manual</th>
<th>Date of issuance</th>
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<tbody>
<tr>
<td>Issue 12</td>
<td>July 8, 1993.</td>
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<td>Issue 17</td>
<td>September 12, 1996.</td>
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<td>October 9, 1997.</td>
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<td>Issue 26</td>
<td>January 1, 2002.</td>
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<td>July 1, 2003.</td>
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<td>Issue 32</td>
<td>May 12, 2006.</td>
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<td>April 17, 2011.</td>
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<td>June 24, 2012.</td>
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<td>July 11, 2016.</td>
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<td>January 22, 2017.</td>
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United States Postal Service

§ 20.5 [Reserved]

§ 20.4 Amendments to the International Mail Manual.


§ 20.5 [Reserved]
§ 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.


(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.


§ 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
§ 111.3


(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.

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<td>44 FR 39742</td>
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<td>Oct. 1, 1980</td>
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<td>Jan. 20, 1983</td>
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<td>61 FR 67218.</td>
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<td>61 FR 64618.</td>
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<td>51</td>
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<td>62 FR 30457</td>
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<td>53</td>
<td>January 10, 1999</td>
<td>64 FR 39.</td>
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§ 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 June 23, 2017.


§ 111.5 [Reserved]

PART 121—SERVICE STANDARDS FOR MARKET-DOMINANT MAIL PRODUCTS

Sec.
121.1 First-Class Mail.
121.2 Periodicals.
121.3 Standard Mail.
121.4 Package Services.

APPENDIX A TO PART 121—SERVICE STANDARD DAY RANGE TABLES


Source: 72 FR 72228, Dec. 19, 2007, unless otherwise noted.
First-Class Mail properly accepted before the day-zero CET with an origin or destination that is in American Samoa or one of the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(c) A 3-day service standard is applied to domestic First-Class Mail pieces properly accepted before the day-zero CET, if the 1-day and 2-day service standards do not apply, and:

(1) Both the origin and the destination are within the contiguous 48 states;

(2) The origin is in the contiguous 48 states, and the destination is in any of the following: the city of Anchorage, Alaska (5-digit ZIP Codes 99501 through 99539); the 968 3-digit ZIP Code area in Hawaii; or the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico;

(3) The origin is in the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico, and the destination is in the contiguous 48 states;

(4) The origin is in Hawaii, and the destination is in Guam, or vice versa;

(5) The origin is in Hawaii, and the destination is in American Samoa, or vice versa; or

(6) Both the origin and destination are within Alaska.

(d) A 4-day service standard is applied to domestic First-Class Mail pieces properly accepted before the day-zero CET, if the 1-day, 2-day, and 3-day service standards do not apply, and:

(1) The origin is in the contiguous 48 states and the destination is in any of the following: any portion of Alaska other than the city of Anchorage (5-digit ZIP Codes 99501 through 99539); any portion of Hawaii other than the 968 3-digit ZIP Code area; or the U.S. Virgin Islands;

(2) The destination is in the contiguous 48 states and the origin is in Alaska, Hawaii, or the U.S. Virgin Islands;

(3) The origin and destination are in different non-contiguous states or territories, excluding mail to and from Guam and mail between Puerto Rico and the U.S. Virgin Islands.

(e) A 5-day service standard is applied to all remaining domestic First-Class Mail pieces properly accepted before the day-zero CET.

(f) The service standard for Outbound Single-Piece First-Class Mail International™ pieces properly accepted before the day-zero CET is equivalent to the service standard for domestic First-Class Mail pieces originating from the same 3-digit ZIP Code area and destined to the 3-digit ZIP Code area in which the designated International Service Center is located.

(g) The service standard for Inbound Single-Piece First-Class Mail International pieces properly accepted before the day-zero CET is equivalent to the service standard for domestic First-Class Mail pieces destined to the same 3-digit ZIP Code area and originating from the 3-digit ZIP Code area in which the designated International Service Center is located.

§ 121.2 Periodicals.

(a) End-to-End. (1)(i) Until January 5, 2015, a 2- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero Critical Entry Time (CET) and merged with First-Class Mail pieces for surface transportation (as per the Domestic Mail Manual (DMM)), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard;

(ii) On and after January 5, 2015, a 3- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation (as per the DMM), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard;

(ii) On and after January 5, 2015, a 3- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation (as per the DMM), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard;

(ii) On and after January 5, 2015, a 3- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation (as per the DMM), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard;

(ii) On and after January 5, 2015, a 3- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation (as per the DMM), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard;

(ii) On and after January 5, 2015, a 3- to 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation (as per the DMM), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard;
ZIP Codes 99540 through 99599, 996, 997, 998, and 999.

3) A 4-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET if: the origin and destination are separately in Hawaii and Guam; or the origin and destination are separately in Hawaii and American Samoa.

4)(i) A 5- to 8-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET if they originate and destinate within the contiguous 48 states, they are not merged with First-Class Mail pieces for surface transportation (as per the DMM), and the Area Distribution Center (ADC) and Sectional Center Facility (SCF) are co-located, with the standard specifically equaling the sum of 4 days plus the number of additional days (from 1 to 4) required for surface transportation between the applicable 3-digit ZIP Code origin-destination pairs;

(ii) A 6- to 9-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET if they originate and destinate within the contiguous 48 states, they are not merged with First-Class Mail pieces for surface transportation (as per the DMM), and the ADC and SCF are not co-located, with the standard specifically equaling the sum of 5 days plus the number of additional days (from 1 to 4) required for surface transportation between the applicable 3-digit ZIP Code origin-destination pairs;

5) A 12- to 26-day service standard is applied to all remaining Periodicals pieces properly accepted before the day-zero CET, with the standard specifically equaling the sum of 5 days plus the number of additional days (from 7 to 21) required for intermodal (highway, boat, air-taxi) transportation outside the contiguous 48 states for the applicable 3-digit ZIP Code origin-destination pairs.

(b) Destination Entry. (1) Destination Delivery Unit (DDU) Entered Mail. A 1-day (overnight) service standard is applied to Periodicals pieces that qualify for a DDU rate and are properly accepted before the day-zero CET at the designated DDU.

(2) Destination Sectional Center Facility (DSCF) Entered Mail. (i) A 1-day (overnight) service standard is applied to Periodicals pieces that qualify for a DSCF rate and are properly accepted before the day-zero CET at the designated DSCF, except for mail entered at the SCF in Puerto Rico and destined to the U.S. Virgin Islands, mail entered at the SCF in Hawaii and destined to American Samoa, and mail destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999;

(ii) A 3-day service standard is applied to Periodicals pieces that qualify for a DSCF rate and are properly accepted before the day-zero CET at the designated DSCF, if the mail is entered at the DSCF in Puerto Rico and destined to the U.S. Virgin Islands, entered at the DSCF in Hawaii and destined to American Samoa, or destined to either American Samoa or the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999;

(iii) A 4-day service standard is applied to Periodicals pieces that qualify for a DSCF rate and are properly accepted before the day-zero CET at the designated DSCF, if they are entered at the DSCF in Puerto Rico and destined to the U.S. Virgin Islands, or if they are destined to American Samoa or the following 3-digit ZIP Code areas
§ 121.3 Standard Mail.

(a) End-to-End. (1) The service standard for Sectional Center Facility (SCF) turnaround Standard Mail® pieces accepted at origin before the day-zero Critical Entry Time is 3 days when the origin Processing & Distribution Center/Facility (OPD&C/F) and the SCF are the same building, except for mail between the territories of Puerto Rico and the U.S. Virgin Islands.

(2) The service standard for Area Distribution Center (ADC) turnaround Standard Mail pieces accepted at origin before the day-zero Critical Entry Time is 4 days when the OPD&C/F and the ADC are the same building, unless the ADC is in the contiguous 48 states and the delivery address is not, or the mail is between Puerto Rico and the U.S. Virgin Islands, or the mail is between Hawaii and American Samoa.

(3) The service standard for intra-Network Distribution Center (NDC) Standard Mail pieces accepted at origin before the day-zero Critical Entry Time is 5 days for each remaining 3-digit ZIP Code origin-destination pair within the same Network Distribution Center service area if the origin and destination are within the contiguous 48 states; the same standard applies to mail that is intra-Alaska or between the state of Hawaii and the territory of Guam or American Samoa.

(4) For each remaining 3-digit ZIP Code origin-destination pair within the contiguous 48 states, the service standard for Standard Mail pieces accepted at origin before the day-zero Critical Entry Time is the sum of 5 or 6 days plus the number of additional days (from 1 to 4) required for surface transportation between each 3-digit ZIP Code origin-destination pair.

(5) For each remaining 3-digit ZIP Code origin-destination pair, the service standard for Standard Mail pieces accepted at origin before the day-zero Critical Entry Time is the sum of 5 or 6 days plus the number of additional days (from 7 to 21) required for intermodal (highway, boat, air-taxi) transportation outside the contiguous 48 states for each 3-digit ZIP Code origin-destination pair.

(b) Destination Entry. (1) Standard Mail pieces that qualify for a Destination Delivery Unit (DDU) rate and that
are accepted before the day-zero Critical Entry Time at the proper DDU have a 2-day service standard.

(2) Standard Mail pieces that qualify for a DSCF rate and that are accepted before the day-zero Critical Entry Time at the proper DDU have a 3-day service standard when accepted on Sunday through Thursday and a 4-day service standard when accepted on Friday or Saturday, except for mail dropped at the SCF in the territory of Puerto Rico and destined to the territory of the U.S. Virgin Islands, or mail destined to American Samoa.

(3) Standard Mail pieces that qualify for a Destination Sectional Center Facility (DSCF) rate and that are accepted before the day zero Critical Entry Time at the SCF in the territory of Puerto Rico and destined for the territory of the U.S. Virgin Islands, or are destined to American Samoa, have a 4-day service standard when accepted on Sunday through Thursday and a 5-day service standard when accepted on Friday or Saturday.

(4) Standard Mail pieces that qualify for a Destination Network Distribution Center (DNDC) rate, and that are accepted before the day-zero Critical Entry Time at the proper DNDC have a 5-day service standard, if both the origin and the destination are in the contiguous 48 states.

(5) Standard Mail pieces that qualify for a Destination Network Distribution Center (DNDC) rate, and that are accepted before the day-zero Critical Entry Time at the proper DNDC in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii or the territories of Guam, American Samoa, Puerto Rico, or the U.S. Virgin Islands, have a service standard of 12–14 days, depending on the 3-digit origin-destination ZIP Code pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside the contiguous 48 states.


§ 121.4 Package Services.

(a) End-to-End. (1) The service standard for Sectional Center Facility (SCF) turnaround Package Services mail accepted at the origin SCF before the day-zero Critical Entry Time is 2 days when the origin Processing & Distribution Center/Facility and the SCF are the same building, except for mail between the territories of Puerto Rico and the U.S. Virgin Islands, and mail destined to American Samoa.

(2) The service standard for intra-Network Distribution Center (NDC) Package Services mail accepted at origin before the day-zero Critical Entry Time is 3 days, for each remaining (non-intra-SCF) 3-digit ZIP Code origin-destination pair within a Network Distribution Center service area, where the origin and destination is within the contiguous 48 states and is not served by an Auxiliary Service Facility; and for mail between the territories of Puerto Rico and the U.S. Virgin Islands, and for mail destined to American Samoa.

(3) The service standard for intra-Network Distribution Center (NDC) Package Services mail accepted at origin before the day-zero Critical Entry Time is 4 days for each remaining 3-digit ZIP Code origin-destination pair within a Network Distribution Center service area, where the destination delivery address is served by an Auxiliary Service Facility; and for mail between the state of Hawaii and the territory of Guam, and mail destined to American Samoa.

(4) For each remaining 3-digit ZIP Code origin-destination pair within the contiguous 48 states, the service standard for Package Services mail accepted at origin before the day-zero Critical Entry Time is between 5 and 8 days. For each such 3-digit ZIP Code origin-destination pair, this is the sum of 4 days, plus the number of additional days (from 1 to 4) required for surface transportation between each 3-digit ZIP Code origin-destination pair, plus an additional day if the destination delivery address is served by an Auxiliary Service Facility.

(5) For each remaining 3-digit ZIP Code origin-destination pair for which either the origin or the destination is outside the contiguous 48 states, the service standard for Package Services mail accepted at origin before the day-zero Critical Entry Time is between 10 and 26 days. For each such 3-digit ZIP
United States Postal Service

(6) The service standard for Inbound Surface Parcel Post® pieces (subject to Universal Postal Union rates) is the same as the service standard for domestic Package Services mail from the 3-digit ZIP Code area in which the International Network Distribution Center is located in the 3-digit ZIP Code in which the delivery address is located.

(b) Destination Entry. (1) Package Services mail that qualifies for a Destination Delivery Unit (DDU) rate, and that is accepted before the day-zero Critical Entry Time at the proper DDU, has a 1-day (overnight) service standard.

(2) Package Services mail that qualifies for a Destination Sectional Center Facility (DSCF) rate, and that is accepted before the day-zero Critical Entry Time at the proper DSCF, has a 2-day service standard, except for mail dropped at the SCF in the territory of Puerto Rico and destined to the territory of the U.S. Virgin Islands, and mail destined to American Samoa.

(3) Package Services mail that qualifies for a Destination Sectional Center Facility (DSCF) discount, is accepted before the day-zero Critical Entry Time at the SCF, and is destined to either American Samoa or the U.S. Virgin Islands, has a 3-day service standard.

(4) Package Services mail that qualifies for a Destination Network Distribution Center (DNDC) rate, and is accepted before the day-zero Critical Entry Time at the proper DNDC, has a 3-day service standard.

(5) Package Services mail that qualifies for a Destination Network Distribution Center (DNDC) rate, and that is accepted before the day-zero Critical Entry Time at the proper DNDC in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii, or the territories of Guam, American Samoa, Puerto Rico, or the U.S. Virgin Islands has a service standard of either 11 or 12 days, depending on the 3-digit ZIP Code origin-destination pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside the contiguous 48 states.

[77 FR 31198, May 25, 2012]

APPENDIX A TO PART 121—TABLES DEPICTING SERVICE STANDARD DAY RANGES

The following tables reflect the service standard day ranges resulting from the application of the business rules applicable to the market-dominant mail products referenced in §§121.1 through 121.4:

Table 1. Prior to January 5, 2015, end-to-end service standard day ranges for mail originating and destinating within the contiguous 48 states and the District of Columbia.

<table>
<thead>
<tr>
<th>Mail class</th>
<th>End-to-end range (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First-Class Mail</td>
<td>1–3</td>
</tr>
<tr>
<td>Periodicals</td>
<td>2–9</td>
</tr>
<tr>
<td>Standard Mail</td>
<td>3–10</td>
</tr>
<tr>
<td>Package Services</td>
<td>2–8</td>
</tr>
</tbody>
</table>

Table 2. On and after January 5, 2015, end-to-end service standard day ranges for mail originating and destinating within the contiguous 48 states and the District of Columbia.

<table>
<thead>
<tr>
<th>Mail class</th>
<th>End-to-end range (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First-Class Mail</td>
<td>1–3</td>
</tr>
<tr>
<td>Periodicals</td>
<td>3–9</td>
</tr>
<tr>
<td>Standard Mail</td>
<td>3–10</td>
</tr>
<tr>
<td>Package Services</td>
<td>2–8</td>
</tr>
</tbody>
</table>

Table 3. Prior to January 5, 2015, end-to-end service standard day ranges for mail originating and/or destinating in non-contiguous states and territories.

<table>
<thead>
<tr>
<th>Mail class</th>
<th>End-to-end range (days)</th>
</tr>
</thead>
<tbody>
<tr>
<td>First-Class Mail</td>
<td></td>
</tr>
<tr>
<td>Periodicals</td>
<td></td>
</tr>
<tr>
<td>Standard Mail</td>
<td></td>
</tr>
<tr>
<td>Package Services</td>
<td></td>
</tr>
</tbody>
</table>
## Table 4: On and after January 5, 2015, end-to-end service standard day ranges for mail originating and/or destinating in non-contiguous states and territories.

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>First-Class Mail</td>
<td>1–3</td>
<td>1–3</td>
<td>1–2</td>
<td>3–4</td>
<td>3–5</td>
<td>3–4</td>
<td>4–5</td>
<td>4–5</td>
<td>4–5</td>
</tr>
<tr>
<td>Package Services</td>
<td>* 2–4</td>
<td>2–4</td>
<td>2–3</td>
<td>12–18</td>
<td>11–21</td>
<td>10–15</td>
<td>21–26</td>
<td>20–26</td>
<td>20–24</td>
</tr>
</tbody>
</table>

*Excluding bypass mail.

Table 5. Destination-entry service standard day ranges for mail to the contiguous 48 states and the District of Columbia.

### Table 5—Destination Entry Service Standard Day Ranges for Mail to the Contiguous 48 States and the District of Columbia

<table>
<thead>
<tr>
<th>Mail class</th>
<th>Destination entry (at appropriate facility)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>DDU (Days)</td>
</tr>
<tr>
<td>Periodicals</td>
<td>1</td>
</tr>
<tr>
<td>Standard Mail</td>
<td>2</td>
</tr>
<tr>
<td>Package Services</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 6. Destination entry service standard day ranges for mail to non-contiguous states and territories.

### Table 6—Destination Entry Service Standard Day Ranges for Mail to Non-Contiguous States and Territories

<table>
<thead>
<tr>
<th>Mail class</th>
<th>Destination entry (at appropriate facility)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>SCF (Days)</td>
</tr>
<tr>
<td>Periodicals</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

VerDate Sep<11>2014 14:13 Aug 11, 2017 Jkt 241150 PO 00000 Frm 00044 Fmt 8010 Sfmt 8002 Q:\39\39V1.TXT
PART 122—SERVICE STANDARDS FOR MARKET-DOMINANT SPECIAL SERVICES PRODUCTS

§ 122.1 Ancillary special services.

(a) For the market-dominant mail products identified above in part 121, mailers may purchase various ancillary special services products, which are designed to provide electronic access to information regarding delivery-related events or forwarding addresses for individual mailpieces.

(1) For the following special services, the service standard for the electronic provision of delivery-related information is that it be made available to the sender no later than 24 hours after the time of the scan of the mailpiece by the Postal Automated Redirection System.

(b) For the market-dominant mail products identified above in part 121, mailers may purchase insurance from the Postal Service to provide indemnity against loss or damage to the contents of a mailpiece. The service standard for the administrative resolution of domestic insurance claims is that a final agency decision must be transmitted to the claimant no later than 30 calendar days after the date on which the Postal Service has received all information from the claimant necessary for analysis of the claim.

§ 122.2 Stand-alone special services.

(a) The service standard for P. O. Box service is that mail be available for pickup at the box each delivery day no later than the daily “up-time” publicly posted at the Post Office location that includes the box section.

(b) The service standard for completion of Address List Services (change-of-address information for election boards and registration commissions, correction and ZIP Code placement of mailing lists, and address sequencing) is transmission of the corrected addresses within 15 business days of receipt to the requester, except for the period from November 16 through January 1.

(c) For the domestic market-dominant mail products identified above in part 121, CONFIRM service allows subscribing customers to obtain electronic information regarding when and
§ 122.2

where mailpieces undergo barcode scans in mail processing operations. The service standard for the electronic provision of CONFIRM service scan information is that it be made available to the sender no later than 24 hours after the recorded time of the CONFIRM scan performed by the Postal Service.

(d) The service standard for Postal Money Order Inquiry service is transmission of a response to the customer’s completed inquiry within 15 business days of receipt of the inquiry by the Postal Service, excluding designated postal holidays.

(e) The service standards for Stamp Fulfillment Services order fulfillment service is shipment of orders within the following timeframes, based from the time of order receipt within SFS systems, excluding designated postal holidays.

| STAMP FULFILLMENT SERVICES—SERVICE STANDARDS FOR FULFILLMENT PROCESS |
|---------------------------------|------------------|
| Customer order                  | Service standard  |
| Internet Orders: Non-Philatelic/Non-Custom | ≤ 2 Business Days |
| Business Level Orders            | ≤ 5 Business Days |
| Philatelic/Custom and All Other Order Sources | ≤ 10 Business Days |

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.


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;


(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.


§ 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.
United States Postal Service § 221.3

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.


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.


(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—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.
(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.


**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 delegates are authorized to effect appointments, administer oaths of office for employment, and take other personnel actions.
§ 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 tain 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.


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.
United States Postal Service

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.
230.6 Contractor requirements.

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. Depart-
§ 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).

44
§ 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.

(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.

§ 230.6 Contractor requirements.

(a) The Office of Inspector General shall be the exclusive judge of its contractors’ qualifications.

(b) The Office of Inspector General shall award contracts to and make purchases from only responsible contractors. In order to award a contract, a contracting officer must make an affirmative determination of responsibility.

(c) A responsible prospective contractor is one who:

1. Has the financial and logistical resources to perform the contract;
2. Has the necessary organization, experience, and technical ability to perform the contract;
3. Is able to comply with the delivery and performance schedules established by the Office of Inspector General;
4. Has a satisfactory performance record (although a lack of relevant performance history shall not disqualify a prospective contractor from award);
5. Has a satisfactory record of integrity and business ethics; and,
(6) Is otherwise qualified and eligible to receive an award under applicable federal laws and regulations. 

[77 FR 6676, Feb. 9, 2012]

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 memorizations 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
§ 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
§ 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.

§ 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.

Subpart C—Rules of Procedure Relating to the Disposition of Stolen Mail Matter and Property Acquired by the Office Of Inspector General for Use as Evidence

SOURCE: 81 FR 50634, Aug. 2, 2016, unless otherwise noted.

§ 230.30 Scope.

This subpart prescribes procedures governing the disposition of any property (real, personal, tangible, or intangible) obtained by the United States Postal Service Office of Inspector General (Office of Inspector General) for possible use as evidence after the need to retain such property no longer exists.

§ 230.31 Definitions.

The following definitions apply to this subpart:

(a) Apparent. That which is clear, plain, and evident.

(b) Owner. The person recognized by the law as having ultimate control over and the right to use property.

(c) Claimant. A person who submits a claim for abandoned or other unclaimed property.

(d) Ruling official. The official who has the authority to grant or deny a claim for abandoned or other unclaimed property, typically the Executive Special Agent in Charge of the Area Field Office where the property is located, or a designee.

§ 230.32 Disposition of property of apparent owners where property is valued over $200.

Where an apparent owner of property subject to this subpart is known, and the estimated value of the property exceeds $200, the owner shall be notified by certified mail at his last known address. The written notice shall describe the property and the procedure for filing a claim for its return (see, §§ 230.36 and 230.39). Such claims must be filed within 30 days from the date the written 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 § 230.38.
§ 230.33 Disposition of property of apparent owners where property is valued at $200 or less.

Where an apparent owner of property subject to this subpart is known, and the estimated value of the property is $200 or less, the Executive Special Agent in Charge, or a designee, should attempt to return the property to the owner. If successful, the Executive Special Agent in Charge shall request the owner sign a Hold Harmless Agreement. If not, the Executive Special Agent in Charge shall vest title in the Government.

§ 230.34 Disposition of property of unknown owners where property is valued over $200.

(a) Where no apparent owner of property subject to this subpart is known, except property described in § 230.36, and the estimated value of the property exceeds $200, the Executive Special Agent in Charge, or a designee, must publish notice providing the following information:

(1) A description of the property, including model or serial numbers, if known;

(2) A statement of the location where the property was found;

(3) The name, address, and telephone number of the Executive Special Agent in Charge who has custody of the property; and

(4) A statement inviting any person who believes he or she is fully entitled to the property to submit a claim for its return with the Executive Special Agent in Charge identified in the notice. Such claim must be submitted within 30 days from the date of first publication of the notice.

(b) The notice under paragraph (a) of this section must be published for three consecutive weeks on the Office of Inspector General’s Web site.

§ 230.35 Disposition of property of unknown owners where property is valued at $200 or less.

Where the owner of property subject to this subpart is unknown and the estimated value of the property is $200 or less, no notice is required, and the Executive Special Agent in Charge, or a designee, should vest title in the Government, subject to the rights of the owner to submit a valid claim as provided in § 230.38.

§ 230.36 Contraband and property subject to court order.

Claims submitted with respect to property subject to this subpart, 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 Executive Special Agent in Charge, or a designee, determines that it should be placed in official use by the Office of Inspector General. 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.

§ 230.37 Determination of type of property.

If the Office of Inspector General is unable to determine whether the personal property in its custody is abandoned or voluntarily abandoned, it shall contact the Office of Inspector General, Office of General Counsel for such a determination.

§ 230.38 Disposition of abandoned property; additional period for filing claims.

(a) Upon expiration of the time provided in §§ 230.32 and 230.34 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 Government. However, if the owner satisfies the requirements of paragraph (b) of this section, except for property described in § 230.36, such abandoned property must be returned to the owner if a valid claim is filed within three years from the date the property became abandoned, with the following qualifications:

(1) Where property has been placed in official use by the Office of Inspector General, a person submitting a valid
§ 230.39 Submission of claims.

Claims submitted pursuant to this subpart must be submitted on Postal Service Form 1503, which may be obtained from the Executive Special Agent in Charge who has custody of the property.

§ 230.40 Determination of claims.

Upon receipt of a claim under this subpart, the Office of Inspector General must conduct an investigation to determine the merits of the claim. The results of the investigation must be submitted to the ruling official, 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 granted, the conditions of relief and the procedures to be followed to obtain the relief shall be set forth. If the claim is denied, the claimant shall be advised of the reason for such denial. For claims involving firearms or contraband, the ruling official shall consult with the Office of Inspector General, Office of General Counsel prior to rendering a decision.

§ 230.41 Reconsideration of claims.

A written request for reconsideration of denied claims must be based on evidence recently developed or not previously presented. It must be submitted within 10 days of the postmarked date of the letter denying the claim. The ruling official shall advise the Asset Forfeiture Coordinator if a timely reconsideration of the denial is made. The Office of Inspector General, Office of General Counsel shall rule on the reconsideration request.

§ 230.42 Disposition of property declared abandoned where title vests in the government.

Property declared abandoned, including cash and proceeds from the sale of property subject to this part, may be shared with federal, state, or local law enforcement agencies. Abandoned property may also be destroyed, sold, or placed into official use. However, before abandoned property can be shared with another agency, sold, or placed into official use, the Executive Special Agent in Charge must confer with the Office of Inspector General, Office of General Counsel. Abandoned property that is not shared with other agencies shall be converted into a monetary instrument and deposited into the Postal Service Fund established by 39 U.S.C. 2003. The Executive Special Agent in Charge of Headquarters Operations, or a designee, in consultation with the Office of General Counsel, shall determine which accounts within the Postal Service Fund will receive the proceeds of abandoned property.
§ 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


§ 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
§ 232.1

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. In accordance with 20 U.S.C. 107a(a)(5), 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.

(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 aims 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 under Executive Order 12353, of March 23, 1982.

(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.
United States Postal Service

§ 232.1

(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, or disability, 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. 501.

(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 a fine as provided in 18 U.S.C. 3571 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 or 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(o)(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]

EDITORIAL NOTE: For Federal Register citations affecting § 232.1, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.
§ 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. With the exception of enforcing laws related to the mails:
   (i) The Office of Inspector General will investigate all allegations of violations of postal laws or misconduct by postal employees, including mail theft; and
   (ii) The Inspection Service will investigate all allegations of violations of postal laws or misconduct by postal employees, including mail theft; 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.

§ 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.
§ 233.2

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.

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.

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
§ 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 purposes 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 that under postal laws and regulations is included...
within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection. Sealed mail includes: First-Class Mail; Priority Mail; Priority Mail Express; Outbound International Expedited Services (Priority Mail Express International); as well as Global Express Guaranteed items containing only documents; Outbound Single-Piece First-Class Package International Service; International Priority Airmail, except M-bags; International Surface Air Lift, except M-bags; Outbound Single-Piece First-Class Mail International; Global Bulk Economy Contracts, except M-bags; and International Transit Mail.

(4) **Unsealed mail** is mail that under postal laws or regulations is not included within a class of mail maintained by the Postal Service for the transmission of letters sealed against inspection. Unsealed mail includes: Periodicals; Standard Mail (Commercial and Nonprofit); Package Services; incidental First-Class Mail attachments and enclosures; Parcel Select; Parcel Return Service; First Class Package Service; USPS Retail Ground; Global Express Guaranteed items containing non-documents; Outbound Priority Mail International; International Direct Sacks—M-bags; and all items sent via “Free Matter for the Blind or Handicapped” under 39 U.S.C. 3403 and “Free Matter for the Blind” under International Mail Manual 270.

(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 Operations 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.
United States Postal Service

§ 233.3

(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 thereof.

(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.


§ 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
United States Postal Service

must be in writing and served by personal service upon the addressee or by Certified Mail (Return Receipt Requested) and by First Class Mail.


§ 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.


§ 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
§ 233.7

Forfeiture authority and procedures.

(a) Scope of regulations. (1) The regulations in this section apply to all forfeitures administered by the United States Postal Service with the exception of seizures and forfeitures under the statutes listed in 18 U.S.C. 983(i).

(b) Designation of officials having administrative forfeiture authority. (1) Administrative forfeiture authority. The Chief Postal Inspector is authorized to conduct administrative forfeitures under the statutes identified in paragraph (b)(2) of this section, following, where applicable, the procedures provided by the customs laws of the United States (19 U.S.C. 1602–1618) and to pay valid liens and mortgages against property that has been so forfeited.

(2) Authority of the Chief Postal Inspector. The Chief Postal Inspector is authorized to perform all duties and responsibilities necessary on behalf of the Postal Service and the Office of Inspector General to enforce 18 U.S.C. 981, 983, 2254; 21 U.S.C. 863(c), 881; and 31 U.S.C. 5317; following, where applicable, the procedures provided by the customs laws of the United States (19 U.S.C. 1602–1618) and to pay valid liens and mortgages against property that has been so forfeited. The Chief Postal Inspector is authorized 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

(39 CFR Ch. I (7–1–17 Edition))

§ 233.7

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(2) Authority of the Chief Postal Inspector. The Chief Postal Inspector is authorized to perform all duties and responsibilities necessary on behalf of the Postal Service and the Office of Inspector General to enforce 18 U.S.C. 981, 983, 2254; 21 U.S.C. 863(c), 881; and 31 U.S.C. 5317; following, where applicable, the procedures provided by the customs laws of the United States (19 U.S.C. 1602–1618) and to pay valid liens and mortgages against property that has been so forfeited. The Chief Postal Inspector is authorized 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.

(3) State adoption. The seizure of property by a state or local law enforcement agency or other entity or individual may be adopted for forfeiture by the Postal Inspection Service, as appropriate under its seizure authority pursuant to paragraphs (b)(1) and (2) of this section.

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

(1) Administrative forfeiture means the process by which property may be forfeited by the Postal Inspection Service rather than through judicial proceedings. Administrative forfeiture has the same meaning as nonjudicial forfeiture, as that term is used in 18 U.S.C. 983.

(2) Appraised value means the estimated market value of property 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.

(3) Appropriate official means the Chief Postal Inspector or that person's designee, or where the term “appropriate official” means the office or official identified in the notice published or personal written notice in accordance with paragraph (j) of this section.

(4) Contraband means:

(i) Any controlled substance, hazardous raw material, equipment or container, plants, or other property subject to summary forfeiture pursuant to sections 511(f) or (g) of the Controlled Substances Act (21 U.S.C. 881(f) or (g)); or

(ii) Any controlled substance imported into the United States, or exported out of the United States, in violation of law.

(5) Civil forfeiture proceeding means a civil judicial forfeiture action as that term is used in 18 U.S.C. 983.

(6) Domestic value means the same as the term appraised value as defined in paragraph (c)(2) of this section.

(7) Expense means all costs incurred to detain, inventory, safeguard, maintain, advertise, sell, or dispose of property under seizure, detained, or forfeited pursuant to any law.

(8) File or filed has the following meanings:

(i) A claim or any other document submitted in an administrative forfeiture proceeding is not deemed filed until actually received by the appropriate official identified in the personal written notice and the published notice specified in paragraph (i) of this section. A claim is not considered filed if it is received by any other office or official. In addition, a claim in an administrative forfeiture proceeding is not considered filed if received only by an electronic or facsimile transmission.

(ii) For purposes of computing the start of the 90-day period set forth in 18 U.S.C. 983(a)(3), an administrative forfeiture claim is filed on the date when the claim is received by the designated official, even if the claim is received from an incarcerated pro se prisoner.

(9) Interested party means any person who reasonably appears to have an interest in the property, based on the facts known to the Postal Inspection Service before a declaration of forfeiture is entered.

(10) Judicial forfeiture means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

(11) Mail includes regular or certified U.S. mail, and mail and package transportation and delivery services provided by other private or commercial interstate carriers.

(12) Nonjudicial forfeiture has the same meaning as administrative forfeiture. See paragraph (b)(1) of this section.

(13) Person means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

(14) Property subject to administrative forfeiture means any personal property of the kinds described in 19 U.S.C. 1607(a)(1)(4).

(15) Property subject to forfeiture refers to all property that Federal law authorizes to be forfeited to the United States of America in any administrative forfeiture proceeding, in any civil judicial forfeiture proceeding, or in any criminal forfeiture proceeding.

(d) Seizing property subject to forfeiture—(1) Authority to seize property. Postal Inspectors may seize assets under any Federal statute over which
§ 233.7

the Postal Inspection Service has investigatory or forfeiture jurisdiction.

(2) Turnover of assets seized by state and local agencies. (i) Property that is seized by a state or local law enforcement agency and transferred to the Postal Inspection Service for administrative or civil forfeiture may be adopted for administrative forfeiture without the issuance of any Federal seizure warrant or other Federal judicial process.

(ii) Where a state or local law enforcement agency maintains custody of property pursuant to process issued by a state or local judicial authority, and notifies the Postal Inspection Service of the impending release of such property, the Postal Inspection Service may seek and obtain a Federal seizure warrant in anticipation of a state or local judicial authority releasing the asset from state process for purposes of Federal seizure, and may execute such seizure warrant when the state or local law enforcement agency releases the property as allowed or directed by its judicial authority.

(e) Inventory. The Postal Inspection Service shall prepare an inventory of any seized property.

(f) Custody. (1) All property seized by Postal Inspectors for forfeiture shall be delivered to the custody of the U.S. Marshals Service, or custodian approved by the U.S. Marshals Service, as soon as possible after seizure, unless it is retained as evidence.

(2) Seized U.S. currency (and to the extent practicable seized foreign currency and negotiable instruments) must be deposited promptly in the Holding Account—Seizure and Forfeiture account under the control of the Postal Inspection Service pending forfeiture. Provisional exceptions to this requirement may be granted as follows:

(i) If the seized currency has a value less than $5,000, and a supervisory official within the U.S. Attorney’s Office determines in writing that the currency is reasonably likely to serve a significant, independent, tangible, evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise, or

(ii) The seized currency has a value greater than $5,000, and the Chief, Asset Forfeiture Money Laundering Section (AFMLS) determines in writing that the currency is reasonably likely to serve a significant, independent, tangible, evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise.

(3) Seized currency has a significant independent, evidentiary purpose as those terms are used in paragraphs (f)(2)(i) and (f)(2)(ii) of this section if, for example, it bears fingerprint evidence, is packaged in an incriminating fashion, or contains a traceable amount of narcotic residue or some other substance of evidentiary significance. If only a portion of the seized currency has evidentiary value, only that portion should be retained; the balance should be deposited.

(g) Appraisal. The Postal Inspection Service shall determine the domestic value of the seized property as soon as practicable following seizure.

(h) Release before claim. (1) After seizure for forfeiture and prior to the filing of any claim, the appropriate official is authorized to release property seized for forfeiture provided:

(i) The property is not contraband, evidence of a violation of law, or any property, the possession of which by the claimant, petitioner, or the person from whom it was seized is prohibited by state or Federal law, and does not have a design or other characteristic that particularly suits it for use in illegal activities; and

(ii) The appropriate official determines within 10 days of seizure that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

(2) Further, at any time after seizure and before any claim is filed, such seized property may be released if the appropriate official determines that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.
Commencing an administrative forfeiture. An administrative forfeiture proceeding begins when notice is first published in accordance with paragraph 233.7(i)(1), or the first personal written notice is sent in accordance with paragraph 233.7(i)(2), whichever occurs first.

Notice of administrative forfeiture—

(i) Notice by publication. After seizing property subject to administrative forfeiture, the Appropriate Official shall select from the following options a means of publication reasonably calculated to notify potential claimants of the seizure and intent to forfeit and sell or otherwise dispose of the property:

(A) Publication once each week for at least three successive weeks in a newspaper generally circulated in the judicial district where the property was seized; or
(B) Posting a notice on an official Government Internet site for at least 30 consecutive days.

(ii) The published notice shall:

(A) Describe the seized property;
(B) State the date, statutory basis, and place of seizure;
(C) State the deadline for filing a claim when personal written notice has not been received, at least 30 days after the date of final publication of the notice of seizure; and
(D) State the identity of the appropriate official of the Postal Inspection Service and the address where the claim must be filed.

(ii) Personal written notice—(1) Manner of providing notice. After seizing property subject to administrative forfeiture, the Postal Inspection Service, in addition to publishing notice, shall send personal written notice of the seizure to each interested party in a manner reasonably calculated to reach such parties.

(ii) Content of personal written notice. The personal written notice sent by the Postal Inspection Service shall:

(A) State the date when the personal written notice is sent;
(B) State the deadline for filing a claim, at least 35 days after the personal written notice is sent;
(C) State the date, statutory basis, and place of seizure;
(D) State the identity of the appropriate official of the Postal Inspection Service and the address where the claim must be filed; and
(E) Describe the seized property.

(3) Timing of notice—(i) Date of personal notice. Personal written notice is sent on the date when the Postal Inspection Service causes it to be placed in the mail, or otherwise sent by means reasonably calculated to reach the interested party. The personal written notice required by paragraph (i)(2) of this section shall be sent as soon as practicable, and in no case more than 60 days after the date of seizure (or 90 days after the date of seizure by a state or local law enforcement agency if the property was turned over to the Postal Inspection Service for the purpose of forfeiture under Federal law).

(ii) Civil judicial forfeiture. If, before the time period for sending notice expires, the Government files a civil judicial forfeiture action against the seized property and provides notice of such action as required by law, personal notice of administrative forfeiture is not required under this paragraph.

(iii) Criminal indictment. If, before the time period for sending notice under this paragraph expires, no civil judicial forfeiture action is filed, but a criminal indictment or information is obtained containing an allegation that the property is subject to forfeiture, the seizing agency shall either:

(A) Send timely personal written notice and continue the administrative forfeiture proceeding; or
(B) After consulting with the U.S. Attorney, terminate the administrative forfeiture proceeding and notify the custodian to return the property to the person having the right to immediate possession unless the U.S. Attorney takes steps necessary to maintain custody of the property as provided in the applicable criminal forfeiture statute.

(4) Subsequent Federal seizure. If property is seized by a state or local law enforcement agency, but personal written notice is not sent to the person from whom the property is seized within the time period for providing notice under paragraph (j)(3)(i) of this section, then
any administrative forfeiture proceeding against the property may commence if:

(i) The property is subsequently seized or restrained by the Postal Inspection Service pursuant to a Federal seizure warrant or restraining order and the Postal Inspection Service sends notice as soon as practicable, and in no case more than 60 days after the date of the Federal seizure; or

(ii) The owner of the property consents to forfeiture of the property.

(5) Tolling. (i) In states or localities where orders are obtained from a state court authorizing the turnover of seized assets to the Postal Inspection Service, the period from the date an application or motion is presented to the state court for the turnover order through the date such order is issued by the court shall not be included in the time period for providing notice under paragraph (j)(3)(i) of this section.

(ii) If property is detained at an international border or port of entry for the purpose of examination, testing, inspection, obtaining documentation, or other investigation relating to the importation of the property into, or the exportation of the property from the United States, such period of detention shall not be included in the period described in paragraph (j)(3)(i) of this section. In such cases, the 60-day period shall begin to run when the period of detention ends, if a seizing agency seizes the property for the purpose of forfeiture to the United States.

(6) Identity of interested party. If the Postal Inspection Service determines the identity or interest of an interested party after the seizure or adoption of the property, but before entering a declaration of forfeiture, the Postal Inspection Service shall send written notice to such interested party under paragraph 3(i) not later than 60 days after determining the identity of the interested party or the interested party’s interest.

(7) Extending deadline for notice. The Chief Counsel for the Postal Inspection Service may extend the period for sending personal written notice under these regulations in a particular case for a period not to exceed 30 days (which period may not be further extended except by a court pursuant to 18 U.S.C. 983(a)(1)(C), (D)), if the Chief Counsel for the Postal Inspection Service determines, and states in writing, that there is reason to believe that notice may have an adverse result, including: Endangering the life or physical safety of an individual; flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation, or unduly delaying a trial.

(8) Certification. The Chief Counsel for the Postal Inspection Service shall provide the written certification required under 18 U.S.C. 983(a)(1)(C) when the Government requests it and the conditions described in 18 U.S.C. 983(a)(1)(D) are present.

(k) Claims—(1) Filing. In order to contest the forfeiture of seized property in Federal court, any person asserting an interest in seized property subject to an administrative forfeiture proceeding under these regulations must file a claim with the appropriate official, after the commencement of the administrative forfeiture proceeding as defined in paragraph (h) of this section, and not later than the deadline set forth in a personal notice letter sent pursuant to paragraph (i)(2) of this section. If personal written notice is sent but not received, then the intended recipient must file a claim with the appropriate official not later than 30 days after the date of the final publication of the notice of seizure.

(2) Contents of claim. A claim shall:

(i) Identify the specific property being claimed;

(ii) Identify the claimant and state the claimant’s interest in the property; and

(iii) Be made under oath by the claimant, not counsel for the claimant, and recite that it is made under the penalty of perjury, consistent with the requirements of 28 U.S.C. 1746. An acknowledgement, attestation, or certification by a notary public alone is insufficient.

(3) Availability of claim forms. The claim need not be made in any particular form. However, the Postal Inspection Service will make claim forms generally available on request. Such
forms shall be written in easily understandable language. A request for a claim form does not extend the deadline for filing a claim. Any person may obtain a claim form by requesting one in writing from the appropriate official.

(4) Cost bond not required. Any person may file a claim under paragraph 233.7(k)(1) without posting bond, except in forfeitures under statutes listed in 18 U.S.C. 983(i).

(5) Referral of claim. Upon receipt of a claim that meets the requirements of paragraphs (k)(1) and (2) of this section, the Postal Inspection Service shall return the property or suspend the administrative forfeiture proceeding and promptly transmit the claim, together with a description of the property and a complete statement of the facts and circumstances surrounding the seizure, to the appropriate U.S. Attorney for commencement of judicial forfeiture proceedings.

(6) Premature filing. If a claim is filed with the appropriate official after the seizure of the property, but before the commencement of the administrative forfeiture proceeding as defined in paragraph (i) of this section, the claim shall be deemed filed on the 30th day after the commencement of the administrative forfeiture proceeding. If such claim meets the requirements of paragraph (k)(2) of this section, the Postal Inspection Service shall suspend the administrative forfeiture proceedings and promptly transmit the claim, together with a description of the property and a complete statement of the facts and circumstances surrounding the seizure to the appropriate U.S. Attorney for commencement of judicial forfeiture proceedings.

(7) Defective claims. If the Postal Inspection Service determines that an otherwise timely claim does not meet the requirements of paragraph (k)(2) of this section, the Postal Inspection Service may notify the claimant of this determination and allow the claimant a reasonable time to cure the defect(s) in the claim. If, within the time allowed by the Postal Inspection Service, the requirements of paragraph (k)(2) of this section are not met, the claim shall be void and the forfeiture proceedings shall proceed as if no claim had been submitted. If the claimant timely cures the deficiency, then the claim shall be deemed filed on the date when the appropriate official receives the cured claim.

(l) Interplay of administrative and criminal judicial forfeiture proceedings. An administrative forfeiture proceeding pending against seized or restrained property does not bar the Government from alleging that the same property is forfeitable in a criminal case. Notwithstanding the fact that an allegation of forfeiture has been included in a criminal indictment or information, the property may be administratively forfeited in a parallel proceeding.

(m) Requests for hardship release of seized property. (1) Under certain circumstances, a claimant may be entitled to immediate release of seized property on the basis of hardship.

(2) Any person filing a request for hardship release must also file a claim to the seized property pursuant to paragraph (k) of this section and as defined in 18 U.S.C. 983(a).

(3) The timely filing of a valid claim pursuant to paragraph (k) of this section does not entitle the claimant to possession of the seized property, but a claimant may request immediate release of the property while forfeiture is pending, based on hardship.
§ 233.7

(4) A claimant seeking release of property under 18 U.S.C. 983(f) and these regulations must file a written request with the appropriate official. The request must establish that:

(i) The claimant has a possessory interest in the property;

(ii) The claimant has sufficient ties to the community to provide assurance that the property will be available at the time of trial;

(iii) The continued possession by the Government pending the final disposition of forfeiture proceedings will cause substantial hardship to the claimant, such as preventing the functioning of a business, preventing an individual from working, or leaving an individual homeless;

(iv) The claimant’s likely hardship from the continued possession by the Government of the seized property outweighs the risk that the property will be destroyed, damaged, lost, concealed, or transferred if it is returned to the claimant during the pendency of the proceeding; and

(v) The property is not:

(A) Contraband, any property, the possession of which by the claimant, petitioner, or person from whom it was seized is prohibited by state or Federal law, currency, or other monetary instrument, or electronic funds unless such currency or other monetary instrument or electronic funds constitutes the assets of a legitimate business which has been seized;

(B) Intended to be used as evidence of a violation of law;

(C) By reason of design or other characteristic, particularly suited for use in illegal activities; or

(D) Likely to be used to commit additional criminal acts if returned to the claimant.

(5) A hardship release request pursuant to this paragraph shall be deemed to have been made on the date when it is received by the appropriate official as defined in paragraph (c)(3) of this section, or the date the claim was deemed filed under paragraph (k) of this section. If the request is ruled on and denied by the appropriate official or the property has not been released within the 15-day time limit period, the claimant may file a petition in Federal district court pursuant to 18 U.S.C. 983(f)(3). If a petition is filed in Federal district court, the claimant must send a copy of the petition to the appropriate official to whom the hardship petition was originally submitted and to the U.S. Attorney in the judicial district where the judicial petition was filed.

(6) If a civil forfeiture complaint is filed on property and the claimant files a claim with the court pursuant to 18 U.S.C. 983(a)(4)(A) and Rule G(5) of the Supplemental Rules for Certain Admiralty and Maritime Claims, a hardship petition may be submitted to the individual identified in the public or personal notice of the civil forfeiture action.

(n) Disposition of property before forfeiture. (1) Whenever it appears to the Postal Inspection Service that any seized property is liable to perish or to waste, or to be greatly reduced in value during its detention for forfeiture, or that the expense of keeping the property is or will be disproportionate to its value, the Chief Counsel for the Postal Inspection Service may order destruction, sale, or other disposition of such property prior to forfeiture. In addition, the owner may obtain release of the property by posting a substitute monetary amount with the Postal Inspection Service to be held subject to forfeiture proceedings in place of the seized property to be released. Upon approval by the Chief Counsel for the Postal Inspection Service, the property will be released to the owner upon the payment of an amount equal to the Government appraised value of the property if the property is not evidence of a violation of law, is not contraband, and has no design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a money order, an official bank check, or a cashier’s check made payable to the Postal Inspection Service. A bond in the form of a cashier’s check or official bank check will be considered as paid once the check has been accepted for payment by the financial institution that issued the check. If a substitute amount is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute amount in lieu of the property. The pre-forfeiture
destruction, sale, or other disposition of seized property pursuant to this subsection shall not extinguish any person’s rights to the value of the property under applicable law. The authority vested in the Chief Counsel for the Postal Inspection Service under this subsection may not be delegated.

(2) The Postal Inspection Service shall commence forfeiture proceedings, regardless of the disposition of the property under this paragraph. A person with an interest in the property that was destroyed or otherwise disposed of under this paragraph may file a claim to contest the forfeiture of the property or a petition for remission or mitigation of the forfeiture. No employee of the Postal Inspection Service shall be liable for the destruction or other disposition of property made pursuant to this paragraph. The destruction or other disposition of the property does not impair in rem jurisdiction.

(o) Declaration of administrative forfeiture. If the Postal Inspection Service commences a timely proceeding against property subject to administrative forfeiture, and no valid and timely claim is filed, the appropriate official shall declare the property forfeited. The declaration of forfeiture shall have the same force and effect as a final decree and order of forfeiture in a Federal judicial forfeiture proceeding.

(p) Return of property. (1) If, under 18 U.S.C. 983(a)(3), the Postal Inspection Service is notified by the U.S. Attorney in charge of the matter that the 90-day deadline was not met, the Postal Inspection Service is required to release the seized property. Under this subsection, the Postal Inspection Service is not required to return property for which it has an independent basis for continued custody including, but not limited to, contraband or evidence of a violation of law.

(2) Upon becoming aware that the seized property must be released, the Postal Inspection Service shall promptly notify the person with a right to immediate possession of the property, informing that person to contact the property custodian within the specified period for release of the property may result in the initiation of abandonment proceedings against the property pursuant to 39 CFR part 946. The property custodian will be notified of the identity of the person to whom the property should be released.

(3) The property custodian shall have the right to require presentation of proper identification or to verify the identity of the person who seeks the release of property.

(q) 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 that is not required to be destroyed by law and that 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.

(r) Attorney fees and costs. The Postal Inspection Service is not liable for attorney fees or costs in any administrative forfeiture proceeding, including such proceedings in which a claim is filed; the matter is referred to the U.S. Attorney, and the U.S. Attorney declines to commence judicial forfeiture proceedings.

[77 FR 25596, May 1, 2012]

§ 233.8 Expedited forfeiture proceedings for property seizures based on violations involving the possession of personal use quantities of a controlled substance.

(a) Purpose and scope. (1) The following definitions, regulations, and criteria are designed to establish and implement procedures required by section
6079 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4181. They are intended to supplement existing law and procedures relative to the forfeiture of property under the identified statutory authority. These regulations do not affect the existing legal and equitable rights and remedies of those with an interest in property seized for forfeiture, nor do these provisions relieve interested parties from their existing obligations and responsibilities in pursuing their interests through such courses of action. These regulations are intended to reflect the intent of Congress to minimize the adverse impact on those entitled to legal or equitable relief occasioned by the prolonged detention of property subject to forfeiture due to violations of law involving personal use quantities of controlled substances. The definition of personal use quantities of a controlled substance as contained herein is intended to distinguish between those small quantities, which are generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities generally considered to be possessed for personal consumption and not for further distribution, and those larger quantities generally considered to be subject to further distribution.

(2) In this regard, for violations involving the possession of personal use quantities of a controlled substance, section 6079(b)(2) requires either that administrative forfeiture be completed within 21 days of the seizure of the property, or alternatively, that procedures are established that provide a means by which an individual entitled to relief may initiate an expedited administrative review of the legal and factual basis of the seizure for forfeiture. Should an individual request relief pursuant to these regulations and be entitled to the return of the seized property, such property shall be returned immediately following that determination, but not later than 20 days after filing of a petition for expedited release by an owner, and the administrative forfeiture process shall cease. Should the individual not be entitled to the return of the seized property, however, the administrative forfeiture of that property shall proceed. The owner may, in any event, obtain release of property pending the administrative forfeiture by submitting to the agency making the determination property sufficient to preserve the Government’s vested interest for purposes of the administrative forfeiture.

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

(1) Commercial fishing industry vessel means a vessel that:
(i) Commercially engages in the catching, taking, or harvesting of fish or an activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;
(ii) Commercially prepares fish or fish products other than by gutting, decapitating, gilling, skinning, shucking, icing, freezing, or brine chilling; or
(iii) Commercially supplies, stores, refrigerates, or transports fish, fish products, or materials directly related to fishing or the preparation of fish to or from a fishing, fish processing, or fish tender vessel or fish processing facility.

(2) Controlled substance has the meaning given in 21 U.S.C. 802(6).

(3) Normal and customary manner means that inquiry suggested by particular facts and circumstances that would customarily be undertaken by a reasonably prudent individual in a like or similar situation. Actual knowledge of such facts and circumstances is unnecessary, and implied, imputed, or constructive knowledge is sufficient. An established norm, standard, or custom is persuasive but not conclusive or controlling in determining whether an owner acted in a normal and customary manner to ascertain how property would be used by another legally in possession of the property. The failure to act in a normal and customary manner as defined herein will result in the denial of a petition for expedited release of the property and is intended to have the desirable effect of inducing owners of the property to exercise greater care in transferring possession of their property.

(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

§233.8

39 CFR Ch. I (7–1–17 Edition)
that another person had dominion and control over the property.

(5) Personal use quantities means those amounts of controlled substances in possession in circumstances where there is no other evidence of an intent to distribute, or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance.

(i) Evidence that possession of quantities of a controlled substance is for other than personal use may include, for example:

(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 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) Circumstances or reliable information indicating that the controlled substance is related to large amounts of cash or any amount of prerecorded Government funds;

(E) Circumstances or reliable information indicating that the controlled substance is a sample intended for distribution in anticipation of a transaction involving large quantities, or is part of a larger delivery;

(F) Statements by the possessor, or otherwise attributable to the possessor, including statements of conspirators, that indicate possession with intent to distribute; or

(G) The fact that the controlled substance was recovered from sweepings.

(ii) Possession of a controlled substance shall be 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 above—and the amounts do not exceed the following quantities:

(A) One gram of a mixture or substance containing a detectable amount of heroin;

(B) One gram of a mixture or substance containing a detectable amount of the following:

(1) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ephedrine, and derivations of ephedrine 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 that contains any quantity of any of the substances referred to in (i)(B)(1) through (i)(B)(3) of this definition;

(C) One-tenth gram of a mixture or substance described in (ii)(B) of this definition that contains cocaine base;

(D) One-tenth gram of a mixture or substance containing a detectable amount of phencyclidine (PCP);

(E) Five hundred micrograms of lysergic acid diethylamide (LSD);

(F) One ounce of a mixture or substance containing a detectable amount of marijuana;

(G) 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 isomers.

(iii) The possession of a narcotic, a depressant, a stimulant, a hallucinogen or a 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 (ii)(B) of this definition.

(6) Property means property subject to forfeiture under 21 U.S.C. 881(a)(4), (6), or (7); 19 U.S.C. 1595a; or 49 U.S.C. 80303.

(7) Seizing agency means the Federal agency that has seized the property or adopted the seizure of another agency and has the responsibility for administratively forfeiting the property.

(8) Statutory rights or defenses to the forfeiture means all legal and equitable rights and remedies available to a claimant of property seized for forfeiture.

(c) Petition for expedited release in an administrative forfeiture proceeding. (1)
§ 233.8

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) Where property described in paragraph (c)(1) of this section is a commercial fishing industry vessel proceeding to or from a fishing area or intermediate port of call or actually engaged in fishing operations, which would be subject to seizure for administrative forfeiture for a violation of law involving controlled substances in personal use quantities, a summons to appear shall be issued in lieu of a physical seizure. The vessel shall report to the port designated in the summons. The Postal Inspection Service shall be authorized to effect administrative forfeiture as if the vessel had been physically seized. Upon answering the summons to appear on or prior to the last reporting date specified in the summons, the owner of the vessel may file a petition for expedited release pursuant to paragraph (c)(1) of this section, and the provisions of paragraph (c)(1) and other provisions in this section pertaining to a petition for expedited release shall apply as if the vessel had been physically seized.

(3) The owner filing the petition for expedited release shall 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 of 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.

(4) In addition to those factors listed in paragraph (c)(3) of this section, if an owner can demonstrate that the owner has other statutory rights or defenses that would cause the owner to prevail on the issue of forfeiture, such factors shall also be considered in ruling on the petition for expedited release.

(5) A petition for expedited release must be received by the Postal Inspection Service within 20 days from the date of the first publication of the notice of seizure in order to be considered by the Postal Inspection Service. The petition must be executed and sworn to by the owner, and both the envelope and the request must be clearly marked “PETITION FOR EXPEDITED RELEASE.” Such petition shall be filed with the appropriate office or official identified in the personal written notice and the publication notice.

(6) The petition shall 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 shall 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.

(d) Ruling on petition for expedited release in an administrative forfeiture proceeding.

(1) If a final administrative determination of the case, without regard to the provisions of this section, is made within 21 days of the seizure, the Postal Inspection Service need take no further action under this section on a petition for expedited release received pursuant to paragraph (c) of this section.

(2) If no such final administrative determination is made within 21 days of the seizure, the following procedure shall apply. The Postal Inspection Service shall, within 20 days after the receipt of the petition for expedited release, determine whether the petition filed by the owner has established the factors listed in paragraph (c)(3) of this section and:

(i) If the Postal Inspection Service determines that those factors have been established, it shall terminate the administrative proceedings and return the property to the owner (or in the case of a commercial fishing industry vessel for which a summons has been issued shall dismiss the summons), except where it is evidence of a violation of law; or
United States Postal Service

§ 233.9 Regulations governing remission or mitigation of administrative, civil, and criminal forfeitures.

(a) Purpose, authority, and scope—(1) 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 Inspection Service. The purpose of these regulations is to provide a basis for 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, the regulations provide for partial or total mitigation of the forfeiture and imposition of alternative conditions in appropriate circumstances.

(2) Authority to grant remission and mitigation. (i) Remission and mitigation functions in administrative forfeitures under the jurisdiction of the Postal Inspection Service are performed by the Chief Counsel.

(ii) Remission and mitigation functions in judicial cases are performed by the Criminal Division of the Department of Justice. Within the Criminal Division, authority to grant remission and mitigation is delegated to the Chief, Asset Forfeiture and Money Laundering Section.

(iii) The powers and responsibilities delegated by the regulations in this section may be re-delegated to attorneys or managers working under the supervision of the Chief Counsel.

(3) Scope. This section governs any petition for remission filed with the Postal Inspection Service and supersedes any Postal Service regulation governing petitions for remission, to the extent such regulation is inconsistent with this section.

(4) Applicability. The time periods and internal requirements established in this section 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. The regulations will apply to all forfeiture actions commenced on or after May 1, 2012.
(b) **Definitions.** As used in this section:

1. **Administrative forfeiture** means the process by which property may be forfeited by the Postal Inspection Service rather than through judicial proceedings. Administrative forfeiture has the same meaning as "nonjudicial forfeiture," as that term is used in 18 U.S.C. 983.

2. **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.

3. **Assets Forfeiture Fund** means the Department of Justice Assets Forfeiture Fund, Department of the Treasury Assets Forfeiture Fund, or the Postal Service's Assets Forfeiture Fund, depending upon the identity of the seizing agency.

4. **Attorney General** means the Attorney General of the United States or that official's designee.

5. **Beneficial owner** means a person with actual use of, as well as an interest in, the property subject to forfeiture.

6. **Chief, Asset Forfeiture and Money Laundering Section, and Chief, refer to the Chief of the Asset Forfeiture and Money Laundering Section, Criminal Division, United States Department of Justice.**

7. **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.

8. **Judgment creditor** means one who has obtained a judgment against the debtor but has not yet received full satisfaction of the judgment.

9. **Judicial forfeiture** means either a civil or a criminal proceeding in a United States District Court that may result in a final judgment and order of forfeiture.

10. **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:

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

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

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

11. **Net equity** means the amount of a lienholder's monetary interest in the 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.

12. **Nonjudicial forfeiture** has the same meaning as *administrative forfeiture* as defined in this section.

13. **Owner** means the person in whose 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 (b)(22) of this section, may also be an owner if that person 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 that person is not its beneficial owner.

14. **Person** means an individual, partnership, corporation, joint business enterprise, estate, or other legal entity capable of owning property.

15. **Petition** means a petition for remission or mitigation of forfeiture under the regulations in this part. This definition includes a petition for restoration of the proceeds of sale of forfeited property and a petition for the
value of the forfeited property placed into official use.

(16) **Petitioner** means the person applying for remission, mitigation, restoration of the proceeds of sale, or for the appraised value of forfeited property, under this part. A petitioner may be an owner as defined in paragraph (b)(13) of this section, a lienholder as defined in paragraph (b)(10), or a victim as defined in paragraph (b)(22), subject to the limitations of paragraph (h) of this section.

(17) **Property** means real or personal property of any kind capable of being owned or possessed.

(18) **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 10 years of the acquisition of the property subject to forfeiture, or two convictions for a related crime at any time in the past.

(19) **Related crime** as used in paragraphs (b)(18) and (f) 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 relating to 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.

(20) **Related offense** as used in paragraph (h) of this section means:

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

(ii) 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 forfeiture was ordered.

(21) **Ruling Official** means any official to whom decision making authority has been delegated pursuant to paragraph (a)(2) of this section.

(22) **Seizing agency** means any Federal agency that seized the property or adopted the seizure of another agency for Federal forfeiture.

(23) **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; provided however, that if a victim has received compensation from insurance or any other source with respect to a pecuniary loss, remission may be granted to the third party who provided compensation, up to the amount of the victim’s pecuniary loss as defined in paragraph (h)(3) of this section.

(24) **Violator** means the person whose use or acquisition of the property in violation of the law subjected such property to seizure for forfeiture.

(c) **Petitions in administrative forfeiture cases.**

(1) **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 30 days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until the property has been forfeited, except in cases involving petitions to restore the proceeds from the sale of forfeited property. A notice of seizure shall include the Ruling Official, the mailing and street address of the official to whom petitions should be sent, and an asset identifier number.

(2) **Persons who may file.** (i) A petition for remission or mitigation must be filed by a petitioner as defined in paragraph (b)(16) of this section, or as prescribed in paragraph (i)(7) and (8) of this section. A person or person acting on their behalf may not file a petition if, after notice or knowledge of the fact that a warrant or process has been issued for his apprehension, in order to avoid criminal prosecution the person:

(A) Purposely leaves the jurisdiction of the United States;

(B) Declines to enter or reenter the United States to submit to its jurisdiction; or
(C) Otherwise evades the jurisdiction of the court in which a criminal matter is pending against the person.

(ii) Paragraph (c)(2)(i)(A) of this section applies to a petition filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation:

(A) Purposely leaves the jurisdiction of the United States;
(B) Declines to enter or reenter the United States to submit to its jurisdiction; or
(C) Otherwise evades the jurisdiction of the court in which a criminal case is pending against the person.

(3) Contents of petition. (i) All petitions must include the following information in clear and concise terms:

(A) 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;
(B) The name of the seizing agency, the asset identifier number, and the date and place of seizure;
(C) A complete description of the property, including make, model, and serial numbers, if any; and
(D) 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. Such documentation includes evidence establishing the source of funds for seized currency or the source of funds used to purchase the seized asset.

(ii) Any factual recitation or documentation of any type in a petition must be supported by a declaration under penalty of perjury that meets the requirements of 28 U.S.C. 1746.

(4) Releases. In addition to the contents of the petition for remission or mitigation set forth in paragraph (c)(3) 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.

(5) Filing a petition. (i) A petition for remission or mitigation subject to administrative forfeiture is to be sent to the official address provided in the notice of seizure and 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 (i)(7).

(ii) If the notice of seizure does not provide an official address, the petition shall be addressed to the Asset Forfeiture Unit at the following address:

Asset Forfeiture Unit, Criminal Investigations, U.S. Postal Inspection Service, P.O. Box 44373, Washington, DC 20026–4373.

(iii) Submission by facsimile or other electronic means will not be accepted.

(6) 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.

(7) Ruling. Upon receipt of the petition and the agency report, the Ruling Official for the Postal Inspection Service shall review the petition and the report, if any, and shall rule on the merits of the petition. No hearing shall be held.

(8) Petitions granted. If the Ruling Official grants a remission or mitigation of the forfeiture, a copy of the decision shall be mailed to the petitioner or, if represented by an attorney, to the petitioner’s attorney. A copy 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.

(9) Petitions denied. If the Ruling Official denies a petition, a copy of the decision shall be mailed 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 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 (c)(10) of this section.

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

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

(B) 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.

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

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

(11) Restoration of proceeds from sale. (i) 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:

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

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

(ii) Such a petition shall be submitted pursuant to paragraphs (c)(2) through (c)(5) of this section within 90 days of the date the property is sold or otherwise disposed of.

(d) Petitions in judicial forfeiture cases—(1) 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 30 days of the date they receive the notice in order to facilitate processing. Petitions shall be considered any time after notice until such time as the forfeited property is placed in official use, sold, or otherwise disposed of according to law, except in cases involving petitions to restore property. A notice of seizure shall include the title of the Ruling Official and the mailing and street address of the official to whom petitions should be sent, the name of the agency seizing the property, an asset identifier number, and the district court docket number.

(2) Persons who may file. A petition for remission or mitigation must be filed by a petitioner as defined in paragraph (b)(16) of this section, or as prescribed in paragraph (i)(7) and (8) of this section.

(3) Contents of petition. (i) All petitions must include the following information in clear and concise terms:

(A) 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;

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

(C) The district court docket number;

(D) A complete description of the property, including the address or legal description of real property, and make, model, and serial numbers of personal property, if any; and

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

(ii) Any factual recitation or documentation of any type in a petition must be supported by a declaration under penalty of perjury that meets the requirements of 28 U.S.C. 1746.

(4) Releases. In addition to the content of the petition for remission or mitigation set forth in paragraph (d)(3) of this section, the petitioner, upon request, also shall 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 the interest in such property.

(5) Filing petition with Department of Justice. 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
§ 233.9

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 forth in paragraph (i)(7) of this section; and shall be submitted to the U.S. Attorney for the district in which the judicial forfeiture proceedings are brought.

(6) Agency investigation and recommendation; U.S. Attorney's recommendation. Upon receipt of a petition, the U.S. Attorney shall direct the seizing agency to investigate the merits of the petition based on the information provided by the petitioner and the totality of the agency's investigation of the underlying basis for forfeiture. The agency shall submit to the U.S. Attorney a report of its investigation and its recommendation on whether the petition should be granted or denied. Upon receipt of the agency's report and recommendation, the U.S. Attorney shall forward to the Chief, Asset Forfeiture and Money Laundering Section, the petition, the seizing agency's report and recommendation, and the U.S. Attorney's recommendation on whether the petition should be granted or denied.

(7) Ruling. The Chief shall rule on the petition. No hearing shall be held. The Chief shall not rule on any petition for remission if such remission was previously denied by the administrative agency pursuant to paragraph (c) of this section.

(8) Petitions granted. If the Chief grants a remission or mitigates the forfeiture, the Chief shall mail a copy of the decision to the petitioner (or, if represented by an attorney, to the petitioner's attorney), and shall mail or transmit electronically a copy of the decision to the appropriate U.S. Attorney, the U.S. Marshals Service or other property custodian, and the seizing agency. 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. The Chief shall advise the petitioner or the petitioner's attorney to consult with the U.S. Attorney as to such terms and conditions. The U.S. Attorney shall confer with the seizing agency regarding the release and shall coordinate disposition of the property with that office and the U.S. Marshals Service or other property custodian.

(9) Petitions denied. If the Chief denies a petition, a copy of that decision shall be mailed to the petitioner (or, if represented by an attorney, to the petitioner's attorney of record), and mailed or transmitted electronically to the appropriate U.S. Attorney, the U.S. Marshals Service or other property custodian, and the seizing agency. The 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 Chief at the address provided in the decision, in accordance with paragraph (d)(10) of this section.

(10) Request for reconsideration. (i) A request for reconsideration of the denial shall be considered if:

(A) It is postmarked or received by the Asset Forfeiture and Money Laundering Section at the address contained in the decision denying the petition within 10 days from the receipt of the notice of denial of the petition by the petitioner;

(B) A copy of the request is also received by the appropriate U.S. Attorney within 10 days of the receipt of the denial by the petitioner; and

(C) 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.

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

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

(iv) Upon receipt of the request for reconsideration of the denial of a petition, disposition of the property will be delayed pending notice of the decision at the request of the Chief. If the request for reconsideration is not received within the prescribed period, the U.S. Marshals Service may dispose of the property.
§ 233.9

(11) Restoration of proceeds from sale. (i) 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:

(A) Did not know of the seizure prior to the entry of a final order of forfeiture; and

(B) Could not reasonably have known of the seizure prior to the entry of a final order of forfeiture.

(ii) Such a petition must be submitted pursuant to paragraphs (d)(2) through (d)(5) of this section within 90 days of the date the property was sold or otherwise disposed of.

(e) Criteria governing administrative and judicial remission and mitigation—(1) Remission. (i) The Ruling Official shall not grant remission of a forfeiture unless the petitioner establishes that the petitioner has a valid, good faith, and legally cognizable interest in the seized property as owner or lienholder as defined in this part and is an innocent owner within the meaning of 18 U.S.C. 983(d)(2)(A) or (d)(3)(A).

(ii) For purposes of this paragraph (e), the knowledge and responsibilities of a petitioner's representative, agent, or employee are imputed to the petitioner where the representative, agent, or employee was acting in the course of that person's employment and in furtherance of the petitioner's business.

(iii) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of forfeited property, a restoration of proceeds 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.

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

(v) 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.

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

(A) 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 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

(B) 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.

(ii) The Ruling Official may as a matter of 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.

(iii) 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 Inspection Service’s 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 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.

(f) Special rules for specific petitioners—

(1) General creditors. A general creditor may not be granted remission or mitigation of forfeiture unless that person otherwise qualifies as petitioner under this part.

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

(3) Voluntary bailments. A petitioner who allows another to use the petitioner’s 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 (e) of this section.

(4) 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 (e) of this section.

(5) Straw owners. A petition by any person who has acquired a property interest recognizable under this part, 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 the regulations in this part, 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 (b)(19), 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 (e) of this section.

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

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

(B) 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

(C) 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.

(ii) 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 this part 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.

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

(g) Terms and conditions of remission and mitigation—(1) Owners. (i) 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.

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

(iii) 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, as a matter of discretion, may waive the deduction of costs and expenses incident to the forfeiture.

(iv) 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.

(2) Lienholders. (i) 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:

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

(B) 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 of foreign government.

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

(A) 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, as a matter of 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 division or field office responsible for the seizure and custody of the property or, if applicable, to the U.S. Marshals Service, who shall thereafter release the property to the lienholder; or

(B) Sale of Property and Payment to Lienholder. Subject to the provisions of paragraph (i)(1) 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, as a matter of 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 in this paragraph (g)(2)(i) within 20 days of the receipt of notification, the Ruling Official shall direct the division or field office responsible for the seizure or custody, or if applicable, the U.S. Marshals Service, 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 received payment as a result of the granting of remission or mitigation, the lienholder shall reimburse the Postal Service Forfeiture 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.

(h) Remission procedures for victims. This section applies 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 petitioners. This section applies only with respect to property forfeited pursuant to statutes that explicitly authorize restoration or remission of forfeited property to victims. A victim requesting remission under this section may concurrently request remission as an owner, pursuant to the regulations set forth in paragraphs (c), (d), and (g) of this section. The claims of victims granted remission as both an owner and victim shall, like other owners, have priority over the claims of any non-owner victims whose claims are recognized under this section.

(1) Remission procedure for victims—(i) Where to file. Persons seeking remission as victims shall file petitions for remission with the appropriate deciding official as described in paragraph (c)(5) (administrative forfeiture) or (d)(5) (judicial forfeiture) of this section.

(ii) Time of decision. The Ruling Official or that person’s designee as described in paragraph (a)(2) of this section may consider petitions filed by persons claiming eligibility for remission as victims at any time prior to the disposal of the forfeited property in accordance with law.

(iii) Request for reconsideration. Persons denied remission under this section may request reconsideration of the denial, in accordance with paragraph (c)(10) (administrative forfeiture) or (d)(10) (judicial forfeiture) of this section.

(2) Qualification to file. A victim, as defined in paragraph (b)(22) of this section, may be granted remission, if in addition to complying with the other applicable provisions of this paragraph (h), the victim satisfactorily demonstrates that:

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

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

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

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

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

(3) 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 victim 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.

(4) 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.

(5) Denial of petition. As a matter of discretion, the Ruling Official may decline to grant remission where:

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

(ii) 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

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

(6) 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:
§ 233.9

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

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

(iii) The fact that a particular victim has cooperated with the Government in the investigation related to the forfeiture or to a related persecution or civil action; and

(iv) 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.

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

(8) Claims of financial institution regulatory agencies. In cases involving property forfeitable under 18 U.S.C. 981(a)(1)(C) or (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 petitioner and claims of the financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (7). Generally, claims of financial institution regulatory agencies pursuant to 18 U.S.C. 981(e)(3) or (T) shall take priority over claims of victims.

(9) Amount of remission. Consistent with the Assets Forfeiture Fund statute (28 U.S.C. 524(c)), the amount of remission shall not exceed the victim’s share of the net proceeds of the forfeitures associated with the activity that caused the victim’s loss. The calculation of net proceeds includes, but is not limited to, the deduction of allowable Government expenses and valid third-party claims.

(i) Miscellaneous provisions—(1) Priority of payment. Except where otherwise provided in this part, costs incurred by the Postal Inspection Service, the U.S. Marshals 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 (i)(3) of this section, investigative or prosecutorial costs especially incurred incident to the particular forfeiture, and costs incurred incident to the processing of petitions for remission or mitigation. The Ruling Official shall direct the distribution of the remaining balance in the following order of priority, except that the Ruling Official may exercise discretion in determining the priority between petitioners belonging to classes described in paragraph (i)(1)(iii) and (iv) of this section in exceptional circumstances:

(i) Owners;

(ii) Lienholders;

(iii) Federal financial institution regulatory agencies (pursuant to paragraph (i)(5) of this section), not constituting owners or lienholders; and

(iv) Victims not constituting owners or lienholders pursuant to paragraph (h) of this part.

(2) 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 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:

(i) Payment of the Government’s expenses incurred incident to the forfeiture and sale, including court costs and storage charges, if any;

(ii) Payment to the petitioner of an amount up to that person’s interest in the property;
(iii) Payment to the Postal Service Forfeiture Fund of all other costs and expenses incident to the forfeiture;
(iv) In the case of victims, payment of any amount up to the amount of that person’s loss; and
(v) Payment of the balance remaining, if any, to the Postal Service Forfeiture Fund.

(3) Trustees and other assistants. As a matter of discretion, the Ruling Official, with the approval of the Chief Postal Inspector, 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.

(4) 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 this part 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 any applicable provisions of paragraphs (c) through (e) of this section. The decision to make such transfer shall be made in writing by the Ruling Official.

(5) 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.

(6) 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).

(7) Filing by attorneys. (i) A petition for remission or mitigation may be filed by a petitioner or by that person’s 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:
(A) The attorney has the authority to represent the petitioner in this proceeding;
(B) The petitioner has fully reviewed the petition; and
(C) The petition is truthful and accurate in every respect.

(ii) 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.

(8) 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 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 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 (b)(22) of this section, may also file a petition on behalf of 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 (b)(20), 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 remission must be transferred to the other petitioners, not the party filing the petition; although, as a matter of discretion, the Ruling Official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

[77 FR 25602, May 1, 2012]
§ 233.10 [Reserved]

§ 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.

(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.

§ 233.12 Civil penalties.

(a) False representations and lottery orders. Under 39 U.S.C. 3005(a)(1)–(3), the Postal Service may issue administrative orders prohibiting persons from using the mail to obtain money through false representations or lotteries. Persons who evade, attempt to evade, or fail to comply with an order to stop such prohibited practices may be liable to the United States for a civil penalty under 39 U.S.C. 3012(a). As adjusted under Public Law 114–74, the penalties are as follows: $69,463 for each mailing less than 50,000 pieces, $138,925 for each mailing of 50,000 to $100,000 pieces, and $13,893 for each additional 10,000 pieces above 100,000 not to exceed $2,778,505.

(b) False representation and lottery penalties in lieu of or as part of an order. In lieu of or as part of an order issued
under 39 U.S.C. 3005(a)(1)–(3), the Postal Service may assess a civil penalty payable under 39 U.S.C. 3012(c)(1). As adjusted under Public Law 114–74, the penalties are as follows: $34,731 for each mailing that is less than 50,000 pieces, $69,463 for each mailing of 50,000 to 100,000 pieces, and an additional $6,946 for each additional 10,000 pieces above 100,000 not to exceed $1,389,252.

(c) Misleading references to the United States Government; Sweepstakes and deceptive mailings. Persons sending certain deceptive mail matter described in 39 U.S.C. 3001(h)–(k), including:

(1) Solicitations making false claims of Federal Government connection or approval;
(2) Certain solicitations for the purchase of a product or service that may be obtained without cost from the Federal Government;
(3) Solicitations containing improperly prepared “facsimile checks”; and
(4) Solicitations for “skill contests” and “sweepstakes” sent to individuals who, in accordance with 39 U.S.C. 3017(d), have requested that such materials not be mailed to them; may be liable to the United States for a civil penalty under 39 U.S.C. 3012(d). As adjusted under Public Law 114–74, this penalty is not to exceed $13,893 for each mailing.

(d) Commercial use of lists of persons electing not to receive skill contest or sweepstakes mailings. Under 39 U.S.C. 3017(g)(2), the Postal Service may impose a civil penalty against a person who provides information for commercial use about individuals who, in accordance with 39 U.S.C. 3017(d), have elected not to receive certain sweepstakes and contest information. As adjusted under Public Law 114–74, the penalty may not exceed $2,778,505 per violation.

(e) Reckless mailing of skill contest or sweepstakes matter. Under 39 U.S.C. 3017(h)(1)(A), any promoter who recklessly mails nonmailable skill contest or sweepstakes matter may be liable to the United States for a civil penalty for each mailing to an individual. As adjusted under Public Law 114–74, the penalty is $13,893 per violation.

(f) Hazardous material. Under 39 U.S.C. 3018(c)(1)(A), the Postal Service may impose a civil penalty payable into the Treasury of the United States on a person who knowingly mails nonmailable hazardous materials or fails to follow postal laws on mailing hazardous materials. As adjusted under Public Law 114–74, the penalty is at least $300, but not more than $119,786 for each violation.

[81 FR 42533, June 30, 2016, as amended at 82 FR 6277, Jan. 19, 2017]

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.


§ 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.


§ 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
§241.3 Discontinuance of USPS-operated retail facilities.

(a) Introduction—(1) Coverage. (i) This section establishes the rules governing the Postal Service’s consideration of whether an existing retail Post Office, station, or branch should be discontinued. The rules cover any proposal to:
   (A) Replace a USPS-operated Post Office, station, or branch with a contractor-operated retail facility;
   (B) Combine a USPS-operated Post Office, station, or branch with another USPS-operated retail facility; or
   (C) Discontinue a USPS-operated Post Office, station, or branch without providing a replacement facility.
   (ii) The conversion of a Post Office into, or the replacement of a Post Office with, another type of USPS-operated retail facility is not a discontinuance action subject to this section. A change in the staffing of a Post Office such that it is staffed only part-time by a postmaster, or not staffed at all by a postmaster, but rather by another type of USPS employee, is not a discontinuance action subject to this section.
   (iii) The regulations in this section are mandatory only with respect to discontinuance actions for which initial feasibility studies have been initiated on or after July 14, 2011. Unless otherwise provided by responsible personnel, the rules under §241.3 as in effect prior to July 14, 2011, shall apply to discontinuance actions pending as of December 1, 2011, that pertain to the conversion of a Post Office to another type of USPS-operated facility are no longer subject to these regulations.

(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]
specified, all references to “Post Office” include PTPOs. The classification of a Post Office as a PTPO is not a discontinuance action under this section.

(3) Requirements. A District Manager or the responsible Headquarters Vice President, or a designee of either, may initiate a feasibility study of a USPS-operated facility for possible discontinuance. Any decision to close or consolidate a USPS-operated retail facility may be effected only upon the consideration of certain factors. These include the effect on the community served; the effect on employees of the USPS-operated retail facility; 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 USPS-operated retail facility 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 USPS-operated retail facility 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 USPS-operated retail facility 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 a Post Office subject to discontinuance may appeal the decision to the Postal Regulatory Commission. Where persons regularly served by another type of USPS-operated retail facility subject to discontinuance file an appeal with the Postal Regulatory Commission, the General Counsel reserves the right to assert defenses, including the Commission’s lack of jurisdiction over such appeals. For purposes of determining whether an appeal is filed within the 30-day period, receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(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 to make any determination subject to 39 U.S.C. § 404(d)(5) within the 120 days specified by statute.

(vii) The following table summarizes the notice and appeal periods defined by statute.

<table>
<thead>
<tr>
<th>PUBLIC NOTICE OF PROPOSAL</th>
<th>PUBLIC NOTICE OF FINAL DETERMINATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>60-day notice</td>
<td>30 days for filing any appeal; up to 120 days for appeal consideration and decision.</td>
</tr>
<tr>
<td></td>
<td>Wait at least 60 days from first day after posting final determination before closing or consolidating USPS-operated retail facility.</td>
</tr>
</tbody>
</table>

(4) 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 to discontinuance of a particular USPS-operated retail facility are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(5) Initial feasibility study. A district manager, the responsible Headquarters vice president, or a designee of either may initiate a feasibility study of a USPS-operated retail facility’s potential discontinuance, in order to assist the district manager in determining whether to proceed with a written proposal to discontinue the facility.

(i) Permissible circumstances. The initial feasibility study may be based upon circumstances including, but not limited to, the following:
(A) A postmaster vacancy;
(B) Emergency suspension of the USPS-operated retail facility due to cancellation of a lease or rental agreement when no suitable alternate quarters are available in the community, a fire or natural disaster, irreparable damage when no suitable alternate quarters are available in the community, challenge to the sanctity of the mail, or similar reasons;
(C) Earned workload below the minimum established level for the lowest level RMPO;
(D) Insufficient customer demand, evidenced by declining or low volume, revenue, revenue units, local business activity, or local population trends;
(E) The availability of reasonable alternate access to postal services for the community served by the USPS-operated retail facility; or
(F) The incorporation of two communities into one or other special circumstances.

(ii) Impermissible circumstances. The following circumstances may not be used to justify initiation of an initial feasibility study:
(A) Any claim that the continued operation of a building without handicapped modifications is inconsistent with the Architectural Barriers Act (42 U.S.C. 1151 et seq.);
(B) The absence of running water or restroom facilities;
(C) Compliance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); or
(D) In the absence of any circumstances identified in paragraph (a)(5)(i) of this section, the operation of a small Post Office at a deficit.

(iii) Notice to customers. Local management must provide notification and questionnaires to customers at the USPS-operated retail facility under study. Local management may determine whether notification is appropriate through media outlets. In addition, the following customers that receive delivery service from the USPS-operated retail facility must receive notification and questionnaires by mail:
(A) Post Office Box customers at the USPS-operated retail facility under study;
(B) Customers whose delivery carrier is stationed out of the USPS-operated retail facility under study;
(C) Customers in the delivery area of the same ZIP Code as the retail facility under study, regardless of whether the delivery carriers for those customers are stationed out of the retail facility under study or out of a nearby facility; and
(D) Customers whom the retail facility under study serves for allied delivery services such as mail pickup.

(iv) Initial feasibility study due to emergency suspension. Wherever possible when an initial feasibility study is to be initiated under §241.3(a)(5)(i)(B) (for example, when it is anticipated that a lease or rental agreement will be cancelled with no suitable alternate quarters available in the community), responsible personnel should initiate the initial feasibility study sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account. If public input cannot be sought sufficiently in advance of the end date of the lease or rental agreement, responsible personnel should endeavor, to the extent possible, to continue operation of the USPS-operated retail facility for the duration necessary to gather public input and make a more fully informed decision on whether to proceed with a discontinuance proposal. Customers formerly served by the suspended facility should receive notice under paragraph (a)(5)(iii) of this section, including by mail, to the same extent that they would have if the facility were not in suspended status at the time of the initial feasibility study, proposal, or final determination.

(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 USPS-operated retail facility should be kept, wherever practical. In some cases, the ZIP Code originally assigned to the discontinued USPS-operated retail facility may be changed if the responsible District Manager receives approval from his or her Vice President, Area Operations,
before any proposal to discontinue the USPS-operated retail facility is posted.

(i) In a consolidation, the ZIP Code for the replacement contractor-operated retail facility is the ZIP Code originally assigned to the discontinued facility.

(ii) If the ZIP Code is changed and the parent or gaining USPS-operated retail facility covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) USPS-operated retail facility’s city name in address. If all the delivery addresses using the city name of the USPS-operated retail facility being discontinued continue to use the same ZIP Code, customers may continue to use the discontinued facility’s city name in their addresses, instead of that of the new delivering USPS-operated retail facility.

(4) Name of facility established by consolidation. If a USPS-operated retail facility is consolidated by establishing in its place a contractor-operated facility, the replacement unit can be given the same name of the facility that is replaced, if appropriate in light of the nature of the contract and level of service provided.

(c) Initial proposal—(1) In general. If a District Manager believes that the discontinuance of a USPS-operated retail facility within his or her responsibility may be warranted, the District Manager:

(i) Must use the standards and procedures in §241.3(c) and (d).

(ii) Must investigate the situation.

(iii) May propose the USPS-operated retail facility be discontinued.

(2) Consolidation. The proposed action may include a consolidation of USPS-operated retail facilities. A consolidation arises when a USPS-operated retail facility is replaced with a contractor-operated retail facility.

(3) Views of postmasters. Whether the discontinuance under consideration involves a consolidation or not, the District Manager must discuss the matter with the postmaster (or the officer in charge) of the USPS-operated retail facility considered for discontinuance, and with the postmaster of any other USPS-operated retail facility affected by the change. The District Manager should make sure that these officials are invited to submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) Preparation of written proposal. The District Manager, or a designee, must gather and preserve for the record all documentation used to assess the proposed change. If the District Manager thinks the proposed action is warranted, he or she, or a designee, must prepare a document titled “Proposal to (Close) (Consolidate) the (Facility Name).” 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 postmasters and other employees of the USPS-operated retail facility considered for discontinuance.

(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 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 notices:

(A) **Supporting materials.** “Copies of all materials on which this proposal is based are available for public inspection at (Facility Name) during normal office hours.”

(B) **Nature of posting.** “This is a proposal. It is not a final determination to close (consolidate) this facility.”

(C) **Posting of final determination.** “If a final determination is made to close or consolidate this facility, after public comments on this proposal are received and taken into account, a notice of that final determination will be posted in this facility.”

(D) **Appeal rights.** “The final determination will contain instructions on how affected customers may appeal a decision to close or consolidate a post office to the Postal Regulatory Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final determination.” The notice in this clause is provided when the USPS-operated retail facility under study is a post office. For purposes of this clause, the date of receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(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, with additional copies to be given to customers upon request, in the following locations:

(i) The USPS-operated retail facility under study, unless service at the facility has been suspended;

(ii) The USPS-operated retail facility proposed to serve as the supervising facility;

(iii) Any USPS-operated retail facility likely to serve a significant number of customers of the USPS-operated retail facility under study; and

(iv) If service at the facility under study has been suspended, any USPS-operated retail facility providing alternative service for former customers of the facility under study.

(2) **Contents of comment notice.** 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 USPS-operated retail facilities.

(iii) Provide a name and telephone number to call for information.

(3) **Other steps.** In addition to providing notice and inviting comment, the District Manager must take any other steps necessary to ensure that the persons served by affected USPS-operated retail facilities understand the nature and implications of the proposed action. A community meeting must be held to provide outreach and gain public input after the proposal is posted, unless otherwise instructed by the responsible Headquarters Vice President or the applicable Vice President, Area Operations. Authorization to forgo a community meeting should issue only where exceptional circumstances make a community meeting infeasible, such as where the community no longer exists because of a natural disaster or because residents have moved elsewhere.

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the District Manager 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 may not rely on communications received from
anyone unless submitted in writing for the record.

(4) Record. The District Manager must keep, as part of the record for consideration and review, all documentation gathered about the proposed change.

(i) The record must include all information that the District Manager considered, and the decision must stand on the record. No written 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 USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, beginning no later than the date on which notice is posted and extending through the posting period. When appropriate, certain personally identifiable information, such as individual names or residential addresses, may be redacted from the publicly accessible copy of the record.

(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 chapter 4 of Handbook AS–333, Guide to Privacy, the Freedom of Information Act, and Records Management.

(e) Consideration of public comments and final local recommendation—(1) Analysis of comments. The District Manager or a designee 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 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 decides against the proposed discontinuance, he or she must post, in the USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, a notice stating that the proposed closing or consolidation is not warranted.

(ii) Discontinuance warranted. If the District Manager 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 District Manager must:

(A) Transmit the revised proposal and the entire record to the responsible Headquarters Vice President.

(B) Certify that all documents in the record are originals or true and correct copies.

(f) Postal Service decision—(1) In general. The responsible Headquarters Vice President or a designee must review the proposal of the District Manager and decide on the merits of the proposal. This review and the decision must be based on and supported by the record developed by the District Manager. The responsible Headquarters Vice President 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 responsible Headquarters Vice President or a designee may approve the proposed discontinuance, with or without further revisions. If approved without further revision, 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(d).

(i) Supporting materials. The Final Determination must include the following notice: “Copies of all materials on which this Final Determination is based are available for public inspection at the (Facility Name) during normal office hours.”

(ii) Appeal rights. If the USPS-operated retail facility subject to discontinuance is a post office, the Final Determination must include the following notice: “Pursuant to Public Law 94–421 (1976), this Final Determination to (close) (consolidate) the (Facility Name) may be appealed by any person served by that office to the Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001. Any appeal must be received by the Commission within 30 days of the first day this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Regulatory Commission, or the parties to the appeal, must be made available for public inspection at the (Facility Name) during normal office hours.”

(3) Disapproval. The responsible Headquarters Vice President or a designee may disapprove the proposed discontinuance and return it and the record to the District Manager with written reasons for disapproval. The District Manager or a designee must post, in each affected USPS-operated retail facility where the proposal was posted under paragraph (d)(1) of this section, a notice that the proposed closing or consolidation has been determined to be unwarranted.

(4) Return for further action. The responsible Headquarters Vice President or a designee may return the proposal of the District Manager 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 responsible Headquarters Vice President must be placed on file in the Postal Service Headquarters library.

(g) Implementation of final determination—(1) Notice of final determination to discontinue USPS-operated retail facility. The District Manager must:

(i) Provide notice of the Final Determination by posting a copy prominently in the USPS-operated retail facilities in each affected USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, including the USPS-operated retail facilities likely to be serving the affected customers. The date of posting must be noted on the first page of the posted copy as follows: “Date of posting.”

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each USPS-operated retail facility 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 chapter 4 of Handbook AS–353, Guide to Privacy, the Freedom of Information Act, and Records Management.

(2) Implementation of determinations not appealed. If no appeal is filed, the official closing date of the office must be published in the Postal Bulletin and effective, at the earliest, 60 days after the first day that Final Determination was posted. A District Manager may request a different date for official discontinuance in the Retail Change Announcement document submitted to the responsible Headquarters Vice President or a designee. However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of 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 responsible Headquarters Vice President may direct a discontinuance before disposition of the appeal. However, the USPS-operated retail facility may not be permanently discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.
United States Postal Service

§ 241.4

(ii) Display of appeal documents. The Office of General Counsel must provide the District Manager 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 USPS-operated retail facilities where the Final Determination was posted under paragraph (g)(1)(i) of this section. If the operation of that USPS-operated retail facility has been suspended, the District Manager must ensure that copies are displayed in the USPS-operated retail facilities likely to be serving the affected customers.

(B) All documents except the Postal Regulatory 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 at the USPS-operated retail facility to be discontinued for 30 days or until the effective date of the discontinuance, whichever is earlier. The final order and opinion must be displayed for 30 days in all other USPS-operated retail facilities where the Final Determination was posted under paragraph (g)(1)(i) of this section.

(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 anytime after the Commission renders its opinion, if not previously implemented under §241.3(g)(3)(i). However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of 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 responsible Headquarters Vice President 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 responsible Headquarters Vice President may provide.


§ 241.4 Relocating retail services; adding new retail service facilities.

(a) Application. (1) Except as otherwise provided, this section applies when the Postal Service makes a tentative decision to relocate all retail services from a retail service facility to a separate existing physical building, or to add a new retail service facility for a community. As used in this section, “retail services” means the single-piece mail services offered to individual members of the public on a walk-in basis at a retail service facility, and a “retail service facility” is a physical building where Postal Service employees provide such retail services.

(2) The rules of this paragraph (a)(2) apply to temporary additions of retail service facilities, temporary or emergency relocations of retail services, and to provisional relocations of retail services.

(i) The Postal Service may implement temporary additions or relocations without undertaking the process in paragraph (c) of this section when necessary to support Postal Service business for holidays, special events, or overflow business. Temporary additions and relocations normally 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 or his designee.

(ii) The Postal Service may implement emergency relocations without first undertaking the process in paragraph (c) of this section when the Postal Service determines relocation is required to protect Postal Service business due to events such as earthquakes, floods, fires, potential or actual OSHA violations, safety factors, environmental causes, other business disrupting events, or as necessary to protect employees, customers, or the security of the mail. Following an emergency relocation, as soon as the Postal Service determines it is feasible to identify the long-term location for the retail services, the Postal Service will
§ 241.4  
(1) Identify the community and engage local elected officials. The Postal Service representative will identify the community the Postal Service anticipates would be affected by implementing the proposal, taking into account such factors as the Postal Service determines are appropriate for the proposal. The Postal Service representative then will deliver to one or more local elected public officials a written outline of the proposal and offer to discuss the proposal with them. The Postal Service representative may elect to conduct that discussion either in person or using any other appropriate communication tool, including electronic communications. If the officials accept the offer, then the Postal Service representative will identify the need and outline the proposal 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 input from the local officials regarding the proposal.

(2) Notify the community and arrange for public presentation. The Postal Service will send an initial news release outlining the proposal to one or more news media serving the community and, if the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news release in the public lobby of that retail service facility. If the proposal concerns relocating retail services from a leased facility, then, using the most current notice address information in the Postal Service’s file for the site, the Postal Service will deliver to the lessor a copy of the information given to local officials or the news release in the public lobby of that retail service facility. If the proposal concerns relocating retail services from a leased facility, then, using the most current notice address information in the Postal Service’s file for the site, the Postal Service will deliver to the lessor a copy of the information given to local officials, provided, however, that no such notice will be required when the lessor has terminated the Postal Service’s lease or has declined to renew the Postal Service lease on terms acceptable to the Postal Service. Additionally, the Postal Service representative will ask the local officials to place a Postal Service presentation of the proposal on the regular agenda of the next scheduled public meeting, or will schedule a separate Postal Service public meeting concerning the proposal. At least 15 days

make a tentative decision to remain in the emergency relocation site on a long-term basis, to return to the original retail service facility (if feasible), or to relocate to another site. Unless the decision is to return to the original retail service facility, the Postal Service then will follow the process in paragraph (c) of this section with respect to collecting and considering community input on a proposal to implement that decision.

(iii) The Postal Service may implement provisional relocations in connection with lease terminations or expirations, or in connection with a lessor exercising a right to require the Postal Service to move to alternate premises, when the Postal Service has not already undertaken the process in paragraph (c) of this section for such relocations. Not later than 180 days following a provisional relocation, the Postal Service will make a tentative decision to remain in the provisional relocation site on a long-term basis or to relocate to another site. After that decision, the Postal Service will follow the process in paragraph (c) of this section with respect to collecting and considering community input on a proposal to implement that decision.

(3) This section applies to tentative decisions described in paragraphs (a)(1) and (a)(2) made on or after March 23, 2015. The rules under § 241.4 in effect prior to that date shall apply to projects described in paragraph (a) of this section undertaken prior to that date.

(b) Purpose. The purpose of this section is to provide opportunities for community members and their elected local officials to appeal Postal Service tentative decisions described in paragraphs (a)(1) and (a)(2) made on or after March 23, 2015. The rules under § 241.4 in effect prior to that date shall apply to projects described in paragraph (a) of this section undertaken prior to that date.

(c) Collecting and considering community input. When the Postal Service makes a tentative decision described in paragraphs (a)(1) and (a)(2) of this section, a Postal Service representative will take the following steps:

(1) Identify the community and engage local elected officials. The Postal Service representative will identify the community the Postal Service anticipates would be affected by implementing the proposal, taking into account such factors as the Postal Service determines are appropriate for the proposal. The Postal Service representative then will deliver to one or more local elected public officials a written outline of the proposal and offer to discuss the proposal with them. The Postal Service representative may elect to conduct that discussion either in person or using any other appropriate communication tool, including electronic communications. If the officials accept the offer, then the Postal Service representative will identify the need and outline the proposal 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 input from the local officials regarding the proposal.

(2) Notify the community and arrange for public presentation. The Postal Service will send an initial news release outlining the proposal to one or more news media serving the community and, if the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news release in the public lobby of that retail service facility. If the proposal concerns relocating retail services from a leased facility, then, using the most current notice address information in the Postal Service’s file for the site, the Postal Service will deliver to the lessor a copy of the information given to local officials, provided, however, that no such notice will be required when the lessor has terminated the Postal Service’s lease or has declined to renew the Postal Service lease on terms acceptable to the Postal Service. Additionally, the Postal Service representative will ask the local officials to place a Postal Service presentation of the proposal on the regular agenda of the next scheduled public meeting, or will schedule a separate Postal Service public meeting concerning the proposal. At least 15 days

(3) This section applies to tentative decisions described in paragraphs (a)(1) and (a)(2) made on or after March 23, 2015. The rules under § 241.4 in effect prior to that date shall apply to projects described in paragraph (a) of this section undertaken prior to that date.

(b) Purpose. The purpose of this section is to provide opportunities for community members and their elected local officials to appeal Postal Service tentative decisions described in paragraphs (a)(1) and (a)(2) made on or after March 23, 2015. The rules under § 241.4 in effect prior to that date shall apply to projects described in paragraph (a) of this section undertaken prior to that date.

(c) Collecting and considering community input. When the Postal Service makes a tentative decision described in paragraphs (a)(1) and (a)(2) of this section, a Postal Service representative will take the following steps:

(1) Identify the community and engage local elected officials. The Postal Service representative will identify the community the Postal Service anticipates would be affected by implementing the proposal, taking into account such factors as the Postal Service determines are appropriate for the proposal. The Postal Service representative then will deliver to one or more local elected public officials a written outline of the proposal and offer to discuss the proposal with them. The Postal Service representative may elect to conduct that discussion either in person or using any other appropriate communication tool, including electronic communications. If the officials accept the offer, then the Postal Service representative will identify the need and outline the proposal 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 input from the local officials regarding the proposal.

(2) Notify the community and arrange for public presentation. The Postal Service will send an initial news release outlining the proposal to one or more news media serving the community and, if the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news release in the public lobby of that retail service facility. If the proposal concerns relocating retail services from a leased facility, then, using the most current notice address information in the Postal Service’s file for the site, the Postal Service will deliver to the lessor a copy of the information given to local officials, provided, however, that no such notice will be required when the lessor has terminated the Postal Service’s lease or has declined to renew the Postal Service lease on terms acceptable to the Postal Service. Additionally, the Postal Service representative will ask the local officials to place a Postal Service presentation of the proposal on the regular agenda of the next scheduled public meeting, or will schedule a separate Postal Service public meeting concerning the proposal. At least 15 days
prior to the meeting, the Postal Service will advertise the date, time, and location of the public meeting in a local news medium and, if the community has an existing retail service facility, then the Postal Service also will post in the public lobby of that retail service facility a notice of the date, time, and location of the public meeting.

(3) Present the proposal to the community. At the public meeting, the Postal Service will identify the need, e.g., to replace an expiring lease or to serve a new population center; identify the tentative decision, e.g., to relocate retail services or add a retail service facility; outline the proposal to meet the need; invite questions; solicit written input on the proposal; and provide an address to which the community and local officials may send written appeals of the tentative decision and comments on the proposal for a period of 30 days following the public meeting. Under exceptional circumstances that would prevent a Postal Service representative from attending or conducting a public meeting to present the proposal within a reasonable time, the Postal Service, in lieu of a public meeting, will mail written notification of the tentative decision and the proposal to customers within the community and post a notice of the proposal in the retail service facility that would be affected by the proposal, seeking their written input on the proposal and providing an address to which the community and local officials may send written appeals of the tentative decision and comments on the proposal for a period of 30 days following that notification. An example of exceptional circumstances would be a proposal that would be implemented in a sparsely populated area remote from the seat of local government or any forum where the public meeting reasonably could be held.

(i)(A) If the proposal concerns relocation, then the Postal Service will:

(1) Discuss the reasons for relocating;

(2) Identify the site or area, or both, to which the Postal Service anticipates relocating the retail services; and

(3) Describe the anticipated size of the relocated retail services, and the anticipated services to be offered at that site or in that area.

(B) The Postal Service may identify more than one potential relocation site and/or area, for example, when the Postal Service has not selected among competing sites.

(ii)(A) If the proposal concerns adding a new retail service facility for a community, then the Postal Service will:

(1) Discuss the reasons for the addition;

(2) Identify the site or area, or both, to which the Postal Service anticipates adding the retail service facility;

(3) Describe the anticipated size of the added retail service facility, and the anticipated services to be offered; and

(4) Outline any anticipated construction (e.g., of a stand-alone building or interior improvements to an existing building (or portion thereof) that will be leased by the Postal Service).

(B) The Postal Service may identify more than one potential site and/or area, for example, when the Postal Service has not selected yet among competing sites.

(4) Consider comments and appeals. After the 30-day comment and appeal period, the Postal Service will consider the comments and appeals received that identify reasons why the Postal Service's tentative decision and proposal (e.g., to relocate to the selected site, or to add a new retail service facility) is, or is not, the optimal solution for the identified need. Following that consideration, the Postal Service will make a final decision to proceed with, modify, or cancel the proposal. The Postal Service will inform local officials in writing of its final decision and send an initial news release announcing the final decision to local news media. If the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news release in the public lobby of that retail service facility. The Postal Service then will implement the final decision.

(5) Identify any new site or area. After the public meeting under paragraph (c)(3) of this section, if the Postal Service decides to use a site or area that it
§ 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.

§ 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.
§ 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.”
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.


(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 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. (1) 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 acknowledgment 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 informal 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)

§ 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]

§ 261.4 Responsibility.

(a) The Chief Freedom of Information Act (FOIA) Officer, whose duties are performed by the Associate General Counsel and Chief Ethics and Compliance Officer, is responsible for:

(1) Overseeing Postal Service compliance with the FOIA.

(2) Making recommendations to the Postmaster General regarding the Postal Service’s FOIA program.

(b) The Chief Privacy Officer, under the Associate General Counsel and Chief Ethics and Compliance Officer, is responsible for administering records and information management policies, the privacy of information programs, and for the compliance of all handbooks, directives, and instructions in support of these policies and programs.

(c) The Deputy Chief FOIA Officer, under the Privacy and Records Office, administers the Postal Service release of information program with the assistance of FOIA Coordinators in Headquarters departments and area and district offices.

(d) Freedom of Information Act Public Liaisons are responsible for:

(1) Managing FOIA Requester Service Centers (RSCs).

(2) Receiving concerns of requesters about the service provided by the FOIA RSC following an initial response.
(3) Ensuring a service-oriented response to requests and FOIA-related inquiries.

(4) Reporting to the Chief FOIA Officer on their activities.

(e) Freedom of Information Act Requester Service Centers are responsible for:

1. Facilitating communication between the Postal Service and FOIA requesters.

2. Providing information to requesters concerning the status of FOIA requests and information about responses to such requests.

(f) Freedom of Information Act Coordinators fill an ad hoc position located within each Headquarters department, and Area and District office, and are responsible for:

1. Coordinating and tracking FOIA requests referred to or received by their functional or geographical area.

2. Providing procedural guidance, upon request, to records custodians.

3. Assisting the Deputy Chief FOIA Officer with national reporting activities, such as annual reporting of local FOIA and Privacy Act activities.

(g) Records Custodians are responsible for ensuring that records within their facilities or organizations are managed according to Postal Service policies. Vice presidents or their designees are the custodians of records maintained at Headquarters. In the field, the Records Custodian is the head of a Postal Service facility such as an area, district, Post Office, or other Postal Service installation or designee that maintains Postal Service records. Senior medical personnel are the custodians of restricted medical records maintained within Postal Service facilities. The Custodian of Employee Assistance Program (EAP) records is the Postal Service counselor, a supplier, or the public health service, whichever provided the services.

(h) 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.

[80 FR 45065, July 29, 2015]
custodians of restricted medical records maintained within postal facilities.

(d) Information System Executive. This is the Postal Service official, usually a vice president, who prescribes the existence of and the policies for an information system.

(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.

§ 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.
§ 262.5 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.

§ 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.

§ 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.


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.

§ 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.

§ 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) 268–2808.

PART 264—VITAL RECORDS

Sec.
264.1 Purpose and scope.
264.2 Policy.
264.3 Responsibility.
264.4 Vital Records Program.


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.

§ 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.

PART 265—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec. 265.1 General provisions.

265.2 Proactive disclosure of Postal Service records.

265.3 Procedure for submitting a FOIA request.

265.4 Responsibility for responding to requests.

265.5 Timing of responses to requests.

265.6 Responses to requests.

265.7 Confidential commercial information obtained from submitters.

265.8 Administrative appeals.

265.9 Fees.

Subpart B—Production or Disclosure in Federal and State Proceedings

265.11 Compliance with subpoenas duces tecum, court orders, and summonses.

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 Postal Inspection Service where the Postal Service, the United States, or any other Federal agency is not a party.

Subpart C—Availability of Records

265.14 Rules concerning specific categories of records.


SOURCE: 81 FR 86271, Nov. 30, 2016, unless otherwise noted.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 265.1 General provisions.

(a) This subpart contains the regulations that implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, insofar as the Act applies to the Postal Service. These rules should be read in conjunction with the text of the FOIA and the Uniform Freedom of Information Fee Schedule and Guidelines published by the Office of Management and Budget, (OMB Guidelines), 52 FR 10012 (Mar.
§ 265.2 Proactive disclosure of Postal Service records.

(a) In general. The Postal Service is responsible for determining which of its records must be made publicly available, for identifying additional records of interest to the public that are appropriate for public disclosure, and for posting and indexing such records. The Postal Service’s FOIA Requester Service Centers (RSCs) and FOIA Public Liaisons can assist individuals in locating Postal Service records. Descriptions of, and contact information for, the various FOIA RSCs can be found at http://about.usps.com/who-we-are/foia/welcome.htm.

(b) Records available in an electronic format. Records that the FOIA requires the Postal Service to make available for public inspection in an electronic format pursuant to 5 U.S.C. 552(a)(2) and that are exempt from the requirements of 5 U.S.C. 552(a)(3), may be accessed through the Postal Service’s Web site at http://about.usps.com/who-we-are/foia/welcome.htm. The Postal Service must ensure that its Web site of posted records and indices is reviewed and updated on an ongoing basis. Such records available for public inspection in an electronic format include the following:

(1) 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 supplier disagreement 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 Web site at http://about.usps.com/who-we-are/foia/welcome.htm.

(2) Administrative manuals and instructions. 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 are available free of charge may be requested on an individual basis in accordance with the procedures provided in §265.3.
§265.3 Procedure for submitting a FOIA request.

(a) To whom submitted. A request must be submitted to the appropriate FOIA Requester Service Center (RSC). Descriptions of, and contact information for, the various FOIA RSCs can be found at http://about.usps.com/who-we-are/foia/welcome.htm. For assistance in determining the appropriate FOIA RSC, requesters may contact the USPS HQ FOIA Requester Service Center, Privacy and Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260, telephone (202) 268–2608. Requests for listings of postal employee names should also be sent to the USPS HQ FOIA Requester Service Center.

(b) Form of request. A request to inspect or to obtain a copy of an identifiable Postal Service record must 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, both on the letter and on the envelope or other cover. Requests for records that are labeled incorrectly may be delayed in reaching the appropriate FOIA RSC. A requester must provide his or her full name and mailing address. A requester may also provide a daytime telephone number or email address to facilitate communication regarding his or her request.

(c) Content of request. Requesters must describe the records sought in sufficient detail to enable Postal Service personnel to locate them with a reasonable amount of effort. Whenever possible, requesters should include specific information about each record sought, such as the type of record (e.g., contract, report, memorandum, etc.); the title or case number of a specific document or report; the topic or subject matter; the name of the office, facility, functional unit or employees most likely to possess the record; the geographical location, such as a city or county; and the name, position, or other contact information for the person at the Postal Service who has the record.

(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 Web site at http://about.usps.com/who-we-are/foia/welcome.htm.
§ 265.4 Responsibility for responding to requests.

(a) In general. When a request is received, the FOIA RSC will either respond to the request, or refer the request to the appropriate FOIA RSC or records custodians. The FOIA RSC will advise the requester of any such referral. The Postal Service, the Office of Inspector General of the Postal Service, and the Postal Inspection Service, respectively, are responsible for responding to requests they receive for records they maintain. Records responsive to a request ordinarily will include only records in the Postal Service’s possession as of the date of the search. If any other date is used, the Postal Service shall inform the requester of that date. A record that is excluded from the requirements of the FOIA pursuant to 5 U.S.C. 552(c) is not considered responsive to the request.

(b) Authority to grant or deny requests. The records custodian of the requested record, or his designee, is authorized to grant or to deny the request. FOIA RSC staff may also grant or deny requests.

(c) Receipt and tracking of requests. FOIA RSCs are responsible for the initial receipt and tracking of FOIA requests.

(d) Acknowledgments of requests. FOIA RSCs must acknowledge the request in writing and assign it an individualized tracking number if it will take longer than 10 working days to process. The acknowledgement of the request must include a brief description of the records sought to allow requesters to
§ 265.5 Timing of responses to requests.

(a) In general. Requests will ordinarily be responded to according to their order of receipt. A request that is not initially submitted to the appropriate FOIA RSC will be deemed to have been received by the Postal Service at the time that it is actually received by the appropriate FOIA RSC or at the time the request is referred to the appropriate records custodian by a FOIA RSC, but in any case a request will be deemed to have been received no later than 10 business days after the request is first received by a FOIA RSC.

(b) Multitrack processing. (1) Unless expedited processing has been granted, the Postal Service places each request in simple or complex tracks based on the amount of work and time involved in processing the request. Factors considered in assigning a request into the complex track may include one or more of the following factors:

(i) The request involves voluminous documents;

(ii) The complexity of the material;

(iii) The request involves record searches at multiple facilities or locations;

(iv) The request requires consultation among components or other agencies;

(v) The number of open requests submitted by the same requester.

(2) Within each track, the Postal Service processes requests in the order in which they are received. When appropriate, the FOIA RSC or the component will notify the requester if it has placed the request in the “Complex” track, and provide the requester with an opportunity to limit the scope of the request. If the requester limits the scope of the request, it may result in faster processing.

(c) Expedited processing. (1) Requests and appeals shall be processed on an expedited basis whenever it is determined that they involve:

(i) Circumstances in which the lack of expedited processing could reason-ably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency to inform the public about an actual or alleged Federal Government activity, if made by a person who is primarily engaged in disseminating information.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct, explaining in detail the basis for making the request for expedited processing. For example, under paragraph (e)(1)(ii) of this section, a requester who is not a full-time member of the news media must establish that the requester is a person whose primary professional activity or occupation is information dissemination, though it need not be the requester’s sole occupation. Such a requester also must establish a particular urgency to inform the public about the government activity involved in the request—one that extends beyond the public’s right to know about government activity generally. The existence of numerous articles published on a given subject can be helpful in establishing the requirement that there be an “urgency to inform” the public on the topic. As a matter of administrative discretion, a component may waive the formal certification requirement.

(3) A component shall notify the requester within 10 calendar days of the receipt of a request for expedited processing of its decision whether to grant or deny expedited processing. If expedited processing is granted, the request shall be given priority, placed in the processing track for expedited requests, and shall be processed as soon as practicable. If a request for expedited processing is denied, any appeal of that decision shall be acted on expeditiously.

(d) Unusual circumstances. Whenever the statutory time limit for processing a request cannot be met because of “unusual circumstances”, as defined in the FOIA, and the component extends the time limit on that basis, the component shall, before the expiration of the 20-day period to respond, notify the requester in writing of the unusual circumstances involved and of the date by which processing of the request can be
expected to be completed. Where the extension exceeds 10 working days, the component shall, as described by the FOIA, provide the requester with an opportunity to modify the request or arrange an alternative time period for processing and alert the requester to the availability of the Office of Government Information Services to provide dispute resolution services. The component shall make available its designated FOIA contact and its FOIA Public Liaison for this purpose.

(e) Aggregating requests. For the purposes of satisfying unusual circumstances under the FOIA, the Postal Service may aggregate requests in cases where it reasonably appears that multiple requests, submitted either by a single requester or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances. Multiple requests that involve unrelated matters shall not be aggregated.

§ 265.6 Responses to requests.

(a) Grants of requests. Once a component makes a determination to grant a request in whole or in part, it shall notify the requester in writing and include a statement alerting the requester of his or her right to seek assistance from the FOIA Public Liaison. The component also shall inform the requester of any fees charged under §265.9 and shall disclose the requested records to the requester promptly upon payment of any applicable fees.

(b) Adverse determinations of requests. A component making an adverse determination denying a request in any respect shall notify the requester of the determination in writing. Adverse determinations, or denials of requests, include decisions that: the requested record is exempt, in whole or in part; the request does not reasonably describe the records sought; the information requested is not a record subject to the FOIA; the requested record does not exist, cannot be located, or has been destroyed; or the requested record is not readily reproducible in the form or format sought by the requester. Adverse determinations also include denials involving fees or fee waiver matters or denials of requests for expedited processing.

(c) Content of denial. The denial shall include, to the extent applicable:

(1) The name and title or position of the person responsible for the denial;

(2) A brief statement of the reasons for the denial, including any FOIA exemption applied by the component in denying the request;

(3) An estimate of the volume of any records or information withheld, such as the number of pages or some other reasonable form of estimation, although such an estimate is not required if the volume is otherwise indicated by deletions marked on records that are disclosed in part or if providing an estimate would harm an interest protected by an applicable exemption; and

(4) A statement that the denial may be appealed under §265.8, and a description of the requirements set forth therein.

(5) A statement notifying the requester of his or her right to seek dispute resolution services from the FOIA Public Liaison or the Office of Government Information Services.

(d) Markings on released documents. Markings on released documents must be clearly visible to the requester. Records disclosed in part shall be marked to show the amount of information deleted and the exemption under which the deletion was made unless doing so would harm an interest protected by an applicable exemption. The location of the information deleted shall also be indicated on the record, if technically feasible.

(e) Use of record exclusions. (1) In the event that a component identifies records that may be subject to exclusion from the requirements of the FOIA pursuant to 5 U.S.C. 552(c), the component must confer with Department of Justice, Office of Information Policy (OIP), to obtain approval to apply the exclusion.

§ 265.7 Confidential commercial information obtained from submitters.

(a) Definitions. (1) Confidential commercial information means commercial or financial information obtained by the Postal Service from a submitter that may be protected from disclosure under Exemption 4 of the FOIA, 5 U.S.C. 552(b)(4).
(2) **Submitter** means any person or entity, including a corporation, State, or foreign government, but not including another Federal Government entity, that provides information, either directly or indirectly to the Postal Service.

(b) **Designation of confidential commercial information.** A submitter of confidential commercial information must use good faith efforts to designate by appropriate markings, either at the time of submission or within a reasonable time thereafter, any portion of its submission that it considers to be protected from disclosure under Exemption 4. The Postal Service will not determine the validity of any request for confidential treatment until a request for disclosure of the information is received. These designations shall expire 10 years after the date of the submission unless the submitter requests and provides justification for a longer designation period.

(c) **When notice to submitters is required.** (1) The Postal Service shall promptly provide written notice to a submitter of confidential commercial information whenever records containing such information are requested under the FOIA if, after reviewing the request, the responsive records, and any appeal by the requester, the Postal Service determines that it may be required to disclose the records, provided:

(i) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(ii) The Postal Service has a reason to believe that the requested information may be protected from disclosure under Exemption 4, but has not yet determined whether the information is protected from disclosure under that exemption or any other applicable exemption.

(2) The notice shall either describe the commercial information requested or include a copy of the requested records or portions of records containing the information. In cases involving a voluminous number of submitters, notice may be made by posting or publishing the notice in a place or manner reasonably likely to accomplish it.

(d) **Exceptions to submitter notice requirements.** The notice requirements of this section shall not apply if:

(1) The Postal Service determines that the information is exempt under the FOIA or 39 U.S.C. 410(c);

(2) The information has been lawfully published or has been officially made available to the public;

(3) Disclosure of the information is required by a statute other than the FOIA or by a Postal Service regulation; if disclosure is required by a Postal Service regulation and the submitter provided written justification for protection of the information under Exemption 4 at the time of submission or a reasonable time thereafter, written notice of the disclosure must be provided to the submitter; or

(4) The designation made by the submitter under paragraph (b) of this section appears obviously frivolous or overly broad, except that, in such cases, the component shall give the submitter written notice of any final decision to disclose the information and must provide that notice within a reasonable number of days prior to a specified disclosure date.

(e) **Opportunity to object to disclosure.** (1) The Postal Service shall specify a reasonable time period within which the submitter must respond to the notice referenced above. If a submitter has any objections to disclosure, it should provide the Postal Service a detailed written statement that specifies all grounds for withholding the particular information under any exemption of the FOIA. In order to rely on Exemption 4 as basis for nondisclosure, the submitter must explain why the information constitutes 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.
§ 265.8 Administrative appeals.

(a) Requirements for making an appeal. Requesters may appeal adverse decisions rendered by the Postal Inspection Service or any Postal Service component by mail to the General Counsel, U.S. Postal Service, 475 L’Enfant Plaza SW., Washington, DC 20260; or by email to foiaappeal@usps.gov. The requester must make the appeal in writing and to be considered timely it must be postmarked, or in the case of electronic submissions, transmitted, within 90 calendar days after the date of the response; or within a reasonable time if the appeal is from a failure of the custodian to act. The General Counsel may, in his or her discretion, consider late appeals. 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 or she 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. A letter of appeal should include, as applicable:

(1) A copy of the request, of any notification of denial or other action, and of any other related correspondence;

(2) The FOIA tracking number assigned to the request;

(3) A statement of the action, or failure to act, from which the appeal is taken;

(4) A statement identifying the specific redactions to responsive records that the requester is challenging;

(5) A statement of the relief sought; and

(6) A statement of the reasons why the requester believes the action or failure to act is erroneous.

(b) Adjudication of appeals. (1) The decision of the General Counsel or his or her designee constitutes the final decision of the Postal Service on the issue being appealed. 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 or her designee, for a period of

(2) A submitter who fails to respond within the time period specified in the notice shall be considered to have no objection to disclosure of the information. Information received by the Postal Service after the date of any disclosure decision shall not be considered by the Postal Service. Any information provided by a submitter under this subpart may itself be subject to disclosure under the FOIA. The Postal Service must consider a submitter’s objections and specific grounds for nondisclosure in deciding whether to disclose the requested information.

(f) Determination that confidential treatment is warranted. If the Postal Service determines that confidential treatment is warranted for any part of the requested records and that the records will therefore be redacted or withheld, it must inform the requester in writing, and must advise the requester of the right to appeal. A copy of the letter of denial must also be provided to the submitter of the records in any case in which the submitter had been notified of the request.

(g) Notice of intent to disclose. If the Postal Service decides to disclose information over the objection of a submitter, the Postal Service shall provide the submitter written notice, which shall include:

(1) A statement of the reasons why each of the submitter’s disclosure objections was not sustained;

(2) A description or copy of the information to be disclosed; and

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(h) Notice of FOIA lawsuit. Whenever a requester files a lawsuit seeking to compel the disclosure of confidential commercial information, the component shall promptly notify the submitter. Whenever a submitter files a lawsuit to prevent disclosure of confidential commercial information, the component shall promptly notify the requester.

(i) Requester notification. The Postal Service shall notify a requester whenever it notifies the submitter of its intent to disclose the requested information.
§ 265.9 Fees.

(a) In general. The Postal Service shall charge for processing requests under the FOIA in accordance with the provisions of this section and with the OMB Guidelines. In order to resolve any fee issues that arise under this section, a component may contact a requester for additional information. The Postal Service will conduct searches, review, and duplication in the most efficient and the least expensive manner. The Postal Service ordinarily will collect all applicable fees before sending copies of records to a requester. Requesters must pay fees by check or money order made payable to “U.S. Postal Service.”

(b) Definitions. For purposes of this section:

(1) Commercial-use requester is a requester who asks for information for a use or a purpose that furthers a commercial, trade, or profit interest, which can include furthering those interests through litigation. The Postal Service’s decision to place a requester in the commercial use category will be made on a case-by-case basis based on the requester’s intended use of the information.

(2) Direct costs are those expenses that the Postal Service incurs in searching for and duplicating records in order to respond to a FOIA request. In the case of commercial-use requesters, direct costs include reviewing and taking all other measures needed to prepare the records for disclosure.

(3) Search is the process of looking for and retrieving records or information responsive to a request. Search time includes page-by-page or line-by-line identification of information within records and the reasonable efforts expended to locate and retrieve information from electronic records.

(4) Duplication is reproducing a copy of a record, or of the information contained in it, necessary to respond to a FOIA request. Copies can take the form of paper, audiovisual materials, or electronic records, among others.

(5) Review is the examination of a record located in response to a request in order to determine whether any portion of it is exempt from disclosure. Review time includes processing any record for disclosure, such as doing all that is necessary to prepare the record for disclosure, including the process of redacting the record and marking the appropriate exemptions. Review costs are properly charged even if a record

(6) When appeal is required. Before seeking judicial review of a component’s adverse determination, a requester generally must first submit a timely administrative appeal.

ultimately is not disclosed. Review time also includes time spent both obtaining and considering any formal objection to disclosure made by a confidential commercial information submitter under §265.6, but it does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(6) Educational institution is any school that operates a program of scholarly research. A requester in this fee category must show that the request is authorized by, and is made under the auspices of, an educational institution and that the records are not sought for a commercial use, but rather are sought to further scholarly research. To fall within this fee category, the request must serve the scholarly research goals of the institution rather than an individual research goal.

(7) Noncommercial scientific institution is an institution that is not operated on a “commercial” basis, as defined in paragraph (b)(1) of this section and that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. A requester in this category must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are sought to further scientific research and are not for a commercial use.

(8) Representative of the news media is any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term news means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations that broadcast “news” to the public at large and publishers of periodicals that disseminate “news” and make their products available through a variety of means to the general public, including news organizations that disseminate solely on the Internet. A request for records supporting the news-dissemination function of the requester shall not be considered to be for a commercial use.

“Freelance” journalists who demonstrate a solid basis for expecting publication through a news media entity shall be considered as a representative of the news media. A publishing contract would provide the clearest evidence that publication is expected; however, the Postal Service shall also consider a requester’s past publication record in making this determination.

(c) Charging fees. In responding to FOIA requests, the Postal Service shall charge the following fees unless a waiver or reduction of fees has been granted under paragraph (j) of this section. Because the fee amounts provided below already account for the direct costs associated with a given fee type, components should not add any additional costs to charges calculated under this section.

(1) Search. (i) Requests made by educational institutions, noncommercial scientific institutions, or representatives of the news media are not subject to search fees. Search fees shall be charged for all other requesters, subject to the restrictions of paragraph (d) of this section. The Postal Service may charge for time spent searching even if no responsive records are located or if it determines that the records are entirely exempt from disclosure.

(ii) For each half hour spent by personnel searching for requested records, including electronic searches that do not require new programming, the fee shall be $21.00.

(iii) Requesters shall be charged the direct costs associated with conducting any search that requires the creation of a new computer program to locate the requested records. Requesters shall be notified of the costs associated with creating such a program and must agree to pay the associated costs before the costs may be incurred.

(iv) For requests that require the retrieval of records stored at a Federal records center operated by the National Archives and Records Administration (NARA), or other storage facility, additional costs may be charged for their retrieval.

(2) Duplication. Duplication fees shall be charged to all requesters, subject to the restrictions of paragraph (d) of this section. A component shall honor a requester’s preference for receiving a
record in a particular form or format where it is readily reproducible by the component in the form or format requested. Where photocopies are supplied, the component shall provide one copy per request at a cost of fifteen cents per page. For copies of records produced on tapes, disks, or other media, components shall charge the direct costs of producing the copy, including operator time. Where paper documents must be scanned in order to comply with a requester's preference to receive the records in an electronic format, the requester shall pay the direct costs associated with scanning those materials. For other forms of duplication, components shall charge the direct costs.

(3) Review. Commercial-use requesters shall be charged review fees. Review fees shall be assessed in connection with the initial review of the record, i.e., the review conducted by a component to determine whether an exemption applies to a particular record or portion of a record. No charge will be made for review at the administrative appeal stage of exemptions applied at the initial review stage. However, if a particular exemption is deemed to no longer apply, any costs associated with a component’s re-review of the records in order to consider the use of other exemptions may be assessed as review fees. Review fees shall be charged at the same rates as those charged for a search under paragraph (c)(1)(ii) of this section.

(d) Restrictions on charging fees. (1) No search fees will be charged for educational institutions (unless the records are sought for a commercial use), noncommercial scientific institutions, or representatives of the news media.

(2)(i) If a component fails to comply with the time limits in which to respond to a request, it may not charge search fees, or, in the instances of requests from requesters described in paragraph (d)(1) of this section, may not charge duplication fees.

(ii) If a component has determined that unusual circumstances as defined by the FOIA apply and more than 5,000 pages are necessary to respond to the request, the component may charge search fees, or, in the case of requesters described in paragraph (d)(1) of this section, may charge duplication fees if the following steps are taken:

(A) The component provides timely written notice of unusual circumstances to the requester; and

(B) The component discussed or made three good faith attempts to discuss via mail, email, or telephone how the requester could effectively limit the scope of the request in accordance with 5 U.S.C. 552(a)(6)(B)(ii).

(iv) If a court has determined that exceptional circumstances exist, a failure to comply with the time limits shall be excused for the length of time provided by the court order.

(3) No search or review fees will be charged for a quarter-hour period unless more than half of that period is required for search or review.

(4) Except for requesters seeking records for a commercial use, components shall provide without charge:

(i) The first 100 pages of duplication (or the cost equivalent for other media); and

(ii) The first two hours of search.

(5) When, after first deducting the 100 free pages (or its cost equivalent) and the first two hours of search, a total fee calculated under paragraph (c) of this section is $25.00 or less for any request, no fee will be charged.

(e) Notice of anticipated fees in excess of $25.00. (1) When a component determines or estimates that the fees to be assessed in accordance with this section will exceed $25.00, the component shall notify the requester of the actual or estimated amount of the fees, including a breakdown of the fees for search, review or duplication, unless the requester has indicated a willingness to pay fees as high as those anticipated. If only a portion of the fee can be estimated readily, the component shall advise the requester accordingly. If the requester is a noncommercial use requester, the notice shall specify that
the requester is entitled to the statutory entitlements of 100 pages of duplication at no charge and, if the requester is charged search fees, two hours of search time at no charge, and shall advise the requester whether those entitlements have been provided.

(2) In cases in which a requester has been notified that the actual or estimated fees are in excess of $25.00, the request shall not be considered received and further work will not be completed until the requester agrees in writing to pay the actual or estimated total fee, or designates some amount of fees the requester is willing to pay, or in the case of a noncommercial use requester who has not yet been provided with the requester’s statutory entitlements, designates that the requester seeks only that which can be provided by the statutory entitlements. Components are not required to accept payments in installments.

(3) If the requester has indicated a willingness to pay some designated amount of fees, but the component estimates that the total fee will exceed that amount, the component shall toll the processing of the request when it notifies the requester of the estimated fees in excess of the amount the requester has indicated a willingness to pay. The component shall inquire whether the requester wishes to revise the amount of fees the requester is willing to pay or modify the request. Once the requester responds, the time to respond will resume from where it was at the date of the notification.

(4) Components shall make available their FOIA Public Liaison or other FOIA contact to assist any requester in reformulating a request to meet the requester’s needs at a lower cost.

(f) Charges for other services. Although not required to provide special services, if a component chooses to do so as a matter of administrative discretion, the direct costs of providing the service requested by the requester shall be charged. Examples of such services include providing multiple copies of the same document, or sending records by means other than first class mail.

(g) Aggregating requests. In instances where the Postal Service reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a single request into a series of requests for the purpose of avoiding fees, or that a requester or group of requesters acting in concert makes multiple requests for the same records maintained at multiple facilities or components, the Postal Service may aggregate those requests and charge accordingly. Multiple FOIA requests by a single requester related to the same issue will be aggregated for the purpose of assessing fees. Multiple requests involving unrelated matters shall not be aggregated.

(h) Advance payments. (1) For requests other than those described in paragraphs (h)(2) or (3) of this section, a component shall not require the requester to submit an advance payment before work is commenced or continued on a request. Payment owed for work already completed (i.e., payment before copies are sent to a requester) is not an advance payment.

(2) When a component determines or estimates that a total fee to be charged under this section will exceed $250.00, it may require that the requester make an advance payment up to the amount of the entire anticipated fee before beginning to process the request. A component may elect to process the request prior to collecting fees when it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(3) Where a requester has previously failed to pay a properly charged FOIA fee within 30 calendar days of the billing date, a component may require that the requester pay the full amount due on that prior request, and the component may require that the requester make an advance payment of the full amount of any anticipated fee before the component begins to process a new request or continues to process a pending request or any pending appeal. Where a component has a reasonable basis to believe that a requester has misrepresented the requester’s identity in order to avoid paying outstanding fees, it may require that the requester provide proof of identity.

(4) In cases in which a component requires advance payment, the request shall not be considered received and further work will not be completed until the required payment is received.
If the requester does not pay the advance payment within 30 calendar days after the date of the component’s fee determination, the request will be administratively closed.

(i) Other statutes specifically providing for fees. The fee schedule of this section does not apply to fees charged under any statute that specifically requires the Postal Service to set and collect fees for particular types of records. In instances where records responsive to a request are subject to a statutorily-based fee schedule program, the component shall inform the requester of the contact information for that program.

(j) Requirements for waiver or reduction of fees. (1) Records responsive to a request shall be furnished without charge or at a reduced rate below the rate established under paragraph (c) of this section, where a component determines, based on all available information, that the requester has demonstrated that:

(i) Disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Postal Service, and

(ii) Disclosure of the information is not primarily in the commercial interest of the requester.

(2) In deciding whether disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of operations or activities of the Postal Service, components shall consider all four of the following factors:

(i) The subject of the request must concern identifiable operations or activities of the Postal Service, with a connection that is direct and clear, not remote or attenuated.

(ii) Disclosure of the requested records must be meaningfully informative about government operations or activities in order to be “likely to contribute” to an increased public understanding of those operations or activities. The disclosure of information that already is in the public domain, in either the same or a substantially identical form, would not contribute to such understanding where nothing new would be added to the public’s understanding.

(iii) The disclosure must contribute to the understanding of a reasonably broad audience of persons interested in the subject, as opposed to the individual understanding of the requester. A requester’s expertise in the subject area as well as the requester’s ability and intention to effectively convey information to the public shall be considered. A representative of the news media does not automatically satisfy this consideration.

(iv) The public’s understanding of the subject in question must be enhanced by the disclosure to a significant extent.

(3) To determine whether disclosure of the requested information is primarily in the commercial interest of the requester, components shall consider the following factors:

(i) Components shall identify any commercial interest of the requester, as defined in paragraph (b)(1) of this section, that would be furthered by the requested disclosure. Requesters shall be given an opportunity to provide explanatory information regarding this consideration.

(ii) Disclosure to data brokers or others who merely compile and market government information for direct economic return shall not be presumed to primarily serve the public interest.

(4) Where only some of the records to be released satisfy the requirements for a waiver of fees, a waiver shall be granted for those records.

(5) Requests for a waiver or reduction of fees should be made when the request is first submitted to the component and should address the criteria referenced above. A requester may submit a fee waiver request at a later time so long as the underlying record request is pending or on administrative appeal. When a requester who has committed to pay fees subsequently asks for a waiver of those fees and that waiver is denied, the requester shall be required to pay any costs incurred up to the date the fee waiver request was received.

[81 FR 86271, Nov. 30, 2016, as amended at 82 FR 2696, Jan. 10, 2017; 82 FR 12921, Mar. 8, 2017]
§ 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]

§ 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 §265.13).

(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, 265.14; 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 266.10.

(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.
§265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Postal 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 that performs the functions specified in part 233 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 §265.14(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 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 20260–2101, 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

134
United States Postal Service

§ 265.14

Rules concerning specific categories of records.

(a) Records available to the public on request. Except as otherwise prescribed by law or regulations, including but not limited to paragraphs (b) and (c) of this section, §265.2 and §265.11–§265.13, Postal Service records will be made available to any person in accordance with the procedures provided in §265.3.

(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 39 U.S.C. 410(c). The Postal Service will exercise its discretion, in accordance with the policy stated in §265.1(c), 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...
§ 265.14

chapter 36 of title 39, U.S. Code, 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. Code, 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 endanger the life or physical safety of any individual.

(2) Whenever a request is made which involves access to records that could reasonably be expected to interfere with law enforcement proceedings, 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...
The term *pro se* means that a party is not represented by an attorney but by himself or herself.

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 filing of a proper FOIA request and payment of any applicable fees. 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 filing of a proper FOIA request and payment of any applicable fees. 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 product is printing. The request must also include 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.

(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)(i)(d) 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 (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 (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)(A) 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:

(1) 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;

(2) 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;

(3) The names of all known parties to the litigation;

(4) The court in which the case has been or will be commenced;

(5) The docket or other identifying number, if one has been issued; and

(6) The capacity in which the boxholder is to be served, e.g., defendant or witness.

(B) 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), (iii), or (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.

(ii) 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)(i) 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.
United States Postal Service § 265.14

(e) Information not available for public disclosure. (1) 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 and addresses (past or present) of postal patrons or other persons in response to a request under this part except that, upon a request in accordance with the procedures of §265.3, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

(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 18 U.S.C. 1905, 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.
§ 265.14

39 CFR Ch. I (7–1–17 Edition)

Change of Address or Boxholder Request Format — Process Servers

Date: __________________
Mail To: __________________
Postmaster __________________
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 street address (if a boxholder) for the following:

Name: __________________
Last Known 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. You must enclose a copy of the statute or regulation that empowers you to serve process. (Not required for attorneys or individuals acting pro se.) If you are a corporation proceeding pro se in state court, you must enclose a copy of the state statute or regulation permitting corporations to proceed pro se.

The following information is provided in accordance with 39 CFR 265.4(d)(4)(ii). There is no fee charged for change of address or boxholder information.

1. Capacity of requester (process server, attorney, party representing self): __________________
2. The names of all known parties to the litigation: __________________
3. The court in which the case has been or will be heard: __________________
4. The docket or other identifying number if one has been issued: __________________
5. The capacity in which this individual is to be served (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 __________________
Printed Name __________________
Address __________________
City, State, ZIP Code __________________

FOR POST OFFICE USE ONLY

___ No change of address on file

NEW ADDRESS OR BOXHOLDER NAME POSTMARK

___ Moved and left no forwarding address

AND STREET ADDRESS

___ No such address

______________________________

______________________________
PART 266—PRIVACY OF INFORMATION

§ 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...
§ 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.

§ 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 advice 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.

§ 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;
(x) 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 of Postal Service customers will be disclosed only in those cases permitted by 39 CFR 265.14(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.


§ 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.

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.

§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
§ 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

§ 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.

§ 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

United States Postal Service

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 requestor 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.
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
United States Postal Service § 266.9

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).

(1) 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.
§266.9

(i) 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.

(ii) 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 investigative 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.
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 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.

§ 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.

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.


§ 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.


§ 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.

§ 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
§ 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.

(i) 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–15 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; or
   (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.

§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
§ 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

\[158\]
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.


§ 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.

§ 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, serve 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.


§ 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.

§ 281.2

(a) A summary of matters referred by the Investigating Official to the Reviewing Official under this part;

(b) A summary of matters transmitted to the Attorney General under this part;

(c) A summary of all hearings conducted by a Presiding Officer under part 962 of this title, and the results of such hearings; and

(d) 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

§ 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;
§ 281.3

(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]
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).

(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

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1Several 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:
(i) As to checks and drafts: banks, savings banks, savings and loan institutions, credit unions, and their offices, affiliates, and facilities.
(ii) 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.
United States Postal Service § 310.2

(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.


(g) The term identical printed letters includes letters that differ only in name, address or serial number.

§ 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;
(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.
§ 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 addressee’s 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.


§ 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 Manager, Mailing Standards, USPS Headquarters, 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.


§ 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 General Counsel, U.S. Postal Service, 475 L’Enfant Plaza SW., Washington, DC 20260–1100. 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.

[75 FR 12123, Mar. 15, 2010]

§ 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]
§ 320.1 Definitions.

The definitions in §310.1 apply to part 320 as well.¹

39 CFR Ch. I (7–1–17 Edition)

§ 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, 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 recurrently 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.

³ 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).
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 Mailing Standards. 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

(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.)


§ 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 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 processing materials. This form should be used for an initial notice of operations and for any amendments to the initial or subsequent notices.
§ 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 either 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 hand-ed 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 out 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 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 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 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 bulletins would not 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 not 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.

$320.7$ 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
§ 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.

§ 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.

§ 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
United States Postal Service

§ 447.31

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

- basis of race, color, religion, sex, national origin, or age.
- 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.
- 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.
- Illegal use of drugs may be grounds for removal from the Postal Service.
- 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 7 of Executive Order No. 12333, of March 23, 1982, relating to agency-approved solicitations. [39 FR 1990, Jan. 16, 1974; 39 FR 3677, Jan. 28, 1974, as amended at 48 FR 46231, Oct. 18, 1983. Redesignated and amended at 60 FR 47244, Sept. 11, 1995; 72 FR 49195, Aug. 28, 2007]
§ 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]
§ 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.


§ 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.


§ 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.


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”.


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.
491.3 Sufficient legal form.
491.4 Identification of employees.
491.5 Costs.
491.6 Response to process.
491.7 Release of information.
491.8 Execution of process.
491.9 Restrictions on garnishment.


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
§ 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 re-determine 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 or any other employee shall not be liable to pay money damages for failure to comply with legal process.

§ 492.1 Collection of delinquent non-tax debts by administrative wage garnishment.

(a) This section provides procedures for the Postal Service to collect money from a debtor's disposable pay by means of administrative wage garnishment, in accordance with 31 U.S.C. 3720D and 31 CFR 285.11, to satisfy delinquent nontax debt owed to the United States.

(b) The Postal Service authorizes the U. S. Department of the Treasury Bureau of the Fiscal Service or its successor entity to collect debts by administrative wage garnishment, and conduct administrative wage garnishment hearings, on behalf of the Postal Service in accordance with the requirements of 31 U.S.C. 3720D and the procedures contained in 31 CFR 285.11.

(c) The Postal Service adopts the provisions of 31 CFR 285.11 in their entirety. The provisions of 31 CFR 285.11 should therefore be read as though modified to effectuate the application of that regulation to administrative wage garnishment proceedings conducted by, or on behalf of, the U.S. Postal Service.
PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS

Sec. 501.1 Definitions.
501.2 Postage Evidencing System provider authorization.
501.3 Postage Evidencing System provider qualification.
501.4 Changes in ownership or control, bankruptcy, or insolvency.
501.5 Burden of proof standard.
501.6 Suspension and revocation of authorization.
501.7 Postage Evidencing System requirements.
501.8 Postage Evidencing System test and approval.
501.9 Demonstration or test Postage Evidencing Systems.
501.10 Postage Evidencing System modifications.
501.11 Reporting Postage Evidencing System security weaknesses.
501.12 Administrative sanctions.
501.13 False representations of Postal Service actions.
501.14 Postage Evidencing System inventory control processes.
501.15 Computerized Meter Resetting System.
501.16 PC postage payment methodology.
501.17 Decertified Postage Evidencing Systems.
501.18 Customer information and authorization.
501.19 Intellectual property.
501.20 Discontinued Postage Evidencing Indicia.


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 as an end user in accordance with Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM), including 604 Postage Payment Methods and Refunds, 4.0 Postage Meters and PC Postage Products (Postage Evidencing Systems).

[71 FR 65733, Nov. 9, 2006, as amended at 80 FR 42392, July 17, 2015]
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 comply with the Postal Service’s revenue assurance practices as outlined in section 501.16, 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 is the Office of Payment Technology (PT) or successor organization. All submissions to the Postal Service required or invited by this part are to be made to this office in person or via mail to 475 L’Enfant Plaza SW., Room 3500, Washington DC 20260–0004.

§ 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
§ 501.4 | 39 CFR Ch. 1 (7–1–17 Edition)

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) As the provider bears the ultimate responsibility to ensure customer information will not be compromised at any domestic or off shore locations, the provider (as well as its agent operating domestic or off shore locations) will not cause or permit data to be released other than for the operation of the third-party location. The provider shall notify its customer that data relating to its systems is being housed by a third-party location, and shall provide a copy thereof to the Postal Service of such notice to its customers. To the extent that any unauthorized release takes place, the vendor shall notify the Postal Service immediately upon discovery of any unauthorized use or disclosure of data or any other breach or improper disclosure of data of this agreement by the provider (as well as its agent operating the third-party location) and will cooperate with the Postal Service in every reasonable way to help the Postal Service regain possession of the data and prevent its further unauthorized use or disclosure. In the event that the Postal Service cannot regain possession of the data or prevent its further unauthorized use or disclosure, the provider shall indemnify the Postal Service from damages resulting from its (or such third-party) actions.

(e) Have, or establish, and keep under its active supervision and control adequate facilities for the control, distribution, and maintenance of PES 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, or that its Postage Evidencing System poses an unreasonable risk to postal revenue, PT, acting on behalf of the Postal Service, shall issue a written notice of proposed suspension citing the specific conditions or deficiencies for which suspension is warranted, 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 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, PT 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 PT.

(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
§ 501.7 Postage Evidencing System requirements.

(a) A Postage Evidencing System submitted to the Postal Service for approval must meet the requirements of the Intelligent Mail Indicia Performance Criteria published by PT. Copies of the current Performance Criteria may be requested 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 relo-catereturn this meter.

WARNING! METER TAMPERING IS A FEDER-
ERAL 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.

(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.

(71 FR 65733, Nov. 9, 2006, as amended at 78 FR 44438, July 24, 2013)
United States Postal Service

§ 501.10

(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.

[71 FR 65733, Nov. 9, 2006, as amended at 78 FR 44439, July 24, 2013]

§ 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 PT. Copies of the current Performance Criteria may be requested 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.

[71 FR 65733, Nov. 9, 2006, as amended at 78 FR 44439, July 24, 2013]

§ 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, PT, 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, PT 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
§ 501.11 Laboratory Accreditation Program (NVLAP).  
(b) Upon receipt and review of additional documentation and/or test results, PT will issue a written acknowledgement and/or approval of the change to the provider.  
[78 FR 44439, July 24, 2013]

§ 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.  
(3) Cyber attacks that include, but are not limited to, gaining unauthorized access to digital systems for purposes of misappropriating assets or sensitive information, corrupting data, or causing operational disruption. Cyber attacks may also be carried out in a manner that does not require gaining unauthorized access, such as by causing denial-of-service attacks on Web sites. Cyber attacks may be carried out by third parties or insiders using techniques that range from highly sophisticated efforts to electronically circumvent network security or overwhelm Web sites to more traditional intelligence gathering and social engineering aimed at obtaining information necessary to gain access. Cyber security risk disclosures reported must adequately describe the nature of the material risks and specify how each risk affects the Postage Evidencing System.  
(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.  
[71 FR 65733, Nov. 9, 2006, as amended at 77 FR 23396, Apr. 19, 2012]

§ 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 upon 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 Information 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.

[71 FR 65733, Nov. 9, 2006, as amended at 78 FR 44439, July 24, 2013]

§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 that 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 business relationship, 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 subjects must be submitted for prior approval, in writing, to the office of Payment Technology.

(1) Service procedures for all Postage Evidencing Systems—these are procedures 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 Postage Evidencing Systems—these are procedures that provide reasonable precautions to prevent use by unauthorized individuals. Providers must ship all postage meters by Postal Service Registered Mail® service 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 service.

(3) Postage Evidencing System 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 postage 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 postage meter is to be removed from service and the authorization to use a Postage Evidencing System revoked, following the procedures for revocation specified by regulation. The Postal Service shall notify the provider to remove the postage meter from the customer’s location.

(4) Out-of-service procedures for a non-faulty Postage Evidencing System—these procedures must be used when the system is to be removed from service for any reason.

(5) Postage Evidencing System 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 postage meter.

(6) Handling procedures for faulty meters—the provider must maintain handling procedures for faulty meters, 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 postage 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 postage meter procedures—the provider must promptly report to the Postal Service the loss or theft of any postage meter or the recovery of any lost or stolen postage meter. Such notification to the Postal Service will be made by completing and filing a standardized lost and stolen meter incident report within 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 or 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 Payment Technology 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 Payment Technology 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 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.
United States Postal Service

§ 501.15

(d) If the provider uses a third party to perform functions that may have an impact upon a Postage Evidencing System (especially its security), including, but not limited to, business relationships, repair, maintenance, and disposal of Postage Evidencing Systems, Payment Technology 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 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 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. By entering into any relationship under this section, the provider is not relieved of any responsibility to the Postal Service, and such must be stated in any memorialization of the relationship.

[77 FR 23618, Apr. 20, 2012]

§ 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

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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 examination of its CMRS system and any other applications and technology infrastructure that may have a material impact on Postal Service revenues, as determined by the Postal Service. The examination shall be performed by a qualified, independent audit firm and shall be conducted in accordance with the Statements on Standards for Attestation Engagements (SSAEs) No. 16, Service Organizations, developed by the American Institute of Certified Public Accountants (AICPA), as amended or superseded. Expenses associated with such examination shall be incurred by the RC. The examination shall include testing of the operating effectiveness of relevant RC internal controls (SOC 1 Type II SSAE 16 Report). If the service organization uses another service organization (sub-service provider), Postal Service management should consider the nature and materiality of the transactions processed by the sub-service organization and the contribution of the sub-service organization’s processes and controls in the achievement of the Postal Service’s control objectives. The Postal Service should have access to the sub-service organization’s SOC 1 Type II SSAE 16 report. The control objectives to be covered by the SOC 1 Type II SSAE 16 report are subject to Postal Service review and approval, and are to be provided to the Postal Service 30 days prior to the initiation of each examination period. As a result of the examination, the service auditor shall provide the RC and the Postal Service with an opinion on the design and operating effectiveness of the RC’s internal controls related to the CMRS system and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the RC. Such examinations are to be conducted on no less than an annual basis, and are to be as of and for the 12 months ended June 30 of each year (except for new contracts for which the examination period will be no less than the period from the contract date to the following June 30, unless otherwise agreed to by the Postal Service). The examination reports are to be provided to the Postal Service by August 15 of each year. To the extent that internal control weaknesses are identified in a SOC 1 Type II SSAE 16 report, the Postal Service may require the remediation of such weaknesses and review working papers and engage in discussions about the work performed with the service auditor. The Postal Service requires that all remediation efforts (if applicable) are completed and reported by the RC prior to the Postal Service’s fiscal year end (September 30). In addition, the RC will be responsible for performing an examination of their internal control environment related to the CMRS system and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the RC, in particular, disclosing changes to internal controls for the period of July 1 to September 30. This examination...
§ 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.

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(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 examination of its PC Postage system and any other applications and technology infrastructure that may have a material impact on Postal Service revenues, as determined by the Postal Service. The examination shall be performed by a qualified, independent audit firm and shall be conducted in accordance with the Statements on Standards for Attestation Engagements (SSAEs) No. 16, Service Organizations, developed by the American Institute of Certified Public Accountants (AICPA), as amended or superseded. Expenses associated with such examination shall be incurred by the provider. The examination shall include testing of the operating effectiveness of relevant provider internal controls. The examination shall be performed by a qualified, independent audit firm and shall be conducted in accordance with the Statements on Standards for Attestation Engagements (SSAEs) No. 16, Service Organizations, developed by the American Institute of Certified Public Accountants (AICPA), as amended or superseded. Expenses associated with such examination shall be incurred by the provider. The examination shall include testing of the operating effectiveness of relevant provider internal controls.
PC Postage system, and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the provider. Such examinations are to be conducted on no less than an annual basis, and are to be as of and for the 12 months ended June 30 of each year (except for new contracts for which the examination period will be no less than the period from the contract date to the following June 30, unless otherwise agreed to by the Postal Service). The examination reports are to be provided to the Postal Service by August 15 of each year. To the extent that internal control weaknesses are identified in a SOC 1 Type II SSAE 16 report, the Postal Service may require the remediation of such weaknesses, and review working papers and engage in discussions about the work performed with the service auditor. The Postal Service requires that all remediation efforts (if applicable) are completed and reported by the provider prior to the Postal Service’s fiscal year end (September 30). In addition, the provider will be responsible for performing an examination of their internal control environment related to the PC Postage system and any other applications and technology infrastructure considered material to the services provided to the Postal Service by the provider, in particular, disclosing changes to internal controls for the period of July 1 to September 30. This examination should be documented and submitted to the Postal Service by October 14. The provider will be responsible for all costs related to the examinations conducted by the service auditor and 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.

(1) Revenue Assurance. To operate PC Postage systems, the provider must support business practices to assure Postal Service revenue and accurate payment from customers. Specifically, the provider is required to notify the customer and adjust the balance in the postage evidencing system or otherwise facilitate postage corrections to address any postage discrepancies as directed by the Postal Service, subject to the applicable notification periods and dispute mechanisms available to customers for these corrections. The Postal Service will supply the provider with the necessary detail to justify the correction and amount of the postage correction to be used in the adjustment process. The provider must supply customers with visibility into the identified postage correction, facilitate a payment adjustment from the customer in the amount equivalent to the identified postage discrepancies to the extent possible, and enable customers to submit electronic disputes of such postage discrepancies to the Postal Service. Further if the Customer does not have funds sufficient to cover the amount of the discrepancies or the postage discrepancies have not been resolved, the provider may be required to temporarily suspend or permanently shut down the customer’s ability to print PC Postage as described in the Domestic Mail Manual section 604.4.


**EFFECTIVE DATE NOTE:** At 82 FR 15465, Mar. 29, 2017, §501.16 was amended by revising paragraph (i), effective Aug. 1, 2017. For the convenience of the user, the revised text is set forth as follows:

§501.16 PC postage payment methodology.

* * * * *

194
§ 501.16, NI.

(i) Revenue assurance. (1) The PC Postage provider must support business practices to assure Postal Service revenue and accurate payment from customers. For purposes of this paragraph, PC Postage provider shall mean: providers who offer PC Postage products (as such terms are defined in § 501.1); Click-N-Ship® service; and postage resellers when such resell relates to postage revenue to the Postal Service in any manner other than through a PC Postage provider. With respect to the reseller transactions described above, the resellers, and not the PC Postage providers who provide the labels, are responsible for complying with this paragraph. For the purpose of this paragraph, a reseller is an entity that obtains postage through a PC Postage provider and is authorized to resell such postage to its customers pursuant to an agreement with the Postal Service. For example, an entity that sells postage to its customers, but uses a PC Postage provider to enable its customers to print postage labels, is a reseller hereunder. If that entity collects postage revenue from its customers and transmits it to the Postal Service directly (instead of through the PC Postage provider) that entity shall be deemed a PC Postage provider hereunder. For the purpose of this paragraph, a customer is the person or entity that deposits the mail piece into the mail system. PC Postage providers must comply with these revenue assurance requirements regardless of whether they have a direct relationship with the customer or sell postage to the customer through one or more resellers.

(ii) For the purposes of this paragraph, a postage adjustment is defined as the difference between the postage or fee actually paid to the Postal Service for a specific service, and the actual postage due to the Postal Service under the published or negotiated rate for that service, as applicable, which shall be calculated as of the time the mail piece is entered into the mailstream. When the collection of a postage adjustment or the provision of a refund is appropriate because a customer has underpaid or overpaid the amount of postage that should have been paid, and such postage adjustment exceeds a threshold amount to be set by the Postal Service from time to time in its discretion, the PC Postage provider must, upon receiving notice from the Postal Service, pay, attempt to collect, or refund, as applicable, the postage adjustment in accordance with paragraph (1)(2)(iii)(B) of this section. The Postal Service will supply the PC Postage provider with the details necessary to explain the correction and the amount of the postage adjustment to be used in the adjustment process. As part of this process, the PC Postage provider shall enable customers to submit disputes concerning the postage adjustment to the Postal Service, in a method approved by the Postal Service, including via phone call to the customer care center or API in the PC Postage provider’s user interface of postage collections. In addition, the PC Postage provider must convey the Postal Service’s dispute decision to the customer. If the Postal Service determines the customer’s dispute was valid, and the customer had already paid the postage adjustment, the PC Postage provider must return the postage adjustment to the customer when notified by the Postal Service according to the rules set forth in paragraph (1)(2)(iii)(B) of this section.

(iii)(A) In the case of an underpayment that exceeds the threshold amount, within 14 business days of receiving notice of the underpayment from the Postal Service the PC Postage provider must pay the postage adjustment directly to the Postal Service, or seek to collect the postage adjustment from the customer in accordance with this paragraph. If the PC Postage provider opts to pursue collection activity, it must notify the customer of the details of the postage adjustment (including the dispute process), retain evidence that such notice was actually received by the customer, and attempt to collect the postage adjustment by adjusting the funds available to the customer in the Postage Evidencing System, or if funds are not available, facilitating customer payment by invoicing the customer or by pursuing other methods available to collect against the customer or access funds of the customer. If the customer has a Postage Evidencing System account, the PC Postage provider must process any refunds due to the customer under paragraph (1)(2)(iii)(B) of this section before processing any collections due to the Postal Service hereunder. If the PC Postage provider opts to pursue collection activity, it shall continue to make affirmative efforts to collect the postage adjustment from the customer until the postage adjustment is satisfied in whole or the collection period (as defined in paragraph (1)(2)(iii)(C) of this section) expires. Immediately upon receiving or securing access to funds of the customer, the PC Postage provider shall remit to the Postal Service any and all available funds from the customer’s account from the Postage Evidencing System or that are otherwise recovered by the PC Postage provider to the extent necessary to satisfy the postage adjustment. The postage adjustment must be paid in full; no partial payments will be accepted by the Postal Service, except for payments made under paragraph paragraph (1)(2)(iii)(C) of this section.

(B) In the case of an overpayment that exceeds the threshold amount, the Postal Service shall within 14 business days of identifying the overpayment, provide notice of the postage adjustment to the PC Postage provider and instruct the PC Postage provider to give the customer a credit and adjust the
§ 501.16, Nt.

Federal Register

39 CFR Ch. 1 (7–1–17 Edition)

funds available to the customer in the Postage Evidencing System. If the Postage Evidencing System account has been closed or for customers who do not have individual Postage Evidencing System accounts, the Postal Service shall instruct the PC Postage provider to issue a refund to the customer and the Postal Service shall either refund the underpayment directly to the customer or permit the PC Postage provider to submit a reconciliation to the Postal Service. The PC Postage provider must immediately upon receiving notice of the overpayment from the Postal Service, notify the customer and, consistent with the Postal Service’s instructions, adjust the funds available to the customer in the Postage Evidencing System, refund the postage adjustment to the PC Postage provider to issue a refund to the customer, or adjust the funds available in the Postage Evidencing System accounts, the PC Postage provider shall adjust any funds available to the customer in the Postage Evidencing System to satisfy the postage adjustment to the greatest extent possible, and assist the Postal Service in its efforts to pursue any remedies that may be available in law or equity, including seeking payment directly from the customer.

(i)(A) In the case of an underpayment that exceeds the threshold amount, immediately upon receiving notice of the underpayment from the Postal Service the PC Postage provider shall prohibit the customer from printing additional postage labels until the postage adjustment is satisfied in accordance with paragraph (i)(2)(ii)(A) of this section, or the customer disputes the adjustment and prevails. The Postal Service may, in its discretion, waive or delay this prohibition in specific instances.

(B) Separately, without regard to any threshold, in certain cases (such as where a customer is suspected of having intentionally or repeatedly underpaid postage) the Postal Service may, in its discretion, instruct the PC Postage provider to shut down temporarily or permanently a customer’s ability to print PC Postage, and the PC Postage provider shall promptly comply with such instruction.

(C) In no event shall the Postal Service be liable to any PC Postage provider, customer or other party for any direct, indirect, exemplary, special, consequential, or punitive damages (including without limitation damages relating to loss of profit or business interruption) arising from or related to any customer’s permanent or temporary inability to print postage labels in accordance with this paragraph (i)(2)(iv) or as a result of funds offset in accordance with this paragraph.

(V) The Postal Service, in its discretion, may adopt and modify from time to time, and the PC Postage providers shall comply with, business rules setting forth processes (including time constraints) for payments, refunds, account suspensions, collections, notifications, dispute resolutions and other activities to be performed hereunder. Such business rules will be published in the Federal Register.

(3)(i) Without regard to any threshold, if the PC Postage provider incorrectly programmed postage rates, delayed programming postage rate changes, or otherwise provided systems or software which caused customers to pay incorrect postage amounts, within two calendar weeks of the PC Postage provider being made aware of such error, the PC Postage provider shall:

(A) Correct the programming error;

(B) Provide the Postal Service with a detailed breakdown of how the error affected the PC Postage provider’s collection of revenue; and

(C) Pay the Postal Service for the postage deficiency caused by the programming error, except in instances where the error was caused by the Postal Service or as a direct result of incorrect specifications provided by the Postal Service.

(4) The PC Postage provider is responsible for ensuring that:

(i) All customers pay (and the Postal Service receives) the current published prices that are available to customers who purchase postage through an approved PC Postage provider, or negotiated contracted prices where applicable in accordance with this paragraph; and

(ii) All payments to the Postal Service (or the log files necessary for the Postal Service to collect payments directly from customers) are complete and accurate and are initiated or transmitted, as applicable, to the Postal Service each day.

(5) Each PC Postage provider shall:

(i) Before each customer’s first transaction following the implementation date of August 1, 2017, provide notice to such customer of the terms, conditions and processes described in this paragraph—including, without limitation, that the customer may be charged for deficient payments and prevented from printing additional postage labels while a postage adjustment remains unpaid—and obtain a certification from each customer that the customer has read, understands and agrees to such terms, conditions and processes, as they may be amended or supplemented from time to time;
(ii) Ensure that each customer certifies that it:
   (A) Will comply with all laws and regulations applicable to Postal Service services, including, without limitation, the provisions of the Domestic Mail Manual and the International Mail Manual,
   (B) Does not owe any money to the Postal Service and is not a controlling member or officer of an entity that owes money to the Postal Service, and
   (C) Authorizes the PC Postage provider to disclose the customer’s personal information to the Postal Service and such other information retained by the PC Postage provider that may enable the Postal Service to collect debts owed to it;

(iii) Maintain a complete and accurate record for each customer, which includes such customer’s current name and a valid U.S. address that is sufficient for service of process under the law, as well as a copy of all terms agreed to by the customer and the date of such agreements;

(iv) Comply with applicable laws, rules, regulations and guidelines and ensure that its Postage Evidencing Systems, software, interfaces, communications and other properties that are used to sell or market Postal Service products accurately describe such products;

(v) Cover any costs or damages that the Postal Service may incur as a result of such PC Postage provider or its employees, contractors, or representatives failing to comply with the terms of this section, or any applicable law, regulation, rule, or government policy; and

(vi) In performing its obligations hereunder, comply with the business rules that shall be published in the Federal Register from time to time and provide all agreed-upon interface documentation (as updated from time to time).

(6) In the event that the Postal Service fails to exercise or delays exercising any right, remedy, or privilege under this paragraph, such failure or delay shall not operate as a waiver thereof or of any other provision hereof, nor shall any single or partial exercise of any right, remedy, or privilege preclude any further exercise of the same. The rights and remedies available to the Postal Service under this paragraph are cumulative and in addition to, and do not diminish, any rights or remedies otherwise available to the Postal Service.

§ 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
§ 501.18  

System, including any unresolved identified postage discrepancies 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.

(6) The customer has any unresolved postage discrepancies.

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
United States Postal Service

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.

[71 FR 65733, Nov. 9, 2006, as amended at 80 FR 42993, July 17, 2015]

§ 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.

§ 501.20 Discontinued Postage Evidencing Indicia.

(a) Decertified indicia (evidence of pre-paid postage) are indicia that have been withdrawn by the Postal Service as valid forms of postage evidence through publication by the Postal Service in the FEDERAL REGISTER, or by voluntary withdrawal undertaken by the provider.

(b) Effective January 1, 2016, all Postage Evidencing Systems (postage meters and PC Postage products) will be required to produce Information-Based Indicia (IBI) or Intelligent Mail Indicia (IMI) for evidence of pre-paid postage. Non-IBI and non-IMI indicia will be decertified effective January 1, 2016, and may not be used as a valid form of postage evidence. These decertified indicia will not be recognized as valid postage after December 31, 2015.

[78 FR 8407, Feb. 6, 2013]

PART 551—SEMIPOSTAL STAMP PROGRAM

§ 551.1 Semipostal Stamp Program.

Sec. 551.1 Semipostal Stamp Program.

551.2 Semipostal stamps.

551.3 Procedure for selection of causes and recipient executive agencies.

551.4 Submission requirements and selection criteria.

551.5 Frequency and other limitations.

551.6 Pricing.

551.7 Calculation of funds for recipient executive agencies.

551.8 Cost offset policy.


SOURCE: 66 FR 31826, June 12, 2001, unless otherwise noted.

§ 551.1 Semipostal Stamp Program.

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.

§ 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 has discretionary authority to select causes and recipient executive agencies to receive funds raised through the sale of semipostal stamps. These regulations apply only to such discretionary semipostal stamps and do not apply to semipostal stamps that are mandated by Act of Congress, such as the Breast Cancer Research stamp. The procedure for selection of causes and recipient executive agencies is as follows:

(a) The Office of Stamp Services will accept proposals from interested persons for future semipostal stamps beginning on May 20, 2016. The Office of Stamp Services will begin considering proposals on July 5, 2016. The Postal Service intends to issue five semipostal stamps under these regulations during the 10-year period established by Congress in 39 U.S.C. 416(g). Each semipostal stamp will be sold for no more than two years. Proposals may be submitted and will be considered on a rolling basis until seven years after May 20, 2016. The Office of Stamp Services may publicize this request for proposals in the Federal Register or through other means, as it determines in its discretion. Proposals for semipostal stamps made prior to May 20, 2016 will not be given further consideration. Nothing in these regulations should be construed as barring the resubmission of previously submitted causes and recipient executive agencies.

(b) Proposals will be received by the Office of Stamp Services, which will review each proposal under §551.4.

(c) The Office of Stamp Services will forward those proposals that satisfy the requirements of §551.4 to the Citizens’ Stamp Advisory Committee for its consideration.

(d) Based on the proposals received from the Office of Stamp Services, the Citizens’ Stamp Advisory Committee may make recommendations on causes and eligible recipient executive agencies to the postmaster general. The Citizens’ Stamp Advisory Committee may recommend more than one cause and eligible recipient executive agency at the same time.

(e) Meetings of the Citizens’ Stamp Advisory Committee are closed, and deliberations of the Citizens’ Stamp Advisory Committee are pre-decisional in nature.

(f) In making decisions concerning semipostal stamps, the postmaster general may take into consideration such factors, including the recommendations of the Citizens’ Stamp Advisory Committee, as the postmaster general determines are appropriate. The decision of the postmaster general shall be the final agency decision.

(g) The Office of Stamp Services will notify each executive agency in writing of a decision designating that agency as a recipient of funds from a semipostal stamp.

(h) As either a separate matter, or in combination with recommendations on a cause and recipient executive agencies, the Citizens’ Stamp Advisory Committee may recommend to the postmaster general a design (i.e., artwork) for the semipostal stamp. The postmaster general will make a final decision on the design to be featured.

(i) The decision of the postmaster general to exercise the Postal Service’s
United States Postal Service

discretionary authority to issue a semipostal stamp is final and not subject to challenge or review.

[81 FR 23163, Apr. 20, 2016]

§ 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 the proposal by U.S. Mail to the Office of Stamp Services, Attn: Semipostal Discretionary Program, 475 L'Enfant Plaza SW., Room 3300, Washington, DC 20260–3501, or in a single Adobe Acrobat (.pdf) file sent by email to semipostal@usps.gov. Indicate in the Subject Line: Semipostal Discretionary Program. 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.

(2) The proposal must be signed by the individual or a duly authorized representative and must provide the mailing address, phone number, fax number (if available), and email address of a designated point of contact.

(3) The proposal must describe the cause and the purposes for which the funds would be used.

(4) The proposal 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 proposal must include a letter from an executive agency or agencies on agency letterhead representing that:

(i) It is an executive agency as defined in 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.

(6)(i) A proposal 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 postmaster general will provide the recipient executive agencies with an opportunity to jointly decide which two agencies will receive funds. If the agencies are unable to reach a joint decision within 20 days, the postmaster general shall either decide which two agencies will receive funds or select another proposal.

(ii) If more than one proposal is submitted for the same cause, and the proposals would have different executive agencies receiving funds, the funds may be evenly divided among the executive agencies, with no more than two agencies being designated to receive funds, as determined by the postmaster general.

(b) Proposals 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 proposals are selected or not, for any reason.

(c) The following persons may not submit proposals:

(1) Employees of the United States Postal Service;

(2) Any contractor of the Postal Service that may stand to benefit financially from the Semipostal Stamp Program; or

(3) Members of the Citizens’ Stamp Advisory Committee and their immediate families, and 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 any of the following: Anniversaries; public works; people; specific organizations or associations; commercial enterprises or products; cities,
§ 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 Office of Stamp Services will determine the date of commencement of the 10-year period.

(b) The Postal Service will offer only one discretionary semipostal stamp for sale at any given time during the 10-year period, although a discretionary semipostal stamp may be offered for sale at the same time as one or more congressionally mandated semipostal stamps.

(c) The sales period for any given discretionary semipostal stamp is limited to no more than two years, as determined by the Office of Stamp Services.

(d) Prior to or after the issuance of a given discretionary semipostal stamp, the Postal Service may 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 expected, or

(3) The cause or recipient executive agency does not further, or does not comply with, the statutory purposes or requirements of the Semipostal Authorization Act.

§ 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 stamped 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.

§ 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.

SUBCHAPTER H—PROCUREMENT SYSTEM FOR THE U.S. POSTAL SERVICE: INTELLECTUAL PROPERTY RIGHTS OTHER THAN PATENTS

PART 601—PURCHASING OF PROPERTY AND SERVICES

Sec.
601.100 Purchasing policy.
601.101 Effective date.
601.102 Revocation of prior purchasing regulations.
601.103 Applicability and coverage.
601.104 Postal purchasing authority.
601.105 Business relationships.
601.106 Reserved.
601.107 Initial disagreement resolution.
601.108 SDR Official disagreement resolution.
601.109 Contract claims and disputes.
601.110 Payment of claims.
601.111 Interest on claim amounts.
601.112 Review of adverse decisions.
601.113 Suspension, debarment, and ineligibility.


SOURCE: 72 FR 58252, Oct. 15, 2007, unless otherwise noted.

§ 601.100 Purchasing policy.

The Postal Service acquires property and services pursuant to the authority of 39 U.S.C. 410.

§ 601.101 Effective date.

These regulations are effective November 14, 2007. Solicitations issued and resulting contracts entered into prior to that date will be governed by the regulations in effect at the time the solicitation was issued.

§ 601.102 Revocation of prior purchasing regulations.

All previous postal 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.

§ 601.103 Applicability and coverage.

The regulations contained in this part apply to all Postal Service acquisition of property (except real property) and services.

§ 601.104 Postal purchasing authority.

Only the Postmaster General/CEO; the Postal Service's vice president, 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, Supply Management, or his or her designee, may also delegate in writing local buying authority throughout the Postal Service.

§ 601.105 Business relationships.

(a) General. A person or organization wishing to have 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 decline to accept or consider proposals from a person or organization when that person or organization fails to meet reasonable business expectations or provide a high level of confidence regarding quality, prompt service, and overall professionalism.

(b) Declining to accept or consider proposals. The Postal Service may decline to accept or consider proposals when a person or organization exhibits unacceptable conduct or business practices that do not meet reasonable business expectations or does not provide a high level of confidence about the entity’s current or future business relations. 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 regarding 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.

(c) Notice. If the Postal Service elects to decline to accept or consider proposals from a person or organization, the vice president, Supply Management, or his or her designee, will provide a written notice to the person or organization by Certified Mail, return receipt requested, explaining:

(1) The reasons for the decision;
(2) The effective date of the decision;
(3) The scope of the decision;
(4) The period of time the decision will be in effect, (a matter at the Postal Service’s discretion consistent with the circumstances); and
(5) The supplier’s right to contest the decision.

(d) 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 §601.108. The Postal Service may reconsider the matter and, if warranted, rescind or modify the decision to decline to accept or consider proposals.

§601.106 [Reserved]

§601.107 Initial disagreement resolution.

(a) Definitions. (1) Days. Calendar days; however, any time period will run until a day that is not a Saturday, Sunday, or legal holiday.

(2) Disagreements. All disputes, protests, claims, disagreements, or demands of whatsoever nature arising in connection with the acquisition of property and services within the scope of §601.103 of this chapter, except those:

(i) That arise pursuant to a contract under the Contract Disputes Act under §601.108;
(ii) That concern debarment, suspension, or ineligibility under §601.113; or
(iii) That arise out of the nonrenewal of transportation contracts containing other provisions for the review of such decisions.

(3) Interested parties. Actual or prospective offerors whose direct economic interests would be affected by the award of, or failure to award, the contract.

(4) Lodge. A disagreement is lodged on the date it is received by the contracting officer or the Supplier Disagreement Resolution Official, as appropriate.

(5) SDR Official. The Supplier Disagreement Resolution Official, a contracting officer designated by the Postal Service to perform the functions established under §601.108.

(b) Policy. It is the policy of the Postal Service and in the interest of its suppliers to resolve disagreements by mutual agreement between the supplier and the responsible contracting officer. All disagreements must be lodged with the responsible contracting office in writing via facsimile, e-mail, hand delivery, or U.S. Mail. For disagreements that concern the award of a contract, the disagreement shall be lodged within 10 days of the date the supplier received notification of award or 10 days from the date the supplier received a debriefing, whichever is later. For disagreements that concern alleged improprieties in a solicitation, the contracting officer must receive the disagreement before the time set for the receipt of proposals, unless the disagreement concerns an alleged impropriety that does not exist in the initial solicitation but which is subsequently incorporated into the solicitation, in which event the contracting officer must receive the disagreement no later than the next closing time for the receipt of proposals following the incorporation. The resolution period shall last 10 days from the date when the disagreement is lodged with the contracting officer. During the supplier-contracting officer 10-day resolution period, the responsible contracting officer’s management may help to resolve the disagreement. At the conclusion of the 10-day resolution period, the contracting officer must communicate, in writing, to the supplier his or her resolution of the disagreement.

(c) Alternative dispute resolution. Alternative dispute resolution (ADR) procedures may be used to resolve a disagreement. If the use of ADR is agreed upon, the 10-day limitation is suspended. If agreement cannot be
§ 601.108 SDR Official disagreement resolution.

(a) General. If a disagreement under § 601.107 is not resolved within 10 days after it was lodged with the contracting officer, if the use of ADR fails to resolve it at any time, if the supplier is not satisfied with the contracting officer’s resolution of the disagreement, or if the decision not to accept or consider proposals under § 601.105 is contested, the SDR Official is available to provide final resolution of the matter. The Postal Service desires to resolve all such matters quickly and inexpensively in keeping with the regulations in this part.

(b) Scope and applicability. This procedure is established as the sole and exclusive means to resolve disagreements under § 601.107 and contests of decisions under § 601.105. This procedure is intended to expeditiously resolve disagreements that are not resolved at the responsible contracting officer level; to reduce litigation expenses, inconvenience, and other costs for all parties; to facilitate successful business relationships with Postal Service suppliers, the supplier community, and other persons; and to develop further the basis for the Postal Service’s purchasing decisions and the administrative records concerning those decisions. All disagreements under § 601.107 and contests of decisions under § 601.105 will be lodged with and resolved, with finality, by the SDR Official under and in accordance with the sole and exclusive procedure established in this section.

(c) Lodging. The disagreement under § 601.107 or contest of decision under § 601.105 must be lodged with the SDR Official in writing via facsimile, email, hand delivery, or U.S. Mail. The disagreement under § 601.107 or contest of decision under § 601.105 must state the factual circumstances relating to it and the remedy sought. A disagreement under § 601.107 must also state the scope and outcome of the initial disagreement resolution attempt with the contracting officer. The address of the SDR Official is: Supply Management, Room 1141 (Attn: SDR Official), United States Postal Service Headquarters, 475 L’Enfant Plaza SW., Washington, DC 20260–1141; email Address: SDROfficial@usps.gov; Fax Number: (202) 268–0075.

(d) Lodging timeframes. Disagreements under § 601.107 or contests of decisions under § 601.105 must be lodged with the SDR Official within the following timeframes:

1. Disagreements under § 601.107 not resolved with the contracting officer must be lodged with the SDR Official within 20 days after they were lodged with the contracting officer (unless ADR had been used to attempt to resolve them);

2. Disagreements under § 601.107 for which ADR had been agreed to be used must be lodged with the SDR Official within 10 days after the supplier knew or was informed by the contracting officer or otherwise that the matter was not resolved;

3. Where a supplier is dissatisfied with the contracting officer’s resolution of a disagreement under § 601.107, the supplier must lodge the disagreement with the SDR Official within 10 days after the supplier first receives notification of the contracting officer’s resolution; and

4. Contests of decisions under § 601.105 to decline to accept or consider proposals must be lodged with the SDR Official within 10 days of the supplier’s receipt of the written notice explaining the decision.

5. The SDR Official may grant an extension of time to lodge a disagreement under § 601.107 or contest of decision under § 601.105 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 SDR Official on or before the time to lodge a disagreement lapses.

(e) Disagreement decision process. The SDR Official will promptly provide a copy of a disagreement to the contracting officer, who will promptly notify other interested parties. The SDR Official will consider a disagreement and any response by other interested parties and appropriate Postal Service
officials within a time frame established by the SDR Official. The SDR Official may also meet individually or jointly with the person or organization lodging the disagreement, other interested parties, 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 parties, or Postal Service officials must promptly provide all relevant, nonprivileged materials and other information requested by the SDR Official. If a submission contains trade secrets or other confidential information, it should be accompanied by a copy of the submission from which the confidential matter has been redacted. The SDR Official will determine whether any redactions are appropriate and will be solely responsible for determining the treatment of any redacted materials. After obtaining such information, materials, and advice as may be needed, the SDR Official will promptly issue a written decision resolving the disagreement and will deliver the decision to the person or organization lodging the disagreement, other interested parties, and appropriate Postal Service officials.

When resolving a disagreement raised under §601.107, the SDR Official may grant remedies including, but not limited to, the following:

1. Directing the contracting officer to revise the solicitation or to issue a new solicitation;
2. Directing the contracting officer to recompete the requirement;
3. Directing the contracting officer to reevaluate the award on the basis of current proposals and the evaluation factors contained in the solicitation; and
4. Directing the contracting officer to terminate the contract or to refrain from exercising options under the contract.

(g) Final resolution by the SDR Official and final contract award of the Postal Service. A resolution by the SDR Official will be final and binding. If the SDR Official's final resolution affirms the original contract award of the contracting officer, the contracting officer's original contract award becomes the Postal Service's final contract award, and may be subject to judicial review as described in paragraph (h) of this section. If the SDR Official's final resolution directs that the Postal Service terminate the contract award and issue a new solicitation, recompete the requirement, or reevaluate the current award, the contracting officer shall implement promptly the SDR Official's final resolution. However, any contract award made by the contracting officer after a resolicitation, recompetition, or reevaluation directed by the SDR Official is not a final contract award of the Postal Service that may be subject to judicial review unless and until disagreements concerning that contract award have been lodged and resolved with finality by the SDR Official.

(h) Judicial review. The Postal Service's final contract award, as described in paragraph §601.108(g), may be appealed to a Federal court with jurisdiction based only upon an alleged violation of the regulations contained in this part or an applicable public law enacted by Congress. The party lodging the disagreement may seek review of the Postal Service's final contract award only after the mandatory administrative remedies provided under §601.107 and §601.108 have been exhausted.

(i) Resolution timeframe. It is intended that this procedure generally will resolve disagreements under §601.107 or contests of decisions under §601.105 within approximately 30 days after receipt by the SDR Official. 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. 7101–7109). If ADR is used, the SDR official may serve as a mediator for contract performance disagreements prior to bringing a contract claim or dispute under this part.

(b) Policy. It is the Postal Service’s intent 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) Supplier 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 agree 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 six 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, 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) Misrepresentation or fraud. 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—(l) 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, and may 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 may 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 sixty days, the contracting officer must issue a final decision on a claim of $100,000 or less within sixty 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 sixty 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 sup-
plier’s supporting data, and any other
relevant factors.

(7) **Wording of decisions.** The con-
tracting officer’s final decision must
contain the following paragraph: “This
is the final decision of the contracting
officer pursuant to the Contract Dis-
putes 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 Ap-
peals by filing a notice of appeal within
ninety days from the date you receive
this decision. You may file the notice
of appeal online through the USPS Ju-
dicial Officer Department’s Electronic
Filing System Web site located at
https://uspsjoe.justware.com/JusticeWeb,
or by mailing or otherwise furnishing
the notice of appeal to the Postal Serv-
ic Board of Contract Appeals. You
also may appeal by mailing, or other-
wise furnishing written notice of ap-
peal to the contracting officer within
ninety days from the date you receive
this decision. The notice should iden-
tify the contract by number, reference
this decision, and indicate that an ap-
peal is intended. Alternatively, you
may bring an action directly in the
United States Court of Federal Claims
within twelve 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 con-
tracting 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.”

(9) **Additional wording for decisions
over $50,000 up to $100,000.** When the
claim or claims denied total $50,000 or
less, but more than $50,000, the con-
tracting 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) **Information and resources.** Con-
tracting officers must have sufficient
information available at the time a
final decision is issued on a claim so
resolution of an appeal within the pe-
riod set for an expedited disposition
will not be delayed. Once an appeal is
docketed, and expedited disposition is
elected, contracting officers must de-
vote 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 con-
trovery after an appeal has been filed,
although such efforts to settle the con-
troversy will not suspend processing
the appeal, unless the Board of Con-
tact Appeals so directs.

[72 FR 58252, Oct. 15, 2007, as amended at 80
FR 31844, June 4, 2015; 81 FR 29146, May 11,
2016]

§ 601.1110 **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 Serv-
ic, 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 par-
ties 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 re-
ceived 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 Suspension, debarment, and ineligibility.

(a) General. Except as provided otherwise in this part, contracting officers may not solicit proposals from, award contracts to, or, when a contract provides for such consent, consent to subcontracts with suspended, debarred, 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. Indications of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities and equipment, contractual relationships, common use of employees, or a business entity organized following the suspension, debarment, or proposed debarment of a supplier which has the same or similar management, ownership, or principal employees as the supplier that was suspended, debarred, or proposed for debarment. 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 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) Suspension. An exclusion from contracting and subcontracting for a reasonable period of time due to specified reasons or the pendency of a debarment proceeding.

(7) 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) Suspension, debarment, and ineligible list. (1) The Postal Service uses the General Services Administration’s System for Award Management (SAM) to determine if suppliers are suspended, debarred, or declared ineligible by Federal agencies or the Government Accountability Office. SAM is accessible by the public on GSA’s Web site at https://www.sam.gov.

(3) Through a representative, the vice president, Supply Management will use the SAM Exclusions database to report Postal Service suspensions, debarments
and proposed debarment decisions; including changes in the status of suppliers and any of their affiliates. Inquiries concerning listed suppliers should be directed to the agency or other authority that took the action.

(d) **Treatment of suppliers included in the SAM Exclusions database.** (1) Contracting officers will review the SAM Exclusions database before making a contract award.

(2) Suppliers included in the SAM Exclusions database 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, Supply Management, or his or her designee, after consultation with the General Counsel, has approved such action.

(3) Suppliers included in the SAM Exclusions database 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 review the consolidated GSA list in order to exclude suppliers suspended or debarred by the Postal Service from performing any part of a Postal Service contract.

(4) The suspension, debarment, 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 suspended, debarred, or determined to be ineligible. Contracting officers may not add new work to any contract with a supplier that is suspended, debarred, or determined to be ineligible by supplemental agreement, by exercise of an option, or otherwise (unless the work is classified as an insignificant or significant minor service change to a mail transportation contract), except with the approval of the vice president, Supply Management, or designee after consultation with the General Counsel.

(e) **Causes for suspension.** (1) The vice president, Supply Management, may suspend any supplier, including any of its affiliates, for causes such as the following:

(i) If 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, or receipt of stolen property, or any other offense indicating a lack of business integrity or business honesty; or

(ii) For any other cause of such serious and compelling nature that suspension is warranted; or

(iii) If the Postal Service has notified a supplier of its proposed debarment under this part.

(f) **Period of suspension.** A suspension will not exceed one year in duration, except a suspension may be extended for reasonable periods of time beyond one year by the vice president, 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, Supply Management, under paragraph (k)(5) of this section.

(g) **Procedural requirements for suspension.** (1) The vice president, 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 ten 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 thirty days of notice of suspension or an extension, a supplier may submit to the vice president, Supply Management, in writing, any information or reason(s) the supplier believes makes a suspension or an extension inappropriate, and the vice president, 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.

(h) Causes for debarment. (1) The vice president, 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 (h)(1)(i) or (ii) of this section can be established by proof of a conviction in a court of competent jurisdiction. If an 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 (h)(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 vice president of Supply Management.

(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 criminal, fraudulent, 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.

(i) 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, 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 implemented 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) 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, 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, 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, Supply Management will consider when deciding the matter. When a debarment is removed or the debarment period is reduced, the vice president, Supply Management must state in writing the reason(s) for the removal of the debarment or the reduction of the period of debarment.

(j) Procedural requirements for debarment. (1) After securing the concurrence of the General Counsel, the vice president, 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 that, within thirty days of the notice, the supplier, individually or through a representative, may submit in person or in writing 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, the notice will be sent 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 that, within thirty days of the notice, the supplier, individually or through a representative, may submit in person or in writing 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, the notice will be sent 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 that, within thirty days of the notice, the supplier, individually or through a representative, may submit in person or in writing information and argument in opposition to the proposed debarment.
to the vice president, 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, 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, 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, Supply Management may reject any findings of fact, in whole or in part, when they are clearly erroneous.

(3) Questions of fact to be resolved by a hearing before the Judicial Officer will be based on the preponderance of the evidence.

(4) After consideration of the circumstances and any information and argument submitted by the supplier, the vice president, 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 the decision was procured by fraud or other criminal misconduct, or the decision was obtained in violation of the regulations contained in this part or an applicable public law enacted by Congress.

[79 FR 65343, Nov. 4, 2014]

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.

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
§ 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 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.


[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.

SOURCE: 37 FR 18861, 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
§ 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.
762.14 Amounts for which disbursement postal money orders may be issued.

Subpart B—Endorsements, Payment, Guarantees, Warranties and Processing of Disbursement Postal Money Orders

762.21 Scope.
762.22 Definitions.
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 401(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 guaranty to the Postal Service that all
§ 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
§ 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.

§ 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

Sec. 775.1 Purpose.
775.2 Policy.
775.3 Responsibilities.
775.4 Definitions.
775.5 Classes of actions.
775.6 Categorical exclusions.
775.7 Planning and early coordination.
775.8 Environmental evaluation guidelines.
775.9 Environmental evaluation process.
775.10 Environmental assessments.
775.11 Environmental impact statements.
775.12 Time frames for environmental impact statement actions.
775.13 Public notice and information.
775.14 Hearings.


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).

§ 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.
United States Postal Service

§ 775.6

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 non-attainment 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(d).

(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.).
United States Postal Service

§ 775.8

(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) Disposal of properties where the size, area, topography, and zoning are similar to existing surrounding properties and/or where current and reasonable anticipated uses are or would be similar to current surrounding uses (e.g., commercial store in a commercial strip, warehouse in an urban complex, office building in downtown area, row house or vacant lot in an urban area).

(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.


§ 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
§ 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.

§ 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
§ 775.11

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.

§ 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.
§ 775.13

(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.”


§ 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.

§ 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
§ 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

§ 776.5
(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.
§ 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.


(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.

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-lit 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 drainage 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.

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)(i) and (f)(1)(ii) 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 later 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
§ 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.

§ 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 if they had 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 seasonable 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.

(1) 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 reestablishment 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:
United States Postal Service § 777.24

(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.


§ 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) 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 downpayment 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.

§ 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.
§ 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...
§ 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

United States Postal Service

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.

§ 777.28

§ 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.


§ 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 person, 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.)
United States Postal Service § 777.31

(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 of 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) Expeditive 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 to 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 pre-paid 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.
§ 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?
778.2 What definitions apply to these regulations?
778.3 What categories of facility project actions of the Postal Service are subject to these regulations?
778.4 What are the Postal Service’s general responsibilities under the Order?
778.5 What is the Postal Service’s obligation with respect to federal interagency coordination?
778.6 What procedures apply to a state’s choice of facility action categories under these regulations?
778.7 How does the Postal Service communicate with state and local officials concerning the Postal Service’s facility project actions?
778.8 How does the Postal Service provide states an opportunity to comment on proposed facility project actions?
778.9 How does the Postal Service receive and respond to comments?
778.10 How does the Postal Service make efforts to accommodate intergovernmental concerns?
778.11 What are the Postal Service’s obligations in interstate situations?
778.12 [Reserved]
778.13 May the Postal Service waive any provision of these regulations?


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?


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

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

SUBCHAPTER M [RESERVED]
SUBCHAPTER N—PROCEDURES

Rules of Procedure Before the Office of General Counsel

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

Sec. 912.1 Claims responsibility.

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 redelega 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.


§ 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, Torts, General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155-9948.


§ 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:
§ 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,
§ 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 notification.

(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, Torts, General Law Service Center, USPS National Tort Center, 1720 Market Street, Room 2400, St. Louis, MO 63155–9948, 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, Torts, General Law Service Center,
§ 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 shall sign the subpoena and enter the name of the individual or entity to whom it is directed.

(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;

(3) 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.

(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

§ 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


SOURCE: 67 FR 50353, Aug. 2, 2002, unless otherwise noted.

PART 927—RULES OF PROCEDURE RELATING TO FINES, DEDUCTIONS, AND DAMAGES
§ 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 once 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 payment 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, see USPS Purchasing Manual, chapter 4.

§ 927.3 Other remedies.

The procedures and other requirements of this part apply only where the
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, Apr. 25, 1968]
§ 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 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]
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 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
§ 952.2 Scope.

These rules of practice shall be applicable in all formal proceedings before the Postal Service under 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 Respondent.

§ 952.3 Informal dispositions.

This part does 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; electronic filing.

(a) The offices of the officials identified in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. Normal business hours are between 8:45 a.m. and 4:45 p.m. (Eastern Time), Monday through Friday except holidays.

(b) The Judicial Officer electronic filing system Web site is accessible 24 hours a day at https://uspsjoe.justware.com/justiceweb.

(81 FR 40192, June 21, 2016)

§ 952.5 Complaints.

When 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 or she 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 answer; 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 “Respondent”; and the Chief Postal Inspector or his or her designee shall be known as “Complainant”. The term “person” (1 U.S.C. 1) shall include any name, address, number or other designation under or by use of which Respondent seeks remittances of money or property through the mail.

§ 952.6 Interim impounding.

In preparation for or during the pendency of a proceeding initiated under 39 U.S.C. 3005, mail addressed to Respondent may be impounded upon obtaining an appropriate order from a United States District Court, as provided in 39 U.S.C. 3007.

§ 952.7 Notice of docketing and answer.

(a) Upon receipt of a complaint filed against a Respondent whose mailing address is within the United States, the Recorder shall issue a notice of docketing and answer due date stating the date for an answer which shall not exceed 30 days from the service of the complaint and a reference to the effect of failure to file an answer and/or the assessment of civil penalties authorized by 39 U.S.C. 3012. (See §§ 952.10 and 952.11).

(b) Upon receipt of a complaint 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). Where the Judicial Officer concludes that a prima facie showing has not been made the complaint shall be dismissed. Where the Judicial Officer concludes that a prima facie showing has been made, he or she shall issue a tentative decision and orders which:

(1) Set forth findings of fact and conclusions of law;

(2) Direct Respondent to cease and desist from engaging in conduct warranting the issuance of an order authorized by 39 U.S.C. 3005(a);

(3) Direct that postal money orders drawn to the order of Respondent not be paid for 45 days from date of the tentative decision;

(4) 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:
(5) Tentatively assess such civil penalties as he considers appropriate under applicable law; and

(6) 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.

(c) 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.

§ 952.8 Service.

(a) Where Respondent’s mailing address is within the United States, the Recorder shall cause a notice of docketing and answer due date (the “Notice”), a copy of these rules of practice, and a copy of the complaint to be transmitted to Complainant who shall serve those documents upon Respondent or his or her agent by certified mail, return receipt requested. Service shall be complete upon mailing. A receipt acknowledging delivery of the notice shall be secured from Respondent or his or her 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. In the absence of a receipt, Complainant shall file an Affidavit of Service, along with returned undelivered mail, or other appropriate evidence of service, with the Recorder. In the alternative Complainant may, in its discretion, effectuate service by hand on Respondent and file an Affidavit of Service with the Recorder.

(b) 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 international 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.

§ 952.9 Filing; docketing and serving documents.

(a) Unless the presiding officer permits otherwise, all documents must be filed using the electronic filing system. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the Recorder of a complete copy of the filing during normal business hours. Discovery need not be filed except as may be sought to be included in the record, or as may be ordered by the presiding officer.

(b) 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 must be received in the electronic filing system or by the Recorder on or before such date. If both parties are participating in the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.

[81 FR 40192, June 21, 2016]

§ 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 Respondent’s address, electronic mail address, and telephone number or the name, address, electronic mail address, and telephone number of an attorney representing Respondent.

(e) The answer shall affirmatively state whether the Respondent will appear in person or by counsel at the hearing.

(f) In lieu of appearing at the hearing in person or by counsel, Respondent may request that the matter be submitted for determination pursuant to §952.17(b)(10).

§952.11 Default.

(a) If Respondent fails to file an answer within the time specified in the notice of docketing and answer, Respondent may be deemed in default, and to have waived hearing and further procedural steps. The Judicial Officer may thereafter issue orders and/or assess civil penalties without further notice.

(b) If Respondent files an answer but fails to appear at the hearing, 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.

(c) If Respondent or Complainant fails to respond to or comply with an order of the presiding officer, the party may be held in default, and absent good cause shown, the party may be deemed to have abandoned the intention to present a defense to the charges of the complaint, or to prosecute the complaint, and the presiding officer or Judicial Officer, without further notice to the offending party, may, as appropriate, dismiss the complaint or issue the orders and/or assess civil penalties sought in the complaint.

§952.12 Amendment of pleadings.

(a) Amendments shall be filed with the Recorder.

(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 rule on the motion as he or she 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 conform the pleadings to the evidence and to raise such issues may 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 raised by the pleadings, but fails to satisfy the presiding officer that an amendment of the pleadings would prejudice him or her 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 occurred since the date of the pleading sought to be supplemented and which are relevant to any of the issues involved.

§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. Time, date, and location for the hearing shall be set by the presiding officer in his or her sole discretion.

§952.15 Change of place of hearings.

(a) 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 in §952.14. The party
§ 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 ensure a fair hearing. The presiding officer may 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, judicial notice or administrative notice of appropriate information may be taken in the discretion of the presiding officer.

(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 may be received in evidence as proof of the efficacy or quality of any product, service, or thing sold through the mails, in the discretion of the presiding officer.

(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 the witness’s opinion or knowledge concerning the matters in question.

(h) A party which objects to the admission of evidence shall explain the grounds for the objection. Formal exceptions to the rulings of the presiding officer are unnecessary.

§ 952.19 Subpoenas.

(a) General. Upon written request of either party filed with the Recorder or on his or her 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. The production by the witness at a 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 possession, custody or 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) Fifteen (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 relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his or her sole discretion, may honor requests for subpoenas not presented within the time limitations specified in this paragraph.

(d) Motion to quash or modify. (1) Upon written request by the person subpoenaed or by a party, the presiding officer may:

(i) Quash or modify the subpoena if it is unreasonable, oppressive or for other good cause shown, or

(ii) 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.

(2) Motions to quash or modify a subpoena shall be filed within 10 days of service, or at least one day prior to any scheduled hearing, whichever first occurs. The presiding officer, in his or her sole discretion, may entertain motions to quash or modify not made within the time limitations specified in this paragraph.

(e) Form; issuance. (1) Every subpoena shall state the title of the proceeding, 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 or her 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 in accordance with 28 U.S.C. 1821, or other applicable law, 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)(1) Service 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) Service outside the United States. 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 or her 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 constitute 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, or a statement of service by registered or certified mail in the event that receipt of delivery is unavailable.

(g) Contumacy or refusal to obey a subpoena. In the case of 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.

§ 952.21 Discovery.

(a) Voluntary discovery. The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, 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, 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) Discovery disputes. The parties are required to make a good faith effort to resolve objections to discovery requests informally. A party receiving an objection to a discovery request, or a party which believes that another party’s response to a discovery request is incomplete or entirely absent, may file a motion to compel a response, but such a motion must include a representation that the moving party has tried in good faith, prior to filing the motion, to resolve the matter informally. The motion to compel shall include a copy of each discovery request at issue and the response, if any.

(c) Discovery limitations. The presiding officer may limit the frequency or extent of use of discovery methods described in these rules. In doing so, generally the presiding officer will consider whether:

(1) The discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

(2) The party seeking discovery has had ample opportunity by discovery in the case to obtain the information sought; or

(3) The discovery is unduly burdensome and expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties’ resources, and the importance of the issues at stake.

(d) Interrogatories. At any time after service of the complaint, 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, the presiding officer will determine the extent to which the interrogatories will be permitted.

(e) Requests for admission. At any time after service of the complaint, 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 may be ordered by the presiding officer as deemed admitted upon the failure of a party to respond timely and fully to the request for admissions.

(f) Requests for production of documents. At any time after service of the complaint, a party may serve on the other party written requests for the production, inspection, and copying of any documents, electronically stored information, or things, to be answered within 30 days. Upon timely objection, the presiding officer will determine the extent to which the requests must be satisfied, and if the parties cannot themselves agree thereon, the presiding officer shall specify just terms and conditions for compliance.

(g) Depositions. Except as stated herein, depositions shall be conducted in accordance with Rule 30 of the Federal Rules of Civil Procedure.

(1) After a complaint has been filed and docketed, 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 purpose 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 conducting depositions shall be as mutually agreed by the parties or, failing such agreement, and upon proper application, governed by order of the presiding officer.

(3) No testimony taken by deposition 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 or before such hearing. It will not ordinarily be received in evidence if the deponent is available to testify at the hearing, but the presiding officer may admit testimony taken by deposition in his or her discretion. A deposition may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted on the written record in lieu of an oral hearing, the presiding officer may, in his or her discretion, receive depositions as evidence in supplementation of that record.
(4) Each party shall bear its own expenses associated with the taking of any deposition unless otherwise ordered by the presiding officer.

(h) Sanctions. If a party fails to appear for a deposition, after being served with a proper notice, or fails to serve answers or objections to interrogatories, requests for admissions, or requests for the production or inspection of documents, after proper service, the party seeking discovery may request that the presiding officer impose appropriate orders. 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. In the sole discretion of the presiding officer, failure of a party to comply with an order pursuant to this rule may result in the presiding officer’s issuance of an order of default under §952.11(c).

§ 952.22 Transcript.

(a) Hearings shall be reported and transcribed by a court reporter. 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 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.

(b) Changes in the official transcript may be ordered by the presiding officer only to correct errors affecting substance and then only in the manner herein provided. Within 10 days after the receipt by any party of a copy of the official transcript, or any part thereof, he or she 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 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.

§ 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 or she 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 30 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
§ 952.24 Decisions.

(a) Initial decision by Administrative Law Judge. A written initial decision shall be rendered by an Administrative Law Judge as soon as practicable after completion of the hearing, or after close of the record in matters heard upon the written record in lieu of an oral hearing under §952.17(b)(10). 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 or she 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 which 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.

§ 952.25 Exceptions to initial decision or tentative decision.

(a) A party in a proceeding presided over by an Administrative Law Judge 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 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 or she may then orally provide 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 duplicate with the Recorder and contain the following matter:

(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; and

(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
§ 952.30 Supplemental orders.

When the Chief Postal Inspector or his or her designee, or the Chief Postal Inspector’s 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 or she 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 record and the legal or other authorities relied upon.

(f) Unless permission is granted by the Judicial Officer no brief shall exceed 50 printed pages double spaced, using 12 point type.

(g) The Judicial Officer will extend the time to file briefs only upon written application for good cause shown. If the appeal brief or brief in support of exceptions is not filed within the time prescribed, the defaulting party may be deemed to have abandoned the appeal or waived the exceptions, and the initial or tentative decision shall become the final agency decision.

§ 952.26 Judicial Officer.

(a) The Judicial Officer is authorized:
(1) To act as presiding officer;
(2) To render tentative decisions;
(3) To render final agency decisions;
(4) To issue Postal Service orders for the Postmaster General;
(5) To refer the record in any proceeding to the Postmaster General or the Deputy Postmaster General for final agency decision;
(6) To remand a case to the presiding officer for consideration; and,
(7) To revise or amend these rules of practice.

(b) In determining appeals from initial decisions or exceptions to tentative decisions, 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.

§ 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 order. 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.

§ 952.28 Orders.

(a) If an order is issued which prohibits delivery of mail to 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 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 Respondent or his or her or its 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 or her or its 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.

§ 952.29 Modification or revocation of orders.

A party against which 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 order. 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.
§ 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 hearing transcript 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.

§ 952.34 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d), and 557(d) prohibiting ex parte communications apply to proceedings under these rules of practice.
§ 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.

§ 953.4 Filing, docketing and serving documents; service of notice; reply; motion for summary judgment.

(a) Filing. Unless the presiding officer permits otherwise, all documents must be filed using the electronic filing system. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the Recorder of a complete copy of the filing during normal business hours. Normal business hours are between 8:45 a.m. and 4:45 p.m. (Eastern Time), Monday through Friday except holidays. If both parties are participating in the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.

(b) 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 or his or her designee’s reply shall be filed within 15 days of receipt of the notice.

(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.

(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 mail, 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.

(c) Reply. The General Counsel, the Chief Postal Inspector, or that officer’s designee shall file a reply within the aforementioned 15-day period or any period granted by the presiding officer for good cause shown. If the reply so filed fails to address any additional allegation in the appeal, that allegation shall be deemed admitted.

(d) Motion for summary judgment. Upon motion of the General Counsel, the Chief Postal Inspector, that officer’s 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.

[81 FR 40192, June 21, 2016]
(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.

§ 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.

§ 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.

§ 953.10 Presiding Officers.

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. The Judicial Officer may preside at the hearing if an Administrative Law Judge is unavailable.

§ 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, June 20, 1994, as amended at 71 FR 53972, 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

Sec. 954.1 Authority for rules. 
954.2 Scope of rules. 
954.3 Informal dispositions. 
954.4 Office business hours; electronic filing. 
954.5 Application. 
954.6 Revocation or suspension. 
954.7 Failure to appeal proposed action. 
954.8 Pleading. 
954.9 Default. 
954.10 Intervention or other participation. 
954.11 Hearings. 
954.12 Change of place of hearing. 
954.13 Appearances. 
954.14 Presiding officers. 
954.15 Judicial Officer. 
954.16 Procedure. 
954.17 Transcript. 
954.18 Proposed findings and conclusions. 
954.19 Initial decision. 
954.20 Appeals. 
954.21 Motion for reconsideration. 
954.22 Continuances. 
954.23 Computation of time. 
954.24 Official record. 
954.25 Public information. 
954.26 Ex parte communications.


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).


§ 954.3 Informal dispositions.

These rules do not preclude the informal dispositions of Periodicals mailing privilege matters before or after institution of proceedings.


§ 954.4 Office business hours; electronic filing.

(a) The offices of the officials identified in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. Normal Business hours are between 8:45 a.m. and 4:45 p.m. (Eastern Time), Monday through Friday except holidays.

(b) The Judicial Officer electronic filing system Web site is accessible 24 hours a day at https://uspsjoe.justware.com/justiceweb.

[81 FR 40193, June 21, 2016]

§ 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.


§ 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.


§ 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) Filing and service. All documents required under this part must be filed using the electronic filing system unless the presiding officer permits otherwise. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the Recorder of a complete copy of the filing during normal business hours. If both parties are participating in the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished. 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.
§ 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.

§ 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.


§ 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.


§ 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 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.


§ 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.

§ 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.


§ 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.


§ 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.

[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.

§ 955.1 Jurisdiction, procedure, service of documents.

(a) Jurisdiction for considering appeals.

Pursuant to the Contract Disputes Act of 1978, 41 U.S.C. 7101–7109, the Postal Service Board of Contract Appeals (Board) has jurisdiction to consider and decide any appeal from a decision of a contracting officer of the United States Postal Service or the Postal Regulatory Commission relative to a contract made by either. In addition the Board has jurisdiction over other matters assigned to it by the Postmaster General, and over matters otherwise authorized by applicable law.


(2) The Board consists of the Judicial Officer as Chairman, and the Judges of the Board, as appointed by the Postmaster General in accordance with the Contract Disputes Act of 1978, 41 U.S.C. 7101–7109. All members of the Board shall meet the qualifications established in the Contract Disputes Act. In general, 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.
§ 955.2 39 CFR Ch. I (7–1–17 Edition)

(c) Board procedures—(1) Rules. Appeals to the Board are handled in accordance with the rules of the Board.

(2) Administration and interpretation of rules. These rules will be interpreted so as to secure a just and inexpensive determination of appeals without unnecessary delay. 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. The Board may consider the Federal Rules of Civil Procedure for guidance in construing those Board rules that are similar to Federal Rules and for matters not specifically covered herein.

(3) 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.

(ii) Unless otherwise specified by the Board, orders and decisions shall be considered received by the parties on the date posted to the electronic filing system. 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 federal holiday in which event the period shall run to the end of the next business day. Except as otherwise provided in these rules or an applicable order, prescribed periods of time are measured in calendar days rather than business days.

(iii) Requests for extensions of time from either party shall be made in writing stating good cause therefor, shall represent that the moving party has contacted the opposing party about the request, or made reasonable and good faith efforts to do so, and shall indicate whether the opposing party consents to the extension. If the request for extension of time is filed after the time for taking the required action has expired, the request should indicate the reasons for the party’s failure to have submitted the request before that time expired.

(4) Manner of filings. Pleadings and other communications shall be filed using the electronic filing system unless the Board permits otherwise. Documents submitted using that system are considered filed with the Board as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Board are considered filed with the Board on the date mailed as evidenced by a United States postmark. Filings submitted by any other means are considered filed with the Board upon receipt by the Recorder of a complete copy of the filing during the Board’s working hours (8:45 a.m.–4:45 p.m. Eastern Time).

(5) Service. If both parties to an appeal are participating via the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail with the opposing party by an equally or more expeditious means of transmittal, noting on the document filed with the Board, or on the transmitting letter, that a copy has been furnished. The filing of a document by fax transmission occurs upon receipt by the Board of the entire legible submission by fax. Copies of simultaneous briefs shall not be filed electronically or otherwise exchanged by the parties but rather shall be filed only with the Board by mail, fax, commercial carrier, on in-person. The Board will distribute simultaneous briefs electronically, or otherwise as appropriate. The Board may determine not to extend a deadline for filing if the extension is necessary solely because the Board’s fax machine is busy or otherwise unavailable when a filing is due. Submissions filed by fax shall be followed promptly by filing by mail.


§ 955.2 Initiation of appeals.

An appeal must be initiated by the filing of a notice of appeal (or equivalent). See §955.1(c)(4). The notice of appeal must be in writing and must be
§ 955.3 Contents of notice of appeal.

(a) A notice of appeal from a contracting officer’s decision should indicate that an appeal is thereby intended. It should identify the contract by number or other identifying reference, and identify the decision from which the appeal is taken, or it should attach a copy of the contracting officer’s decision. If an appeal is taken from the failure of a contracting officer to issue a decision, the notice of appeal should describe in detail the claim that the contracting officer has failed to decide and/or attach a copy of the claim that the contracting officer has failed to decide, and explain that the contracting officer has failed to decide the claim as required.

(b) The notice of appeal should be signed personally by the appellant (the contractor taking 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.

If a party seeking to file an appeal submits a notice of appeal to the contracting officer instead of filing it using the electronic filing system, the contracting officer shall indicate thereon the date of receipt and shall forward the notice of appeal, including any envelope or other wrapping indicating the date of mailing, within 10 days to the Postal Service General Counsel’s Office. A designee of the General Counsel promptly shall enter the resulting case into the electronic filing system.

§ 955.5 Preparation, contents, organization, forwarding, and status of appeal file.

(a) Duties of the respondent. Within 30 days from receipt of the Board’s docketing notice, or such other period as the Board may order, the respondent’s counsel shall file with the Board an appeal file consisting of all documents pertinent to the appeal. The appeal file shall include:

1. The claim and contracting officer’s final decision from which the appeal is taken;
2. The contract, including pertinent specifications, amendments, plans and drawings;
3. All correspondence between the parties pertinent to the appeal;
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; and
5. Any additional information considered pertinent.

(b) Duties of the appellant. Within 30 days after receipt of a copy of the appeal file, the appellant shall supplement the appeal file by transmitting to the Board any documents not contained therein considered to be pertinent to the appeal.

(c) Organization of appeal file. Documents in the appeal file or supplement, as applicable shall be arranged in chronological order where practicable, numbered sequentially, tabbed, and indexed, to identify the contents. Page numbering shall be consecutive and continuous from one document to the next, so that the complete file or supplement, as applicable, will consist of one set of consecutively numbered pages.

(d) Lengthy documents. The Board may waive the requirement to exchange or electronically file bulky, lengthy, or out-of-size documents, or tangible evidence in the appeal file on a showing of impracticality or undue burden. Documents or tangible evidence subject to a waiver will be available for inspection at the Board.

(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. Unless otherwise provided by Board order, any such objection shall
§ 955.6 Motions.

(a) Any motion addressed to the jurisdiction of the Board shall be promptly filed. Oral argument on the motion may be afforded on application of either party, in the Board's discretion, or on the Board's initiative. The Board may at any time and on its own initiative raise the issue of its jurisdiction to proceed with a particular case.

(b) A motion filed in lieu of an answer shall be filed no later than the date on which the answer is required to be filed or such later date as may be established by Board order. Any other dispositive motion shall be filed as soon as practicable after the grounds therefor are known.

(c) Motions for summary judgment may be considered by the Board. However, the Board may defer ruling on a motion for summary judgment, in its discretion, until after a hearing or other presentation of evidence. Motions for summary judgment may be filed only when a party believes that, based upon uncontested material facts, it is entitled to relief as a matter of law. The parties are to consider proceeding by submission of the case without a hearing in accordance with §955.12, in lieu of a motion for summary judgment.

(1) Motions for summary judgment shall include a separate document titled Statement of Uncontested Facts, which shall contain in separately numbered paragraphs all of the material facts upon which the moving party bases its motion and as to which it contends there is no genuine issue. This statement shall include references to affidavits, declarations and/or documents relied upon to support such statement.

(2) The opposing party shall file with its opposition a separate document titled Statement of Genuine Issues. This document shall identify, by reference to specific paragraph numbers in the moving party's Statement of Uncontested Facts, those facts as to which the opposing party claims there is a genuine issue necessary to be litigated. An opposing party shall state the precise nature of its disagreement, and support its opposition with references to affidavits, declarations and/or documents that demonstrate the existence of a genuine dispute.

(3) The moving party and the non-moving party shall each submit a memorandum of law supporting or opposing summary judgment.

(4) If, despite reasonable efforts, the opposing party cannot present facts essential to justify its opposition, the Board may defer ruling on the motion to permit affidavits to be obtained or depositions to be taken or other discovery to be conducted, or may issue such other order as is just. The parties should not expect the Board to search the record for evidence in support of either party's position.

[74 FR 20592, May 5, 2009, as amended at 80 FR 31304, June 2, 2015]

§ 955.7 Pleadings.

(a) Appellant. Within 45 days after receipt of notice of docketing of the appeal, the appellant shall file with the Board a complaint setting forth simple, concise and direct statements of each of its 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 formatality is required. Upon the appellant's request or on the Board's own initiative, the appellant's claim, notice of appeal or other document may be deemed to constitute the complaint if in the opinion of the Board the issues before the Board are sufficiently defined.

(b) Respondent. Within 30 days from receipt of said complaint, or the aforesaid notice from the Board, the respondent shall prepare and file with the Board an answer thereto, setting forth simple, concise, and direct statements of the respondent's defenses to each claim asserted by the appellant. This pleading shall fulfill the generally
recognized requirements of an answer, and shall set forth any affirmative defenses or counterclaims as appropriate. Should the answer not be filed within the time required, the Board may, in its discretion, enter a general denial on behalf of the respondent, and the appellant shall be so notified.

(c) Affirmative claims by the respondent. Where an appellant has appealed an affirmative claim by the respondent asserted in a final decision by a Postal Service contracting officer, such as a termination for default or a Postal Service claim that a contractor owes the Postal Service money under a contract, the Board may order the respondent to file the complaint as described in §955.7(a), and the appellant to file the answer as described in §955.7(b).

§955.8 Amendments of pleadings or record.

(a) Upon its own initiative or upon application by a party, the Board may, in its discretion, order a party to submit a more definite statement of the complaint or answer, or to reply to an answer.

(b) When issues within the proper scope of an appeal, but not raised in the pleadings, have been raised without objection or with permission of the Board at a hearing or in record submissions, they may be treated in all respects as if they had been raised in the pleadings. If evidence is objected to at a hearing on the ground that it is not within the issues raised by the pleadings, in its discretion the Board may admit the evidence and grant the objecting party a continuance or other relief if necessary to enable it to meet such evidence.

§955.9 Hearing request.

As directed by Board order, each party shall inform the Board, in writing, whether it requests a hearing as prescribed in §§955.18 through 955.25, or in the alternative submission of its case on the record without a hearing as prescribed in §955.12. If a hearing is requested, the request should state where and when the requesting party desires the hearing to be conducted and should explain the reasons for its choices. After considering the parties’ requests, the Board will determine whether a hearing will be held.

[76 FR 37660, June 28, 2011]

§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 ordered 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 filed with the Board at least 15 days prior to the date set for hearing.

[74 FR 20592, May 5, 2009, as amended at 76 FR 37660, June 28, 2011; 80 FR 31305, June 2, 2015]

§955.11 Prehearing or presubmission conference.

(a) Whether the case is to be submitted pursuant to §955.12, or heard pursuant to §§955.18 through 955.25, the Board may upon its own initiative or upon the application of either party, convene a conference to consider:

1. The simplification or clarification of the issues;
2. The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which will avoid unnecessary proof;
3. The limitation of the number of expert witnesses, or avoidance of similar cumulative evidence, if the case is to be heard;
4. The possibility of agreement disposing of all or any of the issues in dispute; and
5. Such other matters as may aid in the disposition of the appeal.

(b) The results of the conference shall be reduced to writing by the Board and
this writing shall thereafter constitute part of the record.

§ 955.12 Submission without a hearing.

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 record which will be settled pursuant to § 955.14. The Board may permit such submission to be supplemented by oral argument (transcribed if requested), and by briefs in accordance with § 955.24.

§ 955.13 Optional Small Claims (Expedited) and Accelerated Procedures.

(a) The Small Claims (Expedited) Procedure. (1) The 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 Expedited Procedure, the respondent shall file with 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 to utilize this procedure.

(b) The Accelerated Procedure. (1) The Accelerated 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 Judge with the concurrence of the Chairman or Vice Chairman or other designated 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 Judge presiding at the hearing may, with the concurrence of both parties, convert the appeal to an 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) Denial of election. At the request of the 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 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 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) General rule. Except as herein modified, the rules of this Part 955 otherwise apply in all aspects.

§ 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.

(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.

(d) The Board may consider the Federal Rules of Evidence for guidance regarding admissibility of evidence and other evidentiary issues in construing those Board rules that are similar to Federal Rules and for matters not specifically covered herein.

§ 955.15 Discovery.

(a) The parties are encouraged to engage in voluntary discovery procedures. In connection with any deposition or other discovery procedure, the Board may issue 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
§ 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, 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 may be ordered by the Board as deemed admitted upon the failure of a party to respond timely and fully to the request for admissions.

(c) Production and inspection of documents. After an appeal has been filed with the Board, a party may serve on the other party written requests for the production, inspection, and copying of any documents, electronically stored information, or things, to be answered within 30 days. Upon timely objection, the Board will determine the extent to which the requests must be satisfied, and if the parties cannot themselves agree thereon, the Board shall specify just terms and conditions of compliance.

§ 955.17 Depositions.

(a) 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.
§ 955.22 Examination of witnesses.

Witnesses before the Board will be examined orally under oath or affirmation, unless the facts are stipulated, or the Board shall otherwise order. If the testimony of a witness is not given under oath or affirmation, the Board may warn the witness that his or her statements may be subject to the provisions of 18 U.S.C. 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. Upon the request of either party, or if the Board deems it advisable, the Board may exclude witnesses from the hearing room. The Board will not exclude a party who is an individual, the properly designated representative of a party which is an entity, a person whose presence is essential to the presentation of a party’s case, or a person required by statute to be present.
§ 955.23 Copies of papers, withdrawal of exhibits.

(a) 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.

(b) After a decision has become final, upon request and after notice to the other party, the Board in its discretion may 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.

§ 955.24 Posthearing briefs.

Posthearing briefs may be submitted upon such terms as may be ordered by the Board at the conclusion of the hearing. Ordinarily, they will be simultaneous briefs, submitted to the Board on a date established by the Board, following receipt of transcripts.

§ 955.25 Transcript of proceedings.

Testimony and argument at hearings shall be reported verbatim, unless the Board otherwise orders. Transcripts of the proceedings will be provided to the parties by the Board.

§ 955.26 Representation of the parties.

(a) The term appellant means a party that has filed an appeal for resolution by the Board. An individual appellant may appear before the Board in his or her own behalf, a corporation may appear before the Board by an officer thereof, a partnership or joint venture may appear before the Board by a member thereof. Any appellant may appear before the Board by an attorney at law duly licensed in any state, commonwealth, territory of the United States, or in the District of Columbia. An attorney representing an appellant shall register in the electronic filing system, and file a notice of appearance with the Board. The notice of appearance must include an email address, mailing address, telephone number, fax number, and a jurisdiction in which the attorney is licensed to practice law.

(b) The term respondent means the U.S. Postal Service. Postal Service counsel, who shall be an attorney at law licensed to practice in a state, commonwealth, or territory of the United States, or in the District of Columbia, designated by the General Counsel, will represent the interest of the Postal Service before the Board. Postal Service counsel shall register in the electronic filing system, and file a written notice of appearance with the Board. The notice of appearance must include an email address, mailing address, telephone number, fax number, and a jurisdiction in which the attorney is licensed to practice law.

(c) References to contractor, appellant, contracting officer, respondent and parties shall include respective counsel for the parties, as soon as appropriate notices of appearance have been filed with the Board. A self-represented party or an attorney representing either party shall inform the Board promptly of any change in his or her email address, mailing address, telephone number, or fax number, and must enter the appropriate changes promptly in the electronic filing system.

[80 FR 31305, June 2, 2015]

§ 955.27 Withdrawal of attorney.

Any attorney for either party who has filed a notice of appearance and who wishes to withdraw from a case must file a motion or notice which includes the name, email address, mailing address, telephone number, and fax number of the person who will assume responsibility for representation of the party in question.

[80 FR 31305, June 2, 2015]

§ 955.28 Suspension.

(a) Whenever at any time it appears that the parties 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 active docket.
United States Postal Service

§ 955.34

(b) The Board may, in its discretion, suspend proceedings to permit a contracting officer to issue a decision when an appeal has been taken from the contracting officer’s failure to render a timely decision, or for other good cause.

§ 955.29 Decisions.

Decisions of the Board will be made in writing and sent to both parties through the electronic filing system, or otherwise as appropriate. The rules of the Board and all final orders and decisions shall be open for public inspection at the offices of the Board, and may be made available on its official Web site and to commercial publishers. Decisions of the Board will be made solely upon the record, as described in §955.14.

[74 FR 20592, May 5, 2009, as amended at 80 FR 31305, June 2, 2015]

§ 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.

§ 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.

§ 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.

§ 955.34 Sanctions.

(a) All parties and their attorneys must obey directions and orders prescribed by the Board and adhere to standards of conduct applicable to such parties and attorneys. As to an attorney, the standards include the rules of professional conduct and ethics of the jurisdictions in which that attorney is licensed to practice, to the extent that those rules are relevant to conduct affecting the integrity of the Board, its process, or its proceedings.

(b) If any party or its attorney fails to comply with any direction or order issued by the Board, or engages in misconduct affecting the Board, its process, or its proceedings, the Board may issue such orders as are just, including the imposition of appropriate sanctions. Sanctions may include:

(1) Taking the facts pertaining to the matter in dispute to be established for the purpose of the case;

(2) Forbidding challenge of the accuracy of any evidence;

(3) Refusing to allow the disobedient party to support or oppose designated claims or defenses;
§ 955.35 Subpoenas.

(a) General. Upon written request of either party filed with the Recorder, or on the Board’s own initiative, the Board 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 convenient location as determined by the Board;

(2) Testimony at a hearing. The attendance of a witness for the purpose of taking testimony at a hearing;

(3) Production of books and papers. The production by a witness of books, papers, documents, electronically stored information, and other tangible and intangible things 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 witnesses, 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, and/or where the production by a witness of books, papers, documents, electronically stored information, and other tangible and intangible things is sought; and

(ii) 30 days before a scheduled hearing where the attendance of a witness at a hearing is sought; except that

(iii) 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, papers, documents, electronically stored information, and other tangible and intangible things sought.

(d)(1) 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:

(i) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown; or

(ii) Require the person in whose behalf the subpoena was issued to advance the reasonable cost of compliance.

(2) 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 where appropriate, to produce specified books, papers, documents, electronically stored information, and other tangible and intangible things at a time and place therein specified. In issuing a subpoena to a requesting party, the Judge shall sign the subpoena and may 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 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, is 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.

§ 957.3 Effective dates and applicability.

These revised rules govern proceedings under this part docketed on or after July 2, 2015.

[80 FR 31305, June 2, 2015]
§ 957.4 Authority of the Hearing Officer.

The Hearing Officer’s authority includes, but is not limited to, the following:

(a) Ruling on all motions or requests by the parties.

(b) Issuing notices, orders, or memoranda to the parties concerning the hearing proceedings.

(c) Conducting conferences with the parties. The Hearing Officer will prepare a Memorandum of Conference, which will be transmitted to both parties and which serves as the official record of that conference.

(d) Determining whether an oral hearing will be conducted, and setting the place, date, and time for such a hearing.

(e) Administering oaths or affirmations to witnesses.

(f) Conducting the proceedings and the hearing in a manner to maintain discipline and decorum while ensuring that relevant, reliable and probative evidence is elicited, but irrelevant, immaterial or repetitious evidence is excluded. The Hearing Officer in his or her discretion may examine witnesses to ensure that a satisfactory record is developed.

(g) Establishing the record. The weight to be attached to evidence will rest within the discretion of the Hearing Officer. Except as the Hearing Officer may otherwise order, no proof shall be received in evidence after completion of a hearing. The Hearing Officer may require either party, with appropriate notice to the other party, to submit additional evidence on any relevant matter.

(h) Granting reasonable time extensions or other relief for good cause shown, in the Hearing Officer’s sole discretion.

(i) Issuing findings of fact. The Hearing Officer will issue findings of fact to the Vice President within 30 days from the close of the record, to the extent practicable.

§ 957.5 Case initiation.

(a) Upon receipt of a request or referral from the Vice President, the Recorder will docket a case under this Part. Following docketing, the Judicial Officer will assign a Hearing Officer. The Hearing Officer will establish the schedule for the proceeding, perform all judicial duties under this Part and render Findings of Fact. Whenever practicable, a hearing should be conducted within 30 days of the date of docketing.

(b) The request or referral from the Vice President shall include the notice of proposed debarment and the information or argument submitted by the Respondent pursuant to paragraphs (g) or (h) of § 601.113 of this subchapter.

§ 957.6 Filing documents for the record.

The parties shall file documents, permitted by the rules in this part or required by the Hearing Officer, in the Judicial Officer Department’s electronic filing system. The Web site for electronic filing is https://uspsjoe.justteware.com/justiceweb. Documents submitted using that system are considered filed as of the date and time (Eastern Time) reflected in the system. Orders issued by the Hearing Officer shall be considered received by the parties on the date posted to the electronic filing system.

§ 957.7 Failure to appear at the hearing.

If a party fails to appear at the hearing, the Hearing Officer may proceed with the hearing, receive evidence and issue findings of fact without requirement of further notice to the absent party.

§ 957.8 Hearings.

Hearings ordinarily will be conducted in the Judicial Officer Department courtroom at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078.
However, the Hearing Officer, in his or her discretion, may order the hearing to be conducted at another location, or by another means such as by video.

§ 957.9 Appearances.
(a) An individual Respondent may appear in his or her own behalf; a corporation may appear by an officer thereof; a partnership or joint venture may appear by a member thereof; or any of these may appear by a licensed attorney.
(b) After a request for a hearing has been filed pursuant to the rules in this part, the General Counsel shall designate a licensed attorney as counsel assigned to handle the case.
(c) All counsel, or a self-represented Respondent, shall register in the electronic filing system, and request to be added to the case. Counsel also promptly shall file notices of appearance.
(d) An attorney for any party who has filed a notice of appearance and who wishes to withdraw must file a motion requesting withdrawal, explaining the reasons supporting the motion, and identifying the name, email address, mailing address, telephone number, and fax number of the person who will assume responsibility for representation of the party in question.

§ 957.10 Conduct of the hearing.
The Hearing Officer may approve or disapprove witnesses in his or her discretion. All testimony will be taken under oath or affirmation, and subject to cross-examination. The Hearing Officer may exclude evidence to avoid unfair prejudice, confusion of the issues, undue delay, waste of time, or presentation of irrelevant, immaterial, or cumulative evidence. Although the Hearing Officer will consider the Federal Rules of Evidence for guidance regarding admissibility of evidence and other evidentiary issues, he or she is not bound by those rules. The weight to be attached to evidence presented in any particular form will be within the discretion of the Hearing Officer, taking into consideration all the circumstances of the particular case. Stipulations of fact agreed upon by the parties may be accepted as evidence at the hearing. The parties may stipulate the testimony that would be given by a witness if the witness were present. The Hearing Officer may in any case require evidence in addition to that offered by the parties. A party requiring the use of a foreign language interpreter allowing testimony to be taken in English for itself or witnesses it proffers is responsible for making all necessary arrangements and paying all costs and expenses associated with the use of an interpreter.

§ 957.11 Witness fees.
Each party is responsible for the fees and costs for its own witnesses.

§ 957.12 Transcript.
Testimony and argument at hearings shall be reported verbatim, unless the Hearing Officer otherwise orders. Transcripts of the proceedings will be made available or provided to the parties.

§ 957.13 Proposed findings of fact.
(a) The Hearing Officer may direct the parties to submit proposed findings of fact and supporting explanations 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.
(b) Proposed findings of fact 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 supporting the proposed findings.

§ 957.14 Findings of fact.
The Hearing Officer shall issue written findings of fact, and transmit them to the Vice President. Copies will be sent to the parties.

§ 957.15 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.
§ 957.16 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.

§ 957.17 Public information.

The Postal Service shall maintain for public inspection copies of all findings of fact issued under this Part, and make them available through the Postal Service Web site. The Recorder maintains the complete official record of every proceeding.

§ 957.18 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 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO CIVIL PENALTIES, CLEAN-UP COSTS AND DAMAGES FOR VIOLATION OF HAZARDOUS MATERIAL REGULATIONS

Sec. 958.1 Purpose.
958.2 Definitions.
958.3 Petition for hearing.
958.4 Referral of complaint.
958.5 Scope of hearing; evidentiary standard.
958.6 Notice of docketing and hearing.
958.7 Hearing location.
958.8 Rights of parties.
958.9 Responsibilities and authority of presiding officer.
958.10 Prehearing conferences.
958.11 Respondent access to information.
958.12 Depositions; interrogatories; admission of facts; production and inspection of documents.
958.13 Sanctions.
958.14 Ex parte communications.
958.15 Post-hearing briefs.
958.16 Transcript of proceedings.
958.17 Initial decision.
958.18 Appeal of initial decision to Judicial Officer.
958.19 Form and filing of documents.
958.20 Service.
958.21 Computation of time.
958.22 Continuances and extensions.
958.23 Settlement.


SOURCE: 74 FR 18631, Apr. 24, 2009, unless otherwise noted.

§ 958.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

§ 958.2 Definitions.

As used in this part:
(a) Complaint refers to the determination by the Determining Official that an individual has violated the prohibition against mailing hazardous materials and/or related violations under 39 U.S.C. 3018.
(b) Initial Decision refers to the written decision which the Presiding Officer renders.
(c) Determining Official refers to the Chief Postal Inspector or designee.
(d) Judicial Officer refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or designee within the Judicial Officer Department.
(e) Party refers to the Postal Service or the respondent.
(f) Person refers to any individual, partnership, corporation, association, or private organization.
(g) Presiding Officer refers to an Administrative Law Judge designated by the Chief Administrative Law Judge to conduct a hearing, or to the Judicial Officer, if an Administrative Law Judge is not available.
(i) Representative refers to an attorney or other advocate.
(j) Respondent refers to any person determined by the Determining Official to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

[74 FR 18631, Apr. 24, 2009, as amended at 81 FR 40193, June 21, 2016]
§ 958.3 Petition for hearing.

Within 30 days of being served the Postal Service’s Complaint alleging liability under 39 U.S.C. 3018, the respondent may request a hearing by filing a written Hearing Petition with the Recorder. The respondent’s Petition must include the following:

(a) The words “Petition for Hearing Related to Prohibitions Regarding the Mailing of Hazardous Material” 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; and other address and telephone number where the respondent may be contacted about the hearing proceedings;

(c) The date on which the respondent received the Complaint issued by the Determining Official;

(d) A statement indicating whether the respondent requests an oral hearing or a decision solely on the written 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.

§ 958.4 Referral of complaint.

(a) If the respondent fails to request a hearing within the specified period, the Determining 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 Determining Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service’s Complaint.

§ 958.5 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 39 U.S.C. 3018, and

(2) If so, to determine the amount of any civil penalties, clean-up costs and/or damages 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 for insertion onto the record 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.

§ 958.6 Notice of docketing and hearing.

(a) Within a reasonable time after receiving the respondent’s Hearing Petition and the Complaint, the Presiding Officer shall serve upon the respondent and the Determining Official, a Notice of Docketing and Hearing.

(b) The Notice of Docketing and Hearing required by paragraph (a) of this section may include:

(1) The tentative site, date, and time of the oral hearing, if one is requested;

(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.
§ 958.7 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;
(b) In the judicial district of the United States in which the incident or incidents occurred upon which the determination of liability under 39 U.S.C. 3018 was made by the Determining Official; or
(c) In such other place as may be determined by the Presiding Officer.

§ 958.8 Rights of parties.

Subject to the sound discretion of the Presiding Officer, acting under § 958.9, parties to a hearing under this part shall have the right:
(a) To be accompanied, represented, and advised, by an attorney or representative of his or her own choosing;
(b) To participate in any conferences 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 oral hearing;
(e) To present oral and documentary evidence relevant to the issues;
(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.

§ 958.9 Responsibilities and authority of presiding officer.

(a) The Presiding Officer shall conduct a fair and impartial hearing, avoid unnecessary 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 oral hearing, if any, as well as, in accordance with §958.7, 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 resolution 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) Ruling on all offers, motions, requests by the parties, and other procedural matters;
(6) Issuing any notices, orders, or memoranda to the parties concerning the proceedings;
(7) Regulating the scope and timing of discovery;
(8) Regulating the course of the hearing and the conduct of the parties and their representatives;
(9) Examining witnesses;
(10) 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;
(11) Deciding cases, upon motion of a party, in whole or in part by summary judgment where there is no disputed issue of material fact;
(12) Establishing the record in the case; and
(13) Issuing a written Initial Decision containing findings of fact, conclusions of law, and determinations with respect to whether civil penalties, cleanup costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018 should be imposed, and if so, the amounts thereof, after taking into account the penalty considerations contained in 39 U.S.C. 3018(e).

§ 958.10 Prehearing conferences.

(a) At a reasonable time after issuing the Notice of Docketing and Hearing, and with adequate notice to the parties, the Presiding Officer may conduct, in person or by telephone, one or more prehearing conferences 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;
§ 958.12 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. After the issuance of a Notice of Docketing and Hearing, 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 an order of the Presiding Officer under this paragraph shall specify whether the purpose of the deposition is discovery or for use as evidence.

(1) 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.

(2) No testimony taken by depositions shall be considered as part of the record in the hearing unless and until such testimony is offered and received into evidence by order of the Presiding Officer. Deposition testimony may be used to contradict or impeach the testimony of the witness given at the hearing. In cases submitted for a decision on a written record, the Presiding Officer may, in his or her discretion, receive deposition testimony as evidence in supplementation of that record.

(c) Interrogatories to parties. After the issuance of a Notice of Docketing and Hearing, a party may serve on the other party written interrogatories. Within 30 days after service, the party served shall answer each interrogatory separately in writing, signed under oath, or file objections thereto. 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 Docketing and Hearing, 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. Upon timely objection by the party, the Presiding Officer will determine the extent to which the request for admission will be permitted. 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 a 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. A discovery procedure may not be used to reach documents, transcripts, records, or other material which a person is not entitled to review pursuant to §958.11.

§ 958.13 Sanctions.

(a) In general. The Presiding Officer may sanction a person, including any party, attorney 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) Reasonableness. 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, the Presiding Officer may dismiss the action, or enter an order of default and an Initial Decision.

(e) Failure to file timely. The Presiding Officer may refuse to consider any motion or other pleading, report, or response which is not filed in a timely fashion.

§ 958.14 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.

§ 958.15 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.

§ 958.16 Transcript of proceedings.

Testimony and argument at oral 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
§ 958.17 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 relies upon in determining whether the respondent is liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018, and, if liability is found, shall set forth the amount of any civil penalties, clean-up costs and/or damages imposed.

(b) The Presiding Officer shall promptly send to each party a copy of his or her Initial Decision. A party may, in accordance with § 958.18, appeal an adverse Initial Decision to the Judicial Officer. Unless a party timely appeals in accordance with § 958.18, the Presiding Officer’s Initial Decision, including the findings and determinations, becomes the final agency decision.

§ 958.18 Appeal of initial decision to Judicial Officer.

(a) Notice of appeal and supporting brief. A party may appeal an adverse Initial Decision by filing, within 30 days after the Presiding Officer issues the Initial Decision, a Notice of Appeal with the Recorder. The Judicial Officer may extend the filing period but only if the party files a request for an extension within the initial 30-day period and demonstrates good cause for such extension.

(1) The Notice of Appeal must be accompanied by a written brief specifying the party’s exceptions, and any reasons for such exceptions, to the Presiding Officer’s Initial Decision.

(2) Within 30 days of receiving the party’s brief, the opposing party may file with the Judicial Officer a response to the specified exceptions to the Presiding Officer’s Initial Decision.

(b) Form of review. Review by the Judicial Officer will be based entirely on the record and written submissions.

(c) Decision of Judicial Officer. The Judicial Officer shall promptly serve each party to the appeal with a copy of his or her decision. The decision of the Judicial Officer constitutes final agency action and becomes final and binding on the parties.

§ 958.19 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), an accurate designation of the document, and the name, address, and telephone number of the party on whose behalf the paper was filed. It shall also be signed by the party or party representative submitting the document.

(b) All pleadings and documents required under this part must be filed using the Judicial Officer electronic filing system unless the presiding officer permits otherwise. The Judicial Officer electronic filing system Web site is accessible 24 hours a day at https://uspsjoe.justware.com/justiceweb. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the

§ 958.19 Form and filing of documents.

(a) Every pleading filed in a proceeding under this part must contain a caption setting forth the title of the action, the docket number (after assignment by the Recorder), an accurate designation of the document, and the name, address, and telephone number of the party on whose behalf the paper was filed. It shall also be signed by the party or party representative submitting the document.

(b) All pleadings and documents required under this part must be filed using the Judicial Officer electronic filing system unless the presiding officer permits otherwise. The Judicial Officer electronic filing system Web site is accessible 24 hours a day at https://uspsjoe.justware.com/justiceweb. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the
§ 958.20 Service.

If both parties are participating in the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.

§ 958.21 Computation of time.

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. Except as otherwise provided in these rules or an applicable order, prescribed periods of time are measured in calendar days rather than business days.

§ 958.22 Continuances and extensions.

Continuances and extensions may be granted under these rules for good cause shown.

§ 958.23 Settlement.

Either party may make offers of settlement or proposals of adjustment at any time. The Determining Official has the exclusive authority to compromise or settle any determinations of liability for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018, without the consent of the Presiding Officer or Judicial Officer.

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

Sec.
959.1 Authority for rules.
959.2 Scope of rules.
959.3 Office address and business hours; electronic filing.
959.4 Demands for payment of postage.
959.5 Appeals from demands.
959.6 Revocations of suspension.
959.7 Notice of hearing.
959.8 Service of petition filed under §959.6.
959.9 Filing documents for the record.
959.10 Default.
959.11 Amendment of pleadings.
959.12 Continuances and extensions.
959.13 Hearings.
959.14 Change of place of hearings.
959.15 Appearances.
959.16 Presiding officers.
959.17 Evidence.
959.18 Subpoenas.
959.19 Witness fees.
959.20 Deposits.
959.21 Transcript.
959.22 Proposed findings and conclusions.
959.23 Decisions.
959.24 Exceptions to initial decision or tentative decision.
959.25 Judicial Officer.
959.26 Motion for reconsideration.
959.27 Modification or revocation of orders.
959.28 Computation of time.
959.29 Official record.
959.30 Public information.
959.31 Ex parte communications.


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
§ 959.3 Office address and business hours; electronic filing.

(a) The offices of the officials identified in these rules are located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. Normal Business hours are between 8:45 a.m. and 4:45 p.m. (Eastern Time), Monday through Friday except holidays.

(b) The Judicial Officer electronic filing system Web site is accessible 24 hours a day at https://uspsjoe.justware.com/justiceweb.

[81 FR 40194, June 21, 2016]

§ 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.


§ 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
§ 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.

§ 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.

§ 959.9 Filing documents for the record.

(a) All documents required under this part must be filed using the electronic filing system unless the presiding officer permits otherwise. If both parties are participating in the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.

(b) Documents shall be dated and state the title of the proceeding and, except initial petitions, the docket number. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the Recorder of a complete copy of the filing during normal business hours.

§ 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.

§ 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
§ 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,
   (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.

§ 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.

§ 959.14 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;
§ 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.

§ 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 provided for in § 959.17(f) shall be noted and the deposition taken subject to such objections as the deposition officer may direct.

References:
- 39 CFR Ch. I (7–1–17 Edition) § 959.17

318
§ 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.

§ 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.


§ 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.


§ 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:

(320)
United States Postal Service

§ 959.31

(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.


§ 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.


§ 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.


§ 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

Subpart A—General Provisions

Sec.
960.1 Purpose of these rules.
960.2 When the Act applies.
960.3 Proceedings covered.
960.4 Eligibility of applicants.
960.5 Standards for awards.
960.6 Allowable fees and expenses.
960.7 Rulemaking on maximum rates for attorney fees.
960.8 Official authorized to take final action under the Act.

Subpart B—Information Required from Applicants

960.9 Contents of application.
960.10 Net worth exhibit.
960.11 Documentation of fees and expenses.
960.12 When an application may be filed.

Subpart C—Procedures for Considering Applications

960.13 Filing and service of documents.
960.14 Answer to application.
960.15 Reply.
960.16 Comments by other parties.
960.17 Settlement.
960.18 Further proceedings.
960.19 Decision.
960.20 Further Postal Service review.
960.21 Judicial review.
960.22 Payment of award.

Authority: 5 U.S.C. 504 (c)(1); 39 U.S.C. 204, 410 (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.


§ 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

(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.

§ 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. 1141(a)) with not more than 500 employees; and
5. Any other partnerships, corporations, 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.


§ 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
§ 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.

§ 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.
§ 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. 1141(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.


§ 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.
§ 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.

§ 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.

§ 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.

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.


§ 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 953.30.


§ 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.


PART 961—RULES OF PRACTICE IN PROCEEDINGS 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.
961.5 Effect of filing a petition.
961.6 Filing, docketing, and serving documents; computation of time; representation of parties.
961.7 Answer to petition.
961.8 Hearing Official authority and responsibilities.
961.9 Opportunity for oral hearing.
961.10 Effect of Hearing Official’s decision; motion for reconsideration.
961.11 Consequences for failure to comply with rules.
961.12 Ex parte communications.

§ 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, challenging 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 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. In such cases, all references to Postal Service within these rules shall be construed to refer to the creditor Federal agency involved.

§ 961.3 Definitions.
As used in this part:
(a) Employee refers to a current employee of the Postal Service who is alleged to be indebted to the Postal Service; or to an employee of another Federal agency who is alleged to be indebted to that other 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 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.
(d) Judicial Officer refers to the Judicial Officer, Associate 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, including the provision of notice of the procedures under this Part, 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, located at 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The Recorder’s telephone number is (703) 812–1900, and the fax number is (703) 812–1901.

§ 961.4 Employee petition for a hearing.
(a) If an employee desires a hearing, prescribed by section 5 of the Debt Collection Act, to challenge the Postal Service's determination of the existence or amount of a debt, or to challenge the involuntary repayment terms proposed by the Postal Service, the employee must file a written petition electronically at https://uspsjoe.justiceweb.com/justiceweb, or by mail at Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Blvd., Suite 600, Arlington, VA 22201–3078, on or before the fifteenth (15th) calendar day following the receipt of the Postal Service's “Notice of Involuntary Administrative Salary Offsets Under the Debt Collection Act.” The Hearing Official, in his or her discretion may waive this deadline upon a demonstration of good cause. In the event that the Postal Service initiated involuntary administrative salary offsets without having issued a Notice as required by the Debt Collection Act, the Hearing Official, in his or her discretion, may retain authority to resolve the debt assessment as if a Notice had been issued, and may
(b) A sample petition is available through the Judicial Officer Electronic Filing Web site (https://uspsjoe.justware.com/justiceweb). The hearing petition shall 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, the employee’s work address, home address, work telephone number, home telephone number, and email address, if any, or other address and telephone number at which the employee may be contacted during business hours;

(3) A statement of the date on which 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 challenges:

(i) The existence of the debt identified in the Notice of Involuntary Administrative Salary Offsets;

(ii) the amount of the debt identified in the Notice; and/or

(iii) the involuntary repayment terms identified by the Postal Service in the Notice. For each challenge, the employee’s petition shall indicate the basis of the employee’s disagreement. The employee should identify and explain the facts, evidence, and legal arguments which support his or her position;

(5) Copies of all records in the employee’s possession which relate to the debt; and

(6) If an employee contends that the Postal Service’s proposed offset schedule would result in a severe financial hardship on the employee, his or her spouse, and dependents, the employee shall identify an alternative offset schedule. As directed by the Hearing Official, the employee shall provide a statement and supporting documents indicating the employee’s financial status. This statement should address 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 shall file with the Recorder, any additional information directed by the Hearing Official.

§ 961.5 Effect of filing a petition.

Upon receipt and docketing of the employee’s petition for a hearing, further collection activity by the Postal Service must cease, as required by section 5 of the Debt Collection Act until the petition is resolved by the Hearing Official.

§ 961.6 Filing, docketing and serving documents; computation of time; representation of parties.

(a) Filing. After a petition is filed, all documents relating to the Debt Collection Act hearing proceedings must be filed using the electronic filing system unless the Hearing Official permits otherwise. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the Recorder of a complete copy of the filing during normal business hours (Normal Recorder office business hours are between 8:45 a.m. and 4:45 p.m., Eastern Time). If both parties are participating via the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.

(b) Docketing. The Recorder will maintain a record of Debt Collection Act proceedings and will assign a docket number to each such case. After notification of the docket number, the employee and the Postal Service’s representative 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...
United States Postal Service

§ 961.9

until the close of business on the next business day. Requests for extensions of time shall be made in writing prior to the date on which the submission is due, state the reason for the extension request, represent that the moving party has contacted the opposing party about the request, or made reasonable efforts to do so, and indicate whether the opposing party consents to the extension. Requests for extensions of time submitted after the date on which the submission was due shall explain why the moving party was unable to request an extension prior to the deadline.

(d) Representation of parties. The representative of the Postal Service, as designated by the General Counsel, shall file a notice of appearance as soon as practicable, but no later than the date for filing the answer. If an employee has a representative, he or she also shall file a notice of appearance as soon as practicable, and further transmissions of documents and other communications by and with the employee shall be made through his or her representative.


§ 961.7 Answer to petition.

Within 15 days from the date of receiving the petition, the Postal Service’s representative shall file an answer to the petition, and attach all available relevant records and documents in support of the Postal Service’s debt claim, and/or the administrative salary offset schedule proposed by the Postal Service for collecting any such claim. The answer shall provide a clear and thorough description of the basis for the Postal Service’s determination of the alleged debt, its calculation of the amount of the alleged debt, and/or its proposed offset schedule.

§ 961.8 Hearing Official authority and responsibilities.

The Hearing Official’s authority includes, but is not limited to, the following:

(a) Ruling on all motions or requests by the parties.

(b) Issuing notices, orders or memoranda to the parties concerning the hearing proceedings.

(c) Conducting telephone conferences with the parties to expedite the proceedings. The Hearing Official will prepare a Memorandum of Telephone Conference, which shall be transmitted to both parties and which serves as the official record of that conference.

(d) After considering the positions of the parties, determining whether an oral hearing (or alternatively, a hearing solely on written submissions) shall be conducted, and setting the place, date, and time for such a hearing.

(e) Administering oaths or affirmations to witnesses.

(f) 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. The Hearing Official in his or her discretion may examine witnesses to ensure that a satisfactory record is developed.

(g) Establishing the record in the case. The weight to be attached to any evidence of record will rest within the discretion of the Hearing Official. Except as the Hearing Official may otherwise order, no proof shall be received in evidence after completion of an oral hearing or, in cases submitted on the written record, after notification by the Hearing Official that the record is closed. The Hearing Official may require either party, with appropriate notice to the other party, to submit additional evidence on any relevant matter.

(h) Granting reasonable time extensions or other relief for good cause shown in the Hearing Official’s sole discretion.

(i) Issuing the final decision. The decision must include the determination of the amount and validity of the alleged debt and, where applicable, the repayment schedule. The Hearing Official will issue the decision as soon as practicable after the close of the record. Collection activity remains stayed until the decision has issued.

§ 961.9 Opportunity for oral hearing.

An oral hearing shall be conducted in the sole discretion of the Hearing Official. An oral hearing may be conducted
in-person, by telephone, by video conference, or other appropriate means as directed by the Hearing Official. When the Hearing Official determines that an oral hearing shall not be conducted, the decision shall be based solely on the written submissions. The Hearing Official shall arrange for the recording and transcription of an oral hearing, which shall serve as the official record of the hearing. In the event of an unexcused absence, the hearing may proceed without the participation of the absent party.

§ 961.10 Effect of Hearing Official’s decision; motion for reconsideration.

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of post-hearing briefs, if any, the Hearing Official shall issue a written decision, which shall include the findings of fact and conclusions of law, relied upon.

(b) The Hearing Official shall send each party a copy of the decision. 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 within 10 days from receipt of the decision and shows good cause 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 a collection action authorized by the Hearing Official’s decision.

§ 961.11 Consequences for failure to comply with rules.

(a) The Hearing Official may determine that the employee has abandoned the right to a hearing, and that administrative offset may be initiated if the employee files his or her petition late without good cause; or files a withdrawal of the employee’s petition for a hearing.

(b) The Hearing Official may determine that the administrative offset may not be initiated if the Postal Service fails to file the answer or files the answer late without good cause; or files a withdrawal of the debt determination at issue.

(c) If a party fails to comply with these Rules or the Hearing Official’s orders, the Hearing Official may take such action as he or she deems reasonable and proper under the circumstances, including dismissing or granting the petition as appropriate.

§ 961.12 Ex parte communications.

Ex parte communications are not allowed between a party and the Hearing Official or the Official’s staff. Ex parte communication means an oral or written communication, not on the public record, with one party only with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.
§ 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.
§ 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 as considered 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.


§ 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
§ 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.

(5) 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.

(6) 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.

§ 962.22 Form and filing of documents.
(a) All pleadings and documents required under this part must be filed using the Judicial Officer electronic filing system unless the presiding officer permits otherwise. The Judicial Officer electronic filing system Web site is accessible 24 hours a day at https://uspsjoe.justware.com/justiceweb. 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
§ 962.23 Service.

If both parties are participating in the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.

§ 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.

§ 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.

963.2 Scope of the rules.
§ 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]

§ 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 through the Judicial Officer Department electronic filing system at https://uspsjoe.justiceware.com/justiceweb.

(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. All documents required under this part must be filed using the electronic filing system (https://uspsjoe.justiceware.com/justiceweb) unless the presiding officer permits otherwise. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the Recorder of a complete copy of the filing during normal business hours. Normal business hours are between 8:45 a.m. and 4:45 p.m. (Eastern Time), Monday through Friday except holidays. If both parties are participating in the
§ 963.4 Electronic filing system. Separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished. The Recorder shall maintain a docket and the files in all proceedings.

(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.

§ 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.

§ 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.

§ 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
United States Postal Service

§ 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.

§ 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.

§ 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 otherwise orders, 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
§ 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; 52 FR 20599, June 2, 1987]
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.


§ 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 or her attorney, shall be filed via the Judicial Officer Electronic filing system at https://uspsjoe.justicare.com/justiceweb or via certified mail to the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The Petition must be filed 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 U.S. 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.

(e) Filing and service. All documents required under this part must be filed using the electronic filing system unless the presiding officer permits otherwise. Documents submitted using the electronic filing system are considered filed as of the date/time (Eastern Time) reflected in the system. Documents mailed to the Recorder are considered filed on the date mailed as evidenced by a United States Postal Service postmark. Filings by any other means are considered filed upon receipt by the Recorder of a complete copy of the filing during normal business hours. Normal business hours are between 8:45 a.m. and 4:45 p.m. (Eastern Time), Monday through Friday except holidays. If both parties are participating in the electronic filing system, separate service upon the opposing party is not required. Otherwise, documents shall be served personally or by mail on the opposing party, noting on the document filed, or on the transmitting letter, that a copy has been so furnished.


§ 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.


§ 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.


§ 964.7 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge qualified in accordance with law or the Judicial Officer. The Chief Administrative Law Judge shall assign cases. The Judicial Officer may preside at the hearing if an Administrative Law Judge is unavailable.

(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
§ 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.

§ 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.

§ 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.

§ 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

Sec. 965.1 Authority for rules.

965.2 Scope of rules.

965.3 Notice to parties.

965.4 Presiding officers.

965.5 Initial submissions by parties.

965.6 Comments by parties.

965.7 Default.

965.8 Hearings.

965.9 Evidence.

965.10 Transcript.

965.11 Initial decision.

965.12 Appeal.

965.13 Compromise and informal disposition.

965.14 Public information.


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.

[76 FR 15219, Mar. 21, 2011]

§ 965.2 Scope of rules.

The rules in this part shall be applicable to mail dispute cases forwarded to the Judicial Officer pursuant to Postal Operations Manual section 616.21.

[76 FR 15219, Mar. 21, 2011]

§ 965.3 Notice to parties.

Upon receipt of a mail dispute case, the Recorder, Office of the Judicial Officer, United States Postal Service,
§ 965.4 Presiding officers.

(a) The presiding officer shall be an Administrative Law Judge, an Administrative Judge qualified in accordance with law, or any other qualified person licensed to practice law designated by the Judicial Officer to preside over a proceeding conducted pursuant to this part. 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 to preside properly over the proceeding and render decision therein;

(2) Render an initial decision, if the presiding officer is not the Judicial Officer; or if the presiding officer is the Judicial Officer, issue a tentative or a final decision or order.

§ 965.5 Initial submissions by parties.

Within 15 days after receipt of the Recorder’s notice, each party shall file via the Judicial Officer electronic filing system (https://uspsjoe.justware.com/justiceweb) 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, and any arguments supporting its claim. Unless the presiding officer otherwise permits, all documents relative to this proceeding must be filed using the electronic filing system.

§ 965.6 Comments by parties.

Within 10 days of receipt of the other party’s initial submission under § 965.5, each party may file with the Recorder an additional statement or rebuttal argument setting forth in detail its disagreements, if any, with its opponent’s initial submission. Such rebuttal may include any additional documents relevant to the dispute.

§ 965.7 Default.

A party who fails to file the submission 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) Generally, mail dispute cases are resolved based on written submissions. However, in the discretion of the presiding officer an oral hearing may be conducted where in the opinion of the presiding officer, the case cannot be resolved by a review of the documentary evidence.

(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.

§ 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.

§ 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.

Within 10 days after receipt by the parties of the initial or tentative decision, either party may file an appeal to the Judicial Officer. The Judicial Officer, or by delegation the Associate Judicial Officer, in his or her sole discretion, also may review the initial or tentative decision on his or her own initiative. If an appeal is denied, the initial or tentative decision becomes the final agency decision upon the issuance of such denial. If an appeal is not filed and the Judicial Officer, or by delegation the Associate Judicial Officer does not review the initial or tentative decision on his or her own initiative, a final order will be issued. The Judicial Officer’s decision on appeal or his or her final order is the final agency decision with no further agency review or appeal rights.

[76 FR 15219, Mar. 21, 2011]

§ 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. Copies of decisions also are available on the Judicial Officer's section of the official Web site of the U.S. Postal Service. The Recorder maintains the complete official record of every proceeding.

[76 FR 15219, Mar. 21, 2011]

PART 966—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO ADMINISTRATIVE OFFSETS INITIATED AGAINST FORMER EMPLOYEES OF THE POSTAL SERVICE

Sec.
966.1 Authority for rules.
966.2 Scope of rules.
966.3 Definitions.
966.4 Petition for a hearing and supplement to petition.
966.5 Effect of petition filing.
966.6 Filing, docketing and serving documents; computation of time; representation of parties.
966.7 Answer to petition.
966.8 Authority and responsibilities of Hearing Official or Judicial Officer.
966.9 Opportunity for oral hearing.
966.10 Initial decision.
966.11 Appeal.
966.12 Waiver of rights.
966.13 Ex parte communications.


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.

(a) The rules in this part apply to any petition filed by a former postal employee:

(1) 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, that the Postal Service intends to collect by administrative offset pursuant to the authority of 31 U.S.C. 3716 and in accordance with the regulations contained in the Employee and Labor Relations Manual, sections 470 and 480; and/or

(2) To challenge the administrative offset schedule proposed by the Postal Service for collecting any such debt.

(b) The regulations in this part are consistent with the provisions of the
§ 966.3 Definitions.

(a) Accounting Service Center refers to the United States Postal Service Eagan Accounting Service Center or its successor installation.

(b) 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.

(c) Debt refers to any amount determined by the Postal Service to be owed to the Postal Service by a former employee.

(d) Federal Claims Collection Standards or FCCS refers to regulations promulgated by the Department of Justice and the Department of the Treasury and codified at 31 CFR parts 900 through 904.

(e) 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.

(f) General Counsel refers to the General Counsel of the Postal Service, and includes a designated representative.

(g) 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.

(h) Judicial Officer refers to the Judicial Official, Associate Judicial Official, or Acting Judicial Officer of the Postal Service.

(i) Reconsideration refers to the review of an alleged debt and/or the proposed offset schedule conducted by the Accounting Service Center at the request of a former employee alleged to be indebted to the Postal Service.

(j) Recorder refers to the Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201–3078. The recorder’s telephone number is (703) 812–1900, and the Judicial Officer’s Web site is http://about.usps.com/who-we-are/judicial/welcome.htm. The fax number is (703) 812–1901.

§ 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 (ELM);

(2) The former employee has received a Notice from the Accounting Service Center in compliance with section 472.1 of the ELM and the administrative offset provisions of the FCCS, informing the former employee of the debt and an offset schedule to satisfy the debt, the former employee’s rights under 31 U.S.C. 3716(a), the right to request reconsideration of the debt and/or offset schedule from the Accounting Service Center, and the right to request review under this part; and

(3) The former employee has requested reconsideration of the Postal Service’s determination of the existence or amount of the alleged debt and/or the offset schedule proposed by the Postal Service within thirty (30) calendar days from the reconsideration request.

(b) Notwithstanding the provisions of this part, the Postal Service may omit the procedures for notice and reconsideration in this part under certain circumstances as set forth below:

(1) If the Postal Service first learns of the existence of the amount owed by the former employee when there is insufficient time before payment would be made to the former employee to allow for prior notice and an opportunity for review under this part. When
prior notice and an opportunity for review are omitted, the Postal Service will give the former employee notice and an opportunity for review as soon as practicable and will promptly refund any money ultimately found not to have been owed. In such circumstances whereby prior notice and an opportunity for pre-deprivation review are omitted, the former employee may submit a petition for review under this part.

(2) If an agency (including the Postal Service) has already given the former employee any of the required notice and review opportunities set forth in the FCCS with respect to a particular debt. In such a situation, the Postal Service need not duplicate such notice and review opportunities before taking an administrative offset.

(3) If a former bargaining unit employee of the Postal Service pursues, in accordance with the applicable provisions of his or her CBA, a grievance concerning the Postal Service’s claim, including, but not limited to, the existence of a debt owed to the Postal Service, the amount of such debt, and/or the proposed repayment schedule, and none of the circumstances set forth in ELM section 483.1 apply;

(4) If otherwise allowed by law, including, but not limited to, the administrative offset provisions of the FCCS.

(c) Within thirty (30) calendar days after the date of receipt of the Accounting Service Center’s decision upon reconsideration, after the expiration of sixty (60) calendar days after a request for reconsideration where a reconsideration determination is not made, or following an administrative offset taken without prior notice and opportunity for reconsideration pursuant to paragraph (b)(1) of this section, the former employee must file a written petition electronically at https://uspsjoe.justware.com/justiceweb, or by mail at Recorder, Judicial Officer Department, United States Postal Service, 2101 Wilson Blvd., Suite 600, Arlington, VA 22201–3078.

(d) A sample petition is available through the Judicial Officer Electronic Filing Web site (https://uspsjoe.justware.com/justiceweb). The petition must include the following:

2. The former employee’s name;
3. The former employee’s home address, email address (if available), 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 Accounting Service Center’s decision upon reconsideration of the alleged debt and a copy of the decision;
5. 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
6. 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.

(e) 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.

§ 966.6 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. After a petition is filed, all documents required under this part must be filed using the electronic filing system unless the Hearing Official permits otherwise. Documents submitted using the electronic filing system are considered filed as of the date/time
§ 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. The answer shall provide a clear and detailed description of the basis for the Postal Service’s determination of the alleged debt and its calculation of the amount of the alleged debt and/or its proposed offset schedule, as appropriate.

§ 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). The Hearing Official’s Memorandum of Telephone Conference serves as the official record of that conference;

(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 disputed issues, and that irrelevant, immaterial, or repetitious evidence is excluded. The Hearing Official in his or her discretion may examine...
United States Postal Service

§ 966.12 Waiver of rights.

(a) The Hearing Official may determine that the former employee has waived the right to a hearing, and that administrative offset may be initiated if the former employee files a petition for hearing after the period prescribed in these Rules and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay; or has filed a withdrawal of the former employee’s previous petition for a hearing.

(b) The Hearing Official may determine that the Postal Service has waived the alleged debt at issue, and that the administrative offset may not be initiated if the Postal Service fails to file the answer within the period prescribed by the Rules and fails to demonstrate to the satisfaction of the

§ 966.11 Appeal.

The initial or tentative decision will become the final agency decision thirty (30) days after its issuance unless, before the expiration of that time, a party files an appeal with the Judicial Officer, or the Judicial Officer, in his or her sole discretion, elects to conduct a review of the decision on his or her own initiative. During such review or appeal consideration, the Judicial Officer will accept all findings of fact in the original decision unless clearly erroneous. If following appeal or review, the Judicial Officer affirms the original decision, that decision becomes the final agency decision with no further right of appeal within the agency.

§ 966.9 Opportunity for oral hearing.

An oral hearing shall be held in the sole discretion of the Hearing Official. 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 shall not be conducted, the decision shall be based solely on written submissions. The Hearing Official shall arrange for the recording and transcription of an oral hearing, which shall serve as the official record of the hearing. The unexcused absence of a party at the time and place set for hearing may not be occasion for delay at the discretion of the Hearing Official. In the event of such absence, the hearing may proceed without the participation of the absent party.

§ 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.
§ 966.13  
Hearing Official good cause for the delay; or has filed a withdrawal of the debt determination at issue.

(c) In addition, whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Hearing Official, comply with orders of the Hearing Official, participate in conferences, fail to treat the proceedings with the proper decorum, or otherwise indicate an intention not to continue the prosecution or defense of a petition, the Hearing Official may issue an order requiring the offending party to show cause why the petition should not be dismissed or granted, as appropriate. If the offending party shall fail to show cause, the Hearing Official may take such action as he or she deems reasonable and proper under the circumstances, including dismissal or granting of the petition as appropriate.

[77 FR 65106, Oct. 25, 2012]

§ 966.13  Ex parte communications.

Ex parte communications are not allowed between a party and the Hearing Official or the Official’s staff. For these purposes, ex parte communication means an oral or written communication, not on the public record, with one party only with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

[77 FR 65106, Oct. 25, 2012]

PARTS 967–999 [RESERVED]
<table>
<thead>
<tr>
<th>Part</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>3000</td>
<td>Standards of conduct</td>
<td>359</td>
</tr>
<tr>
<td>3001</td>
<td>Rules of practice and procedure</td>
<td>360</td>
</tr>
<tr>
<td>3002</td>
<td>Organization</td>
<td>405</td>
</tr>
<tr>
<td>3003</td>
<td>Privacy Act rules</td>
<td>409</td>
</tr>
<tr>
<td>3004</td>
<td>Public records and Freedom of Information Act</td>
<td>411</td>
</tr>
<tr>
<td>3005</td>
<td>Procedures for compelling production of information by the Postal Service</td>
<td>420</td>
</tr>
<tr>
<td>3007</td>
<td>Treatment of non-public materials provided by the Postal Service</td>
<td>426</td>
</tr>
<tr>
<td>3008</td>
<td>Ex parte communications</td>
<td>436</td>
</tr>
<tr>
<td>3010</td>
<td>Regulation of rates for market dominant products</td>
<td>439</td>
</tr>
<tr>
<td>3015</td>
<td>Regulation of rates for competitive products</td>
<td>453</td>
</tr>
<tr>
<td>3017</td>
<td>Procedures related to Commission views</td>
<td>454</td>
</tr>
<tr>
<td>3020</td>
<td>Product lists</td>
<td>455</td>
</tr>
<tr>
<td>3025</td>
<td>Rules for appeals of Postal Service determinations to close or consolidate post offices</td>
<td>470</td>
</tr>
<tr>
<td>3030</td>
<td>Rules for complaints</td>
<td>472</td>
</tr>
<tr>
<td>3031</td>
<td>Rules for rate or service inquiries</td>
<td>476</td>
</tr>
<tr>
<td>3032</td>
<td>Special rules for complaints alleging violations of 39 U.S.C. 404a</td>
<td>476</td>
</tr>
<tr>
<td>3035</td>
<td>Rules for market tests of experimental products</td>
<td>477</td>
</tr>
<tr>
<td>3050</td>
<td>Periodic reporting</td>
<td>481</td>
</tr>
<tr>
<td>3055</td>
<td>Service performance and customer satisfaction reporting</td>
<td>491</td>
</tr>
<tr>
<td>3060</td>
<td>Accounting practices and tax rules for the theoretical competitive products enterprise</td>
<td>497</td>
</tr>
<tr>
<td>3061-3099</td>
<td>[Reserved]</td>
<td></td>
</tr>
</tbody>
</table>
SUBCHAPTER A—PERSONNEL

PART 3000—STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec. 3000.5 Cross-reference to employee ethical conduct standards and financial disclosure regulations.
3000.10 Counseling and advisory services.
3000.15 Financial interests.
3000.20 Outside employment.

Subpart B—Ex Parte Communications

3000.50 Ex parte communications prohibited.
3000.55 [Reserved]

APPENDIX A TO PART 3000—CODE OF ETHICS FOR GOVERNMENT SERVICE


SOURCE: 36 FR 5412, Mar. 23, 1971, unless otherwise noted.

Subpart A—General Provisions

SOURCE: 58 FR 42874, Aug. 12, 1993, unless otherwise noted.

§ 3000.5 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Postal Regulatory Commission (Commission) are subject and should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Commission regulation at 5 CFR part 5601 which supplements the executive branch-wide standards, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.


§ 3000.10 Counseling and advisory services.

(a) The Chairman of the Commission shall appoint the Designated Agency Ethics Official (DAEO) for the Commission. The DAEO may appoint deputy ethics officials to assist in carrying out the responsibilities of the designated agency ethics official. The DAEO shall advise employees as to the applicability and interpretation of laws and regulations involving the standards of conduct for employees of the Commission. The DAEO shall furnish advice to employees for the purpose of aiding employees in avoiding conflicts of interest, situations, actions or conduct that may reflect adversely on the Commission.

(b) The DAEO shall develop and execute an ethics agency training plan providing for an initial orientation for new employees and annual ethics training.

[58 FR 42874, Aug. 12, 1993. Redesignated at 81 FR 42540, June 30, 2016]

§ 3000.15 Financial interests.

An employee shall not, either directly or indirectly, have any financial interest (whether by ownership of any stock, bond, security, or otherwise) in any entity or person whose interests may be significantly affected by rates of postage, fees for postal services, the classification of mail, or the operation of the Postal Service. This paragraph does not proscribe interests in an entity or person whose use of the mail is merely an incidental or a minor factor in the general conduct of its business.


§ 3000.20 Outside employment.

(a) An employee shall not engage in outside employment or professional practice, either on a paid or unpaid basis, with or for a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail or the operations of Postal Service.

(b) An employee who wishes to engage in outside employment either on a paid or unpaid basis shall obtain the prior written approval of the DAEO. A request for such approval shall be submitted in writing with sufficient description of the employment to enable
§ 3000.50

the DAEO to make an informed determination that the outside employment is not prohibited by law or regulation, including 5 CFR part 2635 or 5 CFR part 5601.

(c) An employee who has been assigned to a particular matter which affects the financial interests of a prospective employer and who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in that matter shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), provide notice of disqualification to his supervisor upon determining that he will not participate in the matter.

[58 FR 42874, Aug. 12, 1993. Redesignated at 81 FR 42540, June 30, 2016]

Subpart B—Ex Parte Communications

SOURCE: 81 FR 42540, June 30, 2016, unless otherwise noted.

§ 3000.50 Ex parte communications prohibited.

(a) The Commission maintains a written employee policy regarding ex parte communications applicable to all interactions, oral or in writing (including electronic), between Commission decision-making personnel, and the United States Postal Service or public stakeholders in matters before the Commission. It is the responsibility of all Commission personnel to comply with this policy, including the responsibility to inform persons not employed by the Commission of this policy when required. The policy is available for review on the Commission’s Web site at www.prc.gov.

(b) Additional ex parte communications requirements, applicable to specific docket types, are described in part 3008 of this chapter.

§ 3000.55 [Reserved]

APPENDIX A TO PART 3000—CODE OF ETHICS FOR GOVERNMENT SERVICE

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including office-holders:

CODE OF ETHICS FOR GOVERNMENT SERVICE

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.

3. Give a full day’s labor for a full day’s pay; giving to the performance of his duties his earnest effort and best thought.

4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.

5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

9. Expose corruption wherever discovered.

10. Uphold these principles, ever conscious that public office is a public trust.

Passed July 11, 1958.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart A—Rules of General Applicability

Sec.
3001.1 Construction of rules.
3001.2 [Reserved]
3001.3 Scope of rules.
3001.4 Method of citing rules.
3001.5 Definitions.
3001.6 Appearances.
3001.7 [Reserved]
3001.8 No participation by investigative or prosecuting officers.
3001.9 Filing of documents.
3001.10 Form and number of copies of documents.
3001.11 General contents of documents.
3001.12 Service of documents.
3001.13 Docket and hearing calendar.
3001.14 Consolidation and separation of proceedings.
3001.15 Computation of time.
3001.16 Continuances and extensions of time.
Postal Regulatory Commission

§ 3001.17 Notice of proceeding.
§ 3001.18 Nature of proceedings.
§ 3001.19 Notice of prehearing conference or hearing.
§ 3001.20 Formal intervention.
§ 3001.20a Limited participation by persons not parties.
§ 3001.20b Informal expression of views by persons not parties or limited participants (commenters).
§ 3001.21 Motions.
§ 3001.22 Requests for waiver.
§ 3001.23 Presiding officers.
§ 3001.24 Prehearing conferences.
§ 3001.25 Discovery—general policy.
§ 3001.26 Interrogatories for purpose of discovery.
§ 3001.27 Requests for production of documents or things for purpose of discovery.
§ 3001.28 Requests for admissions for purpose of discovery.
§ 3001.29 Settlement conferences.
§ 3001.30 Hearings.
§ 3001.31 Evidence.
§ 3001.31a In camera orders.
§ 3001.32 Appeals from rulings of the presiding officer.
§ 3001.33 Depositions.
§ 3001.34 Briefs.
§ 3001.35 Proposed findings and conclusions.
§ 3001.36 Oral argument before the presiding officer.
§ 3001.37 Oral argument before the Commission.
§ 3001.38 Omission of intermediate decisions.
§ 3001.39 Intermediate decisions.
§ 3001.40 Exceptions to intermediate decisions.
§ 3001.41 Rulemaking proceedings.
§ 3001.42 [Reserved]
§ 3001.43 Public attendance at Commission meetings.
§ 3001.44 Automatic Closure of Inactive Dockets.
§ 3001.45 Motions to Stay Automatic Closure or Reopen Automatically Closed Dockets.

Subparts B–C [Reserved]

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

§ 3001.71 Applicability.
§ 3001.72 Advisory opinion and special studies.
§ 3001.73 Computation of time.
§ 3001.74 Service by the Postal Service.
§ 3001.75 Motions.
§ 3001.76–3001.79 [Reserved]
§ 3001.80 Procedural schedule.
§ 3001.81 Pre-filing requirements.
§ 3001.82 Filing of formal requests.
§ 3001.83 Contents of formal requests.
§ 3001.84 Filing of prepared direct evidence.
§ 3001.85 Mandatory technical conference.
§ 3001.86 Discovery—in general.

§ 3001.87 Interrogatories.
§ 3001.88 Production of documents.
§ 3001.89 Admissions.
§ 3001.90 Rebuttal testimony.
§ 3001.91 Surrebuttal testimony.
§ 3001.92 Hearings.
§ 3001.93 Initial and reply briefs.

APPENDIX A TO SUBPART D OF PART 3001—PRO-FORMA N-CASE PROCEDURAL SCHEDULE

Subparts E–L [Reserved]

AUTHORITY: 39 U.S.C. 404(d); 503; 504; 3661.
SOURCE: 36 FR 396, Jan. 12, 1971, unless otherwise noted.

Subpart A—Rules of General Applicability

§ 3001.1 Construction of rules.

The rules in this part shall be liberally construed to secure just and speedy determination of issues.

[38 FR 4327, Feb. 13, 1973]

§ 3001.2 [Reserved]

§ 3001.3 Scope of rules.

Except as otherwise provided in §3001.71, the rules of practice in this part are applicable to proceedings before the Postal Regulatory Commission under the Act, including those which involve a hearing on the record before the Commission or its designated presiding officer and, as specified in part 3005 of this chapter to the procedures for compelling the production of information by the Postal Service. They do not preclude the informal disposition of any matters coming before the Commission not required by statute to be determined upon notice and hearing.

[79 FR 33406, June 10, 2014]

§ 3001.4 Method of citing rules.

This part shall be referred to as the “rules of practice.” Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, “§3001.24 Prehearing conferences”
shall be referred to as “section 24” or “rule 24.”

(55 FR 6539, Feb. 10, 2000)

§ 3001.5 Definitions.

(a) Act means title 39, United States Code, as amended.

(b) Postal Service means the U.S. Postal Service established by the Act.

(c) Commission or Commissioner means, respectively, the Postal Regulatory Commission established by the Act or a member thereof.

(d) Secretary means the Secretary or the Acting Secretary of the Commission.

(e) Presiding officer means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

(f) Person means an individual, a partnership, corporation, trust, unincorporated association, public or private organization, or governmental agency.

(g) Party means the Postal Service, a complainant, an appellant, or a person who has intervened in a proceeding before the Commission.

(h) Participant means any party to the proceeding, including formal intervenors as described in §3001.20, and the Public Representative. In a proceeding that is not conducted under subpart D of this part, for purposes of §§3001.11(e), 3001.12, 3001.21, 3001.23, 3001.24, 3001.29, 3001.30, 3001.31, and 3001.32 only, the term participant includes persons who are limited participants.

(i) Complainant means a person or interested party who as permitted by section 3662 of the Act files a complaint with the Commission in the form and manner hereinafter prescribed.

(j) Hearing means a hearing under sections 556 and 557 of title 5, U.S.C. (80 Stat. 386), as provided by section 3661 of the Act or in any other proceeding noticed by the Commission under §§3001.17 and 3001.18(a).

(k) Record means the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, which constitutes the exclusive record for decision.

(l) Effective date of an order or notice issued by the Commission or an officer thereof means the date of issuance unless otherwise specifically provided.

(m) Petitioner means a person who is permitted by 39 U.S.C. 404(d)(5) to appeal to the Commission a determination of the Postal Service to close or consolidate a post office.

(n) Commission meeting means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by §3001.43(d) or §3001.43(e).

(o)–(p) [Reserved]

(q) Public Representative or PR means an officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

(r) Negotiated service agreement means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract. A rate associated with a negotiated service agreement is not a rate of general applicability.

(s) Postal service refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.

(t) Product means a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.

(u) Rate or class of general applicability means a rate or class that is available to all mailers equally on the same terms and conditions.

(v) Small business concern means a for-profit business entity that:

(1) Is independently owned and operated;

(2) Is not dominant in its field of operation;

(3) Has a place of business located in the United States;

(4) Operates primarily within the United States or makes a significant contribution to the United States economy by paying taxes or using American products, materials, or labor; and

(5) Together with its affiliates, qualifies as small in its primary industry.
under the criteria and size standards established by the Small Business Administration in 13 CFR 121.201 based on annual receipts or number of employees.  

§ 3001.6 Appearances.  
(a) By whom. An individual may appear in his/her own behalf; a member of a partnership may represent the partnership; and an officer may represent a corporation, trust, unincorporated association, or governmental agency. A person may be represented in a proceeding by an attorney at law admitted to practice and in good standing before the Supreme Court of the United States, the highest court of any State or Territory of the United States or the District of Columbia, or the Court of Appeals or the District Court for the District of Columbia.  
(b) Authority to act. When an officer of any participant or an attorney acting in a representative capacity appears in person, submits a document to the Commission online as a Principal Account Holder, or signs a paper filed with the Commission, his/her personal appearance, online submission, or signature, shall constitute a representation to the Commission that he/she is authorized to represent the particular participant in whose behalf he/she acts. Any person appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of his/her authority to act in such capacity.  
(c) Notice of appearance and withdrawal of appearance. An individual intending to appear before the Commission or its presiding officer in a representative capacity for a participant in a proceeding shall file with the Commission a notice of appearance in the form prescribed by the Secretary unless that individual is named in an initial filing of the participant whom he/she represents as a person to whom communications from the Commission in regard to the filing are to be addressed. A person whose authority to represent a participant in a specific Commission proceeding has been terminated shall file a timely notice of withdrawal of appearance with the Commission.  
(d) Standards of conduct. Individuals practicing before the Commission shall conform to the standards of ethical conduct required of practitioners in the courts of the United States.  
(e) Disqualification and suspension. After hearing, the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing and practicing before it in any way to any individual who is found not to possess the requisite qualifications, or to have engaged in unethical or improper professional conduct. Contumacious conduct at any hearing before the Commission or its presiding officer shall be ground for exclusion of any individual from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.  

§ 3001.9 Filing of documents.  
(a) Filing with the Commission. The filing of each written document required or authorized by these rules or any applicable statute, rule, regulation, or order of the Commission, or by direction of the presiding officer, shall be
§ 3001.10  
39 CFR Ch. III (7–1–17 Edition)

made using the Internet (Filing Online) pursuant to § 3001.10(a) at the Commission’s Web site (http://www.prc.gov), unless a waiver is obtained. If a waiver is obtained, a hard copy document may be filed either by mailing or by hand delivery to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001 during regular business hours on a date no later than that specified for such filing. The requirements of this section do not apply to participants other than the Postal Service in proceedings conducted pursuant to part 3025 of this chapter.

(b) Account holder. In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a principal account holder or an agent account holder (Filing Online account holder). The authority of the principal account holder to represent the participant on whose behalf the document is filed must be valid and current, in conformance with § 3001.6. The authority of an agent account holder to submit documents for a principal account holder must be valid and current. A principal account holder must promptly inform the Secretary of any change in his/her authority to represent participants in a proceeding or any change in the authority delegated to an agent account holder to submit documents on his/her behalf.

(c) Acceptance for filing. Only such documents as conform to the requirements of this part and any other applicable rule or order authorized by the Commission shall be accepted for filing. In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a Filing Online account holder.

(1) Subject to § 3001.9(d):

(i) A document submitted through Filing Online is filed on the date indicated on the receipt issued by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission’s Web site.

(ii) A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission’s Web site.

(2) Any document received after the close of regular business hours or on a Saturday, Sunday, or federal holiday, shall be deemed to be filed on the next regular business day.

(d) Rejected filings. Any filing that does not comply with any applicable rule or order authorized by the Commission may be rejected. Any filing that is rejected is deemed not to have been filed with the Commission. If a filing is rejected, the Secretary or the Secretary’s designee will notify the person submitting the filing, indicating the reason(s) for rejection. Acceptance for filing shall not waive any failure to comply with this part, and such failure may be cause for subsequently striking all or any part of any document.

(e) Account holder exemptions. Notices of intervention and comments solicited by the Commission may be filed under temporary Filing Online accounts. Temporary Filing Online accounts may be obtained without meeting all of the requirements of paragraphs (b) and (c) of this section, and the subscription requirements of § 3001.11(e). Other categories of documents may be filed under temporary Filing Online accounts under extraordinary circumstances, for good cause shown.


§ 3001.10 Form and number of copies of documents.

(a) Documents. Each document filed with the Commission must be submitted through Filing Online by an account holder, unless a waiver is obtained.

(1) The text of documents filed with the Commission shall be formatted in not less than one and one-half spaced lines except that footnotes and quotations may be single spaced. Documents must be submitted in Arial 12 point font, or such program, format, or font as the presiding officer may designate.

(2) The Secretary may prescribe additional format requirements for documents submitted through Filing Online.
Postal Regulatory Commission

§ 3001.11

(a) Caption and title. The caption of each document filed with the Commission in any proceeding shall clearly show the docket designation and title of the proceeding before the Commission. The title of such document shall identify each participant on whose behalf the filing is made and include a brief description of the document or the nature of the relief sought therein (e.g., motion for extension, brief on exceptions, complaint, notice of intervention, answer to complaint).

(b) Designation of individuals to receive service. Each notice of intervention filed pursuant to § 3001.20 or § 3001.20a must state the name, full mailing address, telephone number, and e-mail address of up to two individuals designated to receive service of hardcopy documents relating to the proceeding.

(c) Contents. In the event there is no rule, regulation, or order of the Commission which specifically prescribes the contents of any document to be filed, such document shall contain a proper identification of the parties concerned and a concise but complete statement of the relief sought and of the facts and citations of authority and precedent relied upon.

(d) Improper matter. Defamatory, sordid, or unethical matter shall not be included in any document filed with the Commission.

(e) Subscription. Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that he/she has read the document being subscribed and filed; that he/she knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified in the document with full power and authority so to do; that to the best of his/her knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and
§ 3001.12 Service of documents.

(a) Service by account holders. Each document filed in a proceeding via the Internet by an Account Holder shall be deemed served on all participants when it is accepted by the Secretary and posted on the Commission’s Web site, except that:

(1) A document that must be served on a participant that the Commission or presiding officer has determined is unable to receive service through the Commission’s Web site shall be served by First-Class Mail.

(2) In proceedings conducted pursuant to part 3025 of this chapter, the Secretary will serve documents (except an administrative record) on participants who do not use Filing Online. Service will be by First-Class Mail.

(b) Service by others. If the Commission or presiding officer has determined that a participant is unable to file documents online, documents filed by that participant must be delivered to the Secretary by hand or First-Class Mail. Such documents will be deemed served upon all participants when they are accepted by the Secretary and posted on the Commission’s Web site. If such documents cannot be posted on the Commission’s website, they will be deemed served on all participants when the Secretary posts them as First-Class Mail.

(c) Service by the Commission. Except as provided in this section, each document issued by the Commission or presiding officer shall be deemed served upon the participants in the proceeding upon its posting by the Commission on its website. Service of Commission documents on any participant that the Commission or presiding officer has determined is unable to receive service through the Commission Web site shall be by First-Class Mail.

(d) Hardcopy documents. Each participant filing a hardcopy document in a proceeding shall serve such document upon each person on the proceeding’s service list, unless that person is subject to paragraph (b) of this section, or the Commission or presiding officer otherwise directs.

(e) Limitation on extent of hardcopy service. To avoid the imposition of an unreasonable burden upon participants, the Commission or the presiding officer may, by appropriate order, limit service of hardcopy documents to service upon participants intending to actively participate in the hearing, or upon a person or persons designated for properly representative groups, or by requiring the making of documents available for convenient public inspection, or by any combination of such methods.

(f) Service list. The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participant. The service list for each current proceeding will be available on the Commission’s Web site http://www.prc.gov. Each participant is responsible for ensuring that its listing on the Commission’s Web site is accurate, and should promptly notify the Commission of any errors.

(g) Method of hardcopy service. Service of hardcopy documents may be made...
Postal Regulatory Commission

§ 3001.17 Notice of proceeding.

(a) When issued. The Commission shall issue a notice of a proceeding to be determined on the record with an in issue in such proceedings. The Commission may sever proceedings which have been consolidated, or order separate proceedings on any issue presented, if it appears that separate proceedings will be more convenient, expeditious, or otherwise appropriate.

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a Federal holiday. Except in proceedings conducted under subpart D of this part, in computing a period of time which is 5 days or less, all Saturdays, Sundays and Federal holidays are to be excluded.

§ 3001.14 Consolidation and separation of proceedings.

The Commission, with or without motion, may order proceedings involving related issues or facts to be consolidated for hearing of any or all matters in issue in such proceedings. The Commission may sever proceedings which have been consolidated, or order separate proceedings on any issue presented, if it appears that separate proceedings will be more convenient, expeditious, or otherwise appropriate.

§ 3001.13 Docket and hearing calendar.

The Secretary shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The Secretary shall maintain a hearing calendar of all proceedings that have been set for hearing. Proceedings shall be heard on the date set in the hearing order, except that the Commission may for cause, with or without motion, at any time with due notice to the parties advance or postpone the date of hearing. All documents filed in a docket, other than matter filed under seal, and the hearing calendar may be accessed remotely via the Commission’s Web site, or viewed at the Commission’s docket section during regular business hours.

§ 3001.12 Notice of proceeding.

When issued. The Commission shall issue a notice of a proceeding to be determined on the record with an in issue in such proceedings. The Commission may sever proceedings which have been consolidated, or order separate proceedings on any issue presented, if it appears that separate proceedings will be more convenient, expeditious, or otherwise appropriate.
§ 3001.18 Nature of proceedings.

(a) Proceedings to be set for hearing. Except as otherwise provided in these rules, in any case noticed for a proceeding to be determined on the record pursuant to §3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and §3001.19.

(b) Procedure in hearing cases. In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference pursuant to §3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the Commission or the presiding officer pursuant to §§3001.34 to 3001.37. The Commission shall then issue an advisory opinion or final decision, as appropriate.

(c) Procedure in non-hearing cases. In any case noticed for a proceeding to be determined on the record in which a hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument. The Commission shall then issue an advisory opinion or final decision, as appropriate. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to §3001.19.


§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to §3001.17(a), the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice,
§ 3001.20a Limited participation by persons not parties.

Except for cases noticed for a proceeding under subpart D of this part, any person may, notwithstanding the provisions of §3001.20, appear as a limited participator in any case that is noticed for a proceeding pursuant to §3001.17(a) in accordance with the following provisions:

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§ 3001.20b Informal expression of views by persons not parties or limited participants (commenters).

Notwithstanding the provisions of §§3001.20 and 3001.20a, any person may file with the Commission, in any case that is noticed for a hearing pursuant to §3001.17(a), an informal statement of views in writing, in accordance with the following provisions:

(a) Form of statement. A statement filed pursuant to this section may be submitted as a hardcopy letter mailed to the Secretary or an electronic message entered under the “Contact Us” link on the Commission’s Web site, http://www.prc.gov.

(b) Contents of statement. A statement filed pursuant to this section shall set forth the name and full mailing address of the person by whom or on whose behalf it is filed, a concise statement of the issue or issues to which the comments contained therein apply, and a clear statement of any views, opinions, or suggestions which the person filing the statement wishes to lay before the Commission.

(c) Disposition by the Commission or presiding officer. Statements filed pursuant to this section shall be made a part of the Commission’s files in the proceeding. The Secretary shall maintain a file of such statements which shall be segregated from the evidentiary record in the proceeding, and shall be open to public inspection during the Commission’s office hours. A statement or exhibit thereto filed pursuant to this section shall not be accepted in the “record,” as defined by §3001.5(k) except to the extent that it is (1) otherwise formally introduced in evidence, or (2) a proper subject of official notice, pursuant to §3001.31(j).

(d) Ex parte communications—exception. A statement filed pursuant to this section shall not be considered an ex parte communication within the meaning of §3001.7.

Postal Regulatory Commission

§ 3001.23

All motions to dismiss proceedings or other motions which involve a final determination of the proceeding shall be addressed to the Commission. After a presiding officer is designated in any proceeding, and before the issuance of an intermediate decision pursuant to §3001.39 or certification of the record to the Commission pursuant to §3001.38, all other motions in that proceeding shall be addressed to the presiding officer.

(b) Answers. Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(c) Motions to strike. Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.


§ 3001.22 Requests for waiver.

Upon request by motion, any requirement of any subpart of this Part 3001 may be waived in whole or in part to the extent permitted by law upon a showing that such waiver will not unduly prejudice the interests of other participants and is consistent with the public interest and the Commission’s expeditious discharge of its responsibilities under the Act. A request for waiver shall not be entertained unless it is timely filed so as to permit Commission disposition of the request prior to the date specified for the requirement for which waiver is requested. The pendency of a request for waiver does not justify or excuse any person from timely meeting the requirements of this part.

§ 3001.23 Presiding officers.

(a) Authority delegated. Presiding officers shall have the authority, within the Commission’s powers and subject to its published rules, as follows:

(1) To regulate the course of the hearing, including the recessing, reconvening, and adjournment thereof, unless otherwise directed by the Commission, as provided in §3001.16;

(2) To administer oaths and affirmations;

(3) To issue subpoenas authorized by law;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or authorize that depositions be taken as provided in §3001.33;

(6) To hold appropriate conferences before or during hearings and to rule on matters raised at such conferences including those specified in paragraph (d) of §3001.24;

(7) To dispose of procedural requests or similar matters but not, before their intermediate decision, to dispose of motions made during hearings to dismiss proceedings or other motions which involve a final determination of the proceeding;

(8) Within their discretion, or upon direction of the Commission, to certify any question to the Commission for its consideration and disposition;

(9) To submit an intermediate decision in accordance with §§3001.38 and 3001.39; and

(10) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

(b) Conduct of hearings. It is the duty of the presiding officer to conduct a fair and impartial hearing and to maintain order. Any disregard by participants or counsel of its rulings on matters of order and procedure shall be noted on the record, and where he/she deems it necessary shall be made the
§ 3001.24 Prehearing conferences.

(a) Initiation and purposes. In any proceeding the Commission or the presiding officer may, with or without motion, upon due notice as to time and place, direct the participants in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the proceeding, including those in paragraph (d) of this section. It is the intent of the Commission to issue its advisory opinion on requests under section 3661 of the Act with the utmost practicable expedition. The Commission directs that these prehearing procedures shall be rigorously pursued by the presiding officer and all participants to that end.

(b) Informal off-the-record procedures. In order to make the prehearing conference as effective as possible, the presiding officer may, in his/her discretion, direct that conferences be held off the record at the beginning of a prehearing conference or at other appropriate times, without the presiding officer being present. Such informal off-the-record conferences shall be presided over by the Commission’s officer designated to represent the interests of the general public or such other person as the participants may select. At such off-the-record conferences the participants shall be expected to reach agreement on those matters which will expedite the proceeding, including the matters specified in the notice of the prehearing conference, in the ruling of the presiding officer directing that the off-the-record conference be held and in paragraph (d) of this section. A report on the results of such off-the-record conference shall be made to the presiding officer on the record at a time specified by the presiding officer and he/she shall then determine the further prehearing procedures to be followed.

(c) Required preparation and cooperation of all parties. All participants in any proceeding before the Commission are required and expected to come to the prehearing conference fully prepared to discuss in detail and resolve all matters specified in paragraph (d) of this section, and notice of the prehearing conference, and such other notice or agenda as may have been issued by the Commission or the presiding officer. All participants are required and expected to cooperate fully at all stages of the proceeding to achieve these objectives, through thorough advance preparation for the prehearing conference, including informal communications between the participants, requests for discovery and appropriate discovery procedures at the earliest possible time and no later than at the prehearing conference, and the commencement of preparation of evidence and cross-examination. The failure of any participant to appear at the prehearing conference or to raise any matters that could reasonably be anticipated and resolved at the prehearing conference shall not be permitted to unduly delay the progress of the proceeding and shall constitute a waiver of the rights of the participant with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.
Postal Regulatory Commission

§ 3001.25

(d) Matters to be pursued. At the pre-hearing conference in any proceeding, the presiding officer and the participants shall consider and resolve the following matters:

(1) The definition and simplification of the issues including any appropriate explanation, clarification, or amendment of any proposal, filing, evidence, complaint or other pleading filed by any participant;

(2) Arrangement for timely completion of discovery from the Postal Service or any other participant concerning information desired by any participant with regard to any issues in the proceeding or prior filings, evidence or pleadings of any participant;

(3) Agreement as to procedures for timely discovery with regard to any future evidentiary filings of any participant;

(4) Stipulations, admissions or concessions as to evidentiary facts, and agreements as to documentary matters, exhibits and matters of official notice, which will avoid unnecessary proof or dispute;

(5) Grouping parties with substantially like interests for purposes of presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral argument to the Commission or presiding officer;

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding;

(7) Limitation of the scope of the evidence and the number of witnesses to eliminate irrelevant, immaterial, or cumulative and repetitious evidence;

(8) Procedures to direct and control the use of discovery prior to the hearing and submission of written testimony and exhibits on matters in dispute so as to restrict to a bare minimum the amount of hearing time required for oral cross-examination of witnesses;

(9) Division of the proceeding where practicable into two or more phases for separate simultaneous hearings;

(10) Fixing dates for the submission and service of such written testimony and exhibits as may be appropriate in advance of the hearing;

(11) Order of presentation of the evidence and cross-examination of witnesses so that the hearing may proceed in the most expeditious and orderly manner possible; and

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the participants to the conduct of the entire proceedings off the record.

(e) Rulings by presiding officer. The presiding officer at such prehearing conference, irrespective of the consent of the participants, shall dispose of by ruling (1) any of the procedural matters itemized in paragraph (d) of this section and (2) such other procedural matters on which he/she is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding. Either on the record at the conclusion of such prehearing conference, or by order issued shortly thereafter, the presiding officer shall state the agreements reached by the participants, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38976, July 21, 1993; 78 FR 36438, June 18, 2013]

§ 3001.25 Discovery—general policy.

(a) Sections 3001.26 to 3001.28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant’s direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3661, or set for hearing under part 3030 of this chapter, when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.
(b) The discovery procedures set forth in rules 26 through 28 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§3001.26 to 3001.28, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

(§5 FR 6543, Feb. 10, 2000, as amended at 78 FR 36438, June 18, 2013)

§3001.26 Interrogatories for purpose of discovery.

(a) Service and contents. In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may propound to any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant propounding the interrogatories shall file them with the Commission in conformance with §§3001.9 through 3001.12. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be filed within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) Answers. Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall file the answers in conformance with §§3001.9 through 3001.12 within 14 days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(c) Objections. In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections shall be
§ 3001.27 Requests for production of documents or things for purpose of discovery.

(a) Service and contents. In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things that constitute or contain matters, not privileged, that are relevant to the subject matter involved in the proceeding and that are in the custody or control of the participant to whom the request is addressed. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file its request with the Commission in conformance with §§3001.9 through 3001.12.

(b) Answers. The participant responding to the request shall file an answer with the Commission in conformance with §§3001.9 through 3001.12 within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section.

(c) Objections. In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state with particularity the
§ 3001.28 Requests for admissions for purpose of discovery.

(a) Service and content. In the interest of expedition, any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file its request with the Commission in conformance with §§3001.9 through 3001.12. Objections shall be filed within 10 days of the request for production.

(d) Motions to compel requests for production of documents or things for purposes of discovery. Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) Compelled answers. Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection is found not to be valid. Such compelled documents or things shall be made available to the participant making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing. When complying with orders to produce documents or things, notice shall be filed in conformance with §§3001.9 through 3001.12. The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in §3001.26(g) as may be appropriate.

(65 FR 6541, Feb. 10, 2000, as amended at 67 FR 67556, Nov. 6, 2002; 78 FR 36438, June 18, 2013)
Postal Regulatory Commission

§ 3001.30

(a) How initiated. Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice by the Commission as provided in §3001.19.

(b) Presiding officer. All hearings shall be held before the Commission sitting en banc, or a duly designated presiding officer.

(c) Entering of appearances. The Commission or the presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing in whose behalf each such appearance has been made.

(d) Order of procedure. In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under section 3661 of the Act, and a complainant shall open and close in proceedings on complaints filed under section 3662 of the Act and set for hearing pursuant to §3001.18(a). With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e)(1) Presentations by participants. Any participant shall have the right in public hearings of presentation of evidence, cross-examination (limited to testimony adverse to the participant conducting the cross-examination), objection, motion, and argument. The case-in-chief of participants other than the proponent shall be in writing and shall include the participant’s direct case and rebuttal, if any, to the initial proponent’s case-in-chief. It may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another participant’s direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) Written cross-examination. Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served in accordance with §§3001.9 through 3001.12 no later than three working days before the

§ 3001.29 Settlement conferences.

Any participant in a proceeding may submit offers of settlement or proposals of adjustment at any time and may request a conference between the participants to consider such offers or proposals. The Commission or the presiding officer shall afford the participants appropriate opportunity prior to or during the hearing for conferences for the purpose of considering such offers or proposals as time, the nature of the proceeding, and the public interest permit. Unaccepted offers of settlement or adjustment and proposed stipulations not agreed to shall be privileged and shall not be admissible in evidence against any participant claiming such privilege.

§ 3001.30 Hearings.

(e) Compelled answers. Upon motion of any participant to the proceeding the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be filed with the Commission in conformance with §§3001.9 through 3001.12 within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be filed.

[65 FR 6542, Feb. 10, 2000, as amended at 67 FR 67562, Nov. 6, 2002]
§ 3001.30

scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, “PR-T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997).”)

When a participant designates written cross-examination, two hard copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) Oral cross-examination. Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be filed three or more working days before the announced appearance of the witness and should include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. A participant intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be filed at least two calendar days (including one working day) before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the participant. If a participant has obtained permission to receive service of documents in hardcopy form, hardcopy notices of intent to conduct oral cross-examination of witnesses for that participant should be delivered to counsel for that participant and served three or more working days before the announced appearance of the witness, and cross-examination exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

(f) Limitations on presentation of the evidence. The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately (1) the number of witnesses to be heard upon any issue, (2) the examination by any participant to specific issues, and (3) the cross-examination of a witness to that required for a full and true disclosure of the facts necessary for the disposition of the proceeding and to avoid irrelevant, immaterial, or unduly repetitious testimony.

(g) Motions during hearing. After a hearing has commenced in a proceeding, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall set forth the ruling or relief sought, and state the grounds therefor and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any participant shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(h) Rulings on motions. The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute
Postal Regulatory Commission

§ 3001.31 Evidence.

(a) Form and admissibility. In any public hearing before the Commission, or a presiding officer, relevant and material evidence which is not unduly repetitious or cumulative shall be admissible. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) Documentary material—(1) General. Documents and detailed data and information shall be presented as exhibits. Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony. Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference shall provide the location of that information within the library reference with sufficient specificity to permit ready reference, such as the page and line, or the file and the worksheet or spreadsheet page or cell. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

(ii) Library references. (i) The term ‘‘library reference’’ is a generic term or label that participants and others may use to identify or designate certain documents or things (‘‘material’’) filed with the Commission’s docket section. To the extent possible, material filed as a library reference shall be identified and referred to by participants in terms of the following categories: Category 1—Reporting Systems Material (consisting of library references relating to the Service’s statistical cost and revenue reporting systems, and their primary outputs); Category 2—Witness Foundational Material (consisting of material relating to the testimony of specific witnesses, primarily that which is essential to the establishment of a proper foundation for receiving into evidence the results of studies and analyses); Category 3—Reference Material (consisting of previously published material provided for the convenience of the reader, such as books, chapters or other portions of books, articles, reports, manuals, handbooks, guides, and contracts; Category 4—Material Provided in Response to Discovery (consisting of material provided in response to discovery requests); Category 5—
Disassociated Material (consisting of material filed at the request of another, from which the filing party wishes to be disassociated, is not vouching for or sponsoring the material provided); Category 6—All Other Material (consisting of library references not fitting any of the other categories).

(ii) The practice of filing a library reference is authorized primarily as a convenience to filing participants and the Commission under certain circumstances. These include when the physical characteristics of the material, such as number of pages, bulk, or format, are reasonably likely to render compliance with the service requirements unduly burdensome; and one of the following considerations apply:

(A) Interest in the material or things so labeled is likely to be so limited that service on the entire list would be unreasonably burdensome, and the participant agrees to serve the material on individual participants upon request within three days of a request, or to provide, within the same period, an explanation of why the material cannot be provided within three days, and to undertake reasonable efforts to promptly provide the material; or

(B) The participant satisfactorily demonstrates that designation of material as a library reference is appropriate because the material constitutes a secondary source. A secondary source is one that provides background for a position or matter referred to elsewhere in a participant’s case or filing, but does not constitute essential support and is unlikely to be a material factor in a decision on the merits of issues in the proceeding; or

(C) Reference to, identification of, or use of the material would be facilitated if it is filed as a library reference; or

(D) The material is filed in compliance with a discovery request for production of documents or things.

(iii) Other circumstances. If a participant considers it appropriate to file material as a library reference because its physical characteristics render service unduly burdensome, but cannot satisfy the terms set out in paragraphs (b)(2)(ii)(A) through (D) of this section, the material may be filed (by means of a notice) subject to the following conditions:

(A) Inclusion in the accompanying notice of a detailed explanation of the reason for filing the material under this provision;

(B) Satisfaction of all other applicable requirements relating to library references; and

(C) The Commission’s right to refuse acceptance of the material in its docket room and its right to take other action to ensure participants’ ability to obtain access to the material.

(iv) Filing procedure. Participants filing material as a library reference shall file contemporaneous written notice of this action in conformance with §§3001.9 through 3001.12. The notice shall:

(A) Set forth the reason(s) why the material is being designated as a library reference, with specific reference to paragraphs (b)(2)(ii) and (iii) of this section;

(B) Identify the category into which the material falls and describe in detail what the material consists of or represents, noting matters such as the presence of survey results;

(C) Explain in detail how the material relates to the participant’s case or to issues in the proceeding;

(D) Identify authors or others materially contributing to substantive aspects of the preparation or development of the library reference;

(E) Identify the documents (such as testimony, exhibits, and an interrogatory) or request to which the library reference relates, to the extent practicable;

(F) Identify other library references or testimony relied upon or referred to in the designated material, to the extent practicable;

(G) Indicate whether the library reference is an update or revision to another library reference and, if it is, clearly identify the predecessor material;

(H) To the extent feasible, identify portions expected to be entered into the record and the expected sponsor (if the participant filing a library reference anticipates seeking, on its own behalf, to enter all or part of the material contained therein into the evidentiary record).
Postal Regulatory Commission

§ 3001.31

(v) **Labeling.** Material filed as a library reference shall be labeled in a manner consistent with standard Commission notation and any other conditions the presiding officer or Commission establishes.

(vi) **Optional preface or summary.** Inclusion of a preface or summary in a library reference addressing the matters set out in paragraphs (b)(2)(iv)(A) through (H) of this section is encouraged but optional.

(vii) **Electronic version.** Material filed as a library reference shall also be made available in an electronic version, absent a showing of why an electronic version cannot be supplied or should not be required to be supplied. Participants are encouraged to include in the electronic version the information and disclosures required to be included in the accompanying notice.

(viii) **Number of copies.** Except for good cause shown, two hard copies of each library reference shall be filed.

(ix) **Special requests and motions seeking service.** In situations other than that covered in paragraph (b)(2)(i)(A) of this section, special requests for service of material contained in a library reference may be made by the participant that filed the interrogatory or inquiry that generated a response in the form of a library reference. Service shall be made within a reasonable time. Others seeking service of the material contained in a library reference shall file a detailed motion setting forth the reasons why service is necessary or appropriate.

(x) **Waiver.** Upon the filing of a motion showing good cause, the Commission may waive one or more of the provisions relating to library references. Motions seeking waiver may request expedited consideration and may seek waiver for categories of library references.

(xl) **Status of library references.** Designation of material as a library reference and acceptance in the Commission’s docket section do not confer evidentiary status. The evidentiary status of the material is governed by this section.

(c) **Commission's files.** Except as otherwise provided in §3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

(d) **Public document items.** Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economic statistical data issued by any of the Executive Departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) and such document (or part thereof) has been shown by the offeror thereof to be reasonably available to the public, such document need not be produced or physically marked for identification, but may be offered in evidence as a public document item by clearly identifying the document and the relevant parts thereof.

(e) **Designation of evidence from other Commission dockets.** (1) Participants may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number.

(2) In proceedings conducted under subpart D of this part, these requests must be made at least 6 days before the date for filing the participant’s direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 3 days. Oppositions to requests for counter-designations are due within 2 days.

(3) In all other proceedings subject to this section, these requests must, in the absence of extraordinary circumstances, be made at least 28 days before the date for filing the participant’s direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within 7 days.
(4) In all proceedings subject to this section, the moving participant must submit two copies of the identified material to the Secretary at the time requests for designations and counter-designations are made.

(f) Form of prepared testimony and exhibits. Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of §3001.10(a) and (b).

(g) Copies to participants. Except as otherwise provided in these rules, copies of prepared testimony and exhibits shall be furnished to the presiding officer and to the participants or counsel, unless the presiding officer otherwise directs. In addition, unless otherwise directed by the presiding officer, eight copies of all prepared testimony and exhibits shall be furnished for the use of the Commission.

(h) Reception and ruling. The presiding officer shall rule on the admissibility of evidence and otherwise control the reception of evidence so as to confine it to the issues in the proceeding.

(i) Offers of proof. Any offer of proof made in connection with any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form, or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(j) Official notice of facts. Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the knowledge of the Commission as an expert body. Any participant shall, on timely request, be afforded an opportunity to show the contrary.

(k) Introduction and reliance upon studies and analyses—(1) General. In the case of all studies and analyses offered in evidence in hearing proceedings or relied upon as support for other evidence, other than the kinds described in paragraphs (k)(2) and (3) of this section, there shall be a clear statement of the study plan, all relevant assumptions and a description of the techniques of data collection, estimation and/or testing. In addition, there shall be a clear statement of the facts and judgments upon which conclusions are based, together with an indication of the alternative courses of action considered. Tabulations of input data shall be made available upon request at the offices of the Commission.

(2) Statistical studies. All statistical studies offered in evidence in hearing proceedings or relied upon as support for other evidence shall include a comprehensive description of the assumptions made, the study plan utilized and the procedures undertaken. Where a computer analysis is employed to obtain the result of a statistical study, all of the submissions required by §3001.31(k)(3) shall be furnished, upon request. In addition, for each of the following types of statistical studies, the indicated information should be furnished:

(1) Market research. (a) The following data and information shall be provided:

(1) A clear and detailed description of the sample, observational, and data preparation designs, including definitions of the target population, sampling frame, units of analysis, and survey variables;

(2) An explanation of methodology for the production and analysis of the major survey estimates and associated sampling errors;

(3) A presentation of response, coverage and editing rates, and any other potential sources of error associated with the survey’s quality assurance procedures;

(4) A discussion of data comparability over time and with other data sources;

(5) An assessment of the effects of editing and imputation;

(6) Identification of applicable statistical models, when model-based procedures are employed; and

(7) An explanation of all statistical tests performed and an appropriate set of summary statistics summarizing the results of each test.
Postal Regulatory Commission

§ 3001.31

(ii) Other sample surveys. (a) A clear description of the survey design, including the definition of the universe under study, the sampling frame and units, and the validity and confidence limits than can be placed on major estimates; and

(b) An explanation of the method of selecting the sample and the characteristics measured or counted.

(iii) Experimental analyses. (a) A complete description of the experimental design, including a specification of the controlled conditions and how the controls were realized;

(b) A complete description of the methods of making observations and the adjustments, if any, to observed data.

(iv) Econometric Studies. (a) A presentation of the economic theory underlying the study;

(b) A complete description of the econometric model(s) and the reasons for each major assumption and specification;

(c) The definition of the variables selected and the justification for their selection;

(d) For any alternative model whose computed econometric results influenced the choice of the preferred model, a statement of the reasons for rejecting that alternative, an identification of any differences between that alternative and the preferred model with respect to variable definitions, equation forms, data, or estimation methods, and, upon request, the computed econometric results for that alternative;

(e) A reference to a detailed description in a text, manual, or technical journal for every econometric technique used in the estimation process and the reasons for selecting the technique, or, in the alternative, a description and analysis of the technique that is sufficient for a technical evaluation;

(f) Summary descriptions and source citations for all input data and, upon request, a complete listing of the data. Complete descriptions of any alterations or transformations made to the data as received from the original sources, and the reasons for making the alterations;

(g) A complete report of the econometric results including, where applicable:

(1) coefficient estimates

(2) standard errors and t-values,

(3) goodness-of-fit statistics,

(4) other appropriate test statistics,

(5) the variance/covariance matrix of the estimates,

(6) computed residuals for results computed from samples composed of fewer than 250 observations, and, upon request, other computed residuals;

(h) Descriptions of all statistical tests of hypotheses and the results of such tests;

(v) All other studies involving statistical methodology. (a) The formula used for statistical estimates;

(b) The standard errors of each component estimated;

(c) Test statistics and the description of statistical tests and all related computations, and final results; and

(d) Summary descriptions of input data, and upon request the actual input data shall be made available at the offices of the Commission.

(3) Computer analyses. (i) In the case of computer studies or analyses which are being offered in evidence, or relied upon as support for other evidence, a foundation for the reception of such materials must be laid by furnishing a general description of the program that includes the objectives of the program, the processing tasks performed, the methods and procedures employed, and a listing of the input and output data and source codes (or a showing pursuant to paragraph (k)(3)(iii) of this section as to why such codes cannot be so furnished) and such description shall be furnished in all cases. For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon request of a participant, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing.

(a) For all input data, designations of all sources of such data, and explanations of any modifications to such data made for use in the program;

(b) Definitions of all input and output variables or sets of variables;
(c) A description of input and output data file organization;
(d) A hard copy of all data bases;
(e) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;
(f) The source code in hardcopy form;
(g) All pertinent operating system and programming language manuals; and
(h) If the requested program is user interactive, a representative sample run, together with any explanation necessary to illustrate the response sequence.
(i) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Office of Secretary and Administration of the Postal Regulatory Commission. Any machine-readable data file or program file so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hardcopy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.
(j) Computer simulation models offered in evidence or relied upon as support for other evidence, shall be bound by all applicable provisions of paragraph (k)(3) of this section and the separate requirements of paragraph (k)(2) of this section, to the extent that portions of the simulation model utilize or rely upon such studies. Information that compares the simulation model output results to the actual phenomena being modelled, using data other than those from which the model was developed, shall be separately identified and submitted as evidence supporting the test and validation of the simulation model. Separate statements concerning the model limitations, including limiting model design assumptions and range of data input utilized in model design, shall be provided. Where test and validation of the entire simulation model are not possible, test and validation information shall be provided for disaggregate portions of the model. If disaggregate testing and validation are not possible, separate statements to that effect and statements regarding operational experts’ review of model validity shall be provided.
(ii) Upon timely and otherwise proper request of a participant, or sua sponte, the Commission or the Presiding Officer may rule that matters other than those listed in paragraphs (k)(3)(i) (a) through (h) of this section are necessary to establish the foundation for reception of the evidence concerned and must be furnished.
(iii) When the requestor is other than the Commission or the Presiding Officer, the cost of producing the material required in paragraph (k)(3)(i) (d), (f), and (g) of this section, shall be borne by the requesting party unless otherwise ordered, for good cause shown by the requestor. When the Commission or the Presiding Officer is the requestor, it may assume or equitably allocate such costs for good cause shown by the requestee.
(iv) If the recipient of a request for materials pursuant to this paragraph (k)(3) of this section asserts that compliance with the request would conflict with patent, copyright, trade secret or contract rights applicable to the requested material, the recipient shall immediately notify the requestor and the Presiding Officer. If valid, the Presiding Officer shall devise means of accommodating such rights. Such means may include protective orders, including access under protective conditions to the computer facilities of the recipient of a request, making material available for inspection, compensation, or other procedures, according to the nature of the right affected by compliance with this paragraph (k)(3) of this section. If the Presiding Officer determines that compensation is necessary to accommodate the affected right, the cost of compensation shall be borne in the same manner that paragraph (k)(3)(iii) of this section prescribes for bearing the costs referenced there. If
such right cannot be accommodated by reasonable compensation, or by protective orders or other procedures, and, as a result, materials required by this paragraph (k)(3) of this section cannot be provided, the Presiding Officer shall determine, in his/her discretion, whether evidence that relies upon the materials not provided shall be admissible or afforded limited weight.

(4) Expedition. The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of §3001.12 no later than 3 days after a request is made under paragraph (e)(2) of this section or no later than 14 days after a request is made under paragraph (e)(3) of this section.

§3001.31a In camera orders.

(a) Definition. Except as hereinafter provided, documents and testimony made subject to in camera orders are not made a part of the public record, but are kept confidential, and only authorized parties, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The right of the presiding officer, the Commission, and reviewing courts to disclose in camera data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) In camera treatment of documents and testimony. Presiding officers shall have authority, but only in those unusual and exceptional circumstances when good cause is found on the record, to order documents or oral testimony offered in evidence whether admitted or rejected, to be placed in camera. The order shall specify the date on which in camera treatment expires and shall include: (1) A description of the documents and testimony; (2) a full statement of the reasons for granting in camera treatment; and (3) a full statement of the reasons for the date on which in camera treatment expires. Any party desiring, for the preparation and presentation of the case, to disclose in camera documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the presiding officer setting forth the justification therefor. The presiding officer, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. In camera documents and the transcript of testimony subject to an in camera order shall be segregated from the public record and filed in a sealed envelope, bearing the title and docket number of the proceeding, the notation “In Camera Record under §3001.31a,” and the date on which in camera treatment expires.

(c) Release of in camera information. In camera documents and testimony shall constitute a part of the confidential records of the Commission. However, the Commission, on its own motion or pursuant to a request, may make in camera documents and testimony available for inspection, copying, or use by any other governmental agency. The Commission shall, in such circumstances, give reasonable notice of the impending disclosure to the affected party. However, such notice may be waived in extraordinary circumstances for good cause.

(d) Briefing of in camera information. In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of in camera documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of in camera data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked “confidential,” which shall be placed in
§ 3001.32 Appeals from rulings of the presiding officer.

(a) General policy. The Commission will not review a ruling of the presiding officer prior to its consideration of the entire proceeding except in extraordinary circumstances. This section specifies the showing which participants must make in order to appeal interlocutory rulings.

(b) Appeals certified by the presiding officer.

(1) Before the issuance of an initial decision pursuant to § 3001.39(a) or the certification of the record to the Commission pursuant to § 3001.38(a), rulings of the presiding officer may be appealed when the presiding officer certifies in writing that an interlocutory appeal is warranted. The presiding officer shall not certify an appeal unless the officer finds that (i) the ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion and (ii) an immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy.

(2) A request for the presiding officer to certify an appeal shall be made within 5 days after the presiding officer’s ruling has been issued. The request shall set forth with specificity the reasons that a participant believes that an appeal meets the criteria of paragraphs (b)(1) (i) and (ii) of this section. Such requests shall also state in detail the legal, policy, and factual arguments supporting the participant’s position that the ruling should be modified. If the appeal is from a ruling rejecting or excluding evidence, such request shall include a statement of the substance of the evidence which the participant contends would be admissible by the excluded evidence and the conclusions intended to be derived therefrom.

(3) The presiding officer may request responsive pleadings from other participants prior to ruling upon the request to certify an appeal.

(c) Appeals not certified by the presiding officer. If the presiding officer declines to certify an appeal, a participant who has requested certification may apply to the Commission for review within 10 days. Unless the Commission directs otherwise, its review of the application will be based on the record and pleadings filed before the presiding officer pursuant to paragraph (b) of this section.

(d) Action by the Commission. (1) The Commission may dismiss an appeal certified by the presiding officer if it determines that (i) the objection to the ruling should be deferred until the Commission’s consideration of the entire proceeding or (ii) interlocutory review is otherwise not warranted or appropriate under the circumstances.

(2) Where the presiding officer has declined to certify an appeal, the Commission will not allow an application for review unless it determines (i) that the presiding officer should have certified the matter, (ii) that extraordinary circumstances exist, and (iii) that prompt Commission decision is necessary to prevent grave detriment to the public interest.

(3) The Commission may issue an order accepting an interlocutory appeal within 15 days after the presiding officer certifies the appeal or a participant files an application for review. If the Commission fails to issue such an order, leave to appeal from the presiding officer’s interlocutory ruling shall be deemed to be denied. If the Commission issues an order accepting an appeal, it may rule upon the merits of the appeal in that order or at a later time.

(e) Effect of appeals. Unless the presiding officer or the Commission orders, the certification of an appeal or the filing of an application for review shall not stay the proceeding or the effectiveness of any ruling.

(f) Review at conclusion of proceeding. If an interlocutory appeal is not certified pursuant to paragraph (b)(1) of this section, objection to the ruling may be raised on review of the presiding officer’s intermediate decision, or, if the intermediate decision is omitted, in the participants’ briefs in accordance with § 3001.34.
Postal Regulatory Commission

§ 3001.33 Depositions.

(a) When permissible. The testimony of a witness may be taken by deposition upon authorization by the Commission or the presiding officer on application of any participant before the hearing is closed. An authorization to take the deposition of a witness will be issued only if (1) the person whose deposition is to be taken would be unavailable at the hearing, or (2) the deposition is deemed necessary to perpetuate the testimony of the witness, or (3) the taking of the deposition is necessary to prevent undue and excessive expense to a participant and will not result in undue delay or an undue burden to other participants.

(b) Application. An application for authorization to take testimony by deposition shall be filed in duplicate with the Commission or the presiding officer and shall state (1) the name, identification, and post office address of the witness, (2) the subject matter of the testimony, (3) the time and place of taking the deposition, (4) the name, identification, and post office address of the officer before whom the deposition is to be taken, and (5) the reasons why the testimony of such witness should be taken by deposition.

(c) Authorization. If the application so warrants, the Commission or the presiding officer will issue and serve or cause to be served on the participants within a reasonable time in advance of the time fixed for taking testimony, an authorization for the taking of such testimony by deposition. Such authorization shall name the witness, and the time, place, and officer before whom the deposition shall be taken, and shall specify the number of copies of the deposition to be submitted to the Commission. The authorization may include such terms and conditions as the Commission or the presiding officer deems fair and reasonable.

(d) Qualifications of officer before whom taken. Such deposition may be taken before a presiding officer or other authorized representative of the Commission, or any officer, not being counsel or attorney for any participant or having an interest in the proceeding, authorized to administer oaths by the laws of the United States or of the place where the deposition is to be taken.

(e) Oath and reduction to writing. The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by some one acting under his/her direction and in his/her presence, record the examination of the witness. The examination shall be transcribed in the form specified in §3001.10(a), signed by the witness, and certified in the usual form by the officer. The original of the deposition, together with the number of copies required by the authorization to be made by such officer, shall be forwarded by the officer to the Secretary by personal delivery or registered mail. Upon receipt the Secretary shall hold the original for use in the hearing upon request by any participant and shall make copies available for public inspection.

(f) Scope and conduct of examination. Unless otherwise directed in the authorization, the witness may be questioned regarding any matter which is relevant to the issues involved in the proceeding. Participants shall have the right of cross-examination and objection. In lieu of participation in the oral examination, participants may transmit written interrogatories to the officer who shall propound them to the witness.

(g) Objections. The officer before whom the deposition is taken shall not have the power to rule upon procedural matters or the competency, materiality, or relevancy of questions. Procedural objections or objections to questions of evidence shall be stated briefly and recorded in the deposition without argument. Objections not stated before the officer shall be deemed waived.

(h) When a part of the record. No portion of a deposition shall constitute a
§ 3001.34 Briefs.

(a) When filed. At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of the decision or advisory opinion. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available for decision, the Commission shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the participants may be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission may also order the filing of briefs during the course of the proceeding.

(b) Contents. Each brief filed with the Commission shall be as concise as possible, within any page limitation specified by the Commission or the presiding officer, and shall include the following in the order indicated:

1. A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;
2. A concise statement of the case from the viewpoint of the filing participant;
3. A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service and the advisory opinion or decision to be issued;
4. A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and
5. Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) Incorporation by references. Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading or document.

(d) Excerpts from the record. Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(e) Filing and service. Briefs shall be filed in the form and manner and served as required by §§ 3001.9 to 3001.12.

§ 3001.35 Proposed findings and conclusions.

The Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief statement of the supporting reasons for each proposed finding and conclusion.

§ 3001.36 Oral argument before the presiding officer.

In any case in which the presiding officer is to issue an intermediate decision, such officer may permit the presentation of oral argument when, in his/her opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest
Postal Regulatory Commission

§ 3001.39

warrants hearing such argument. The
presiding officer shall determine the
time and place for oral argument, and
may specify the issue or issues on
which oral argument is to be presented,
the order in which the presentations
shall be made, and the amount of time
allowed each participant. A request for
oral argument before the issuance of an
intermediate decision shall be made
during the course of the hearing on the
record.

[78 FR 36440, June 18, 2013]

§ 3001.37 Oral argument before the
Commission.

(a) When ordered. In any proceeding
before the Commission for decision, the
Commission, upon the request of any
participant or on its own initiative,
may order oral argument when, in the
Commission’s discretion, time permits,
and the nature of the proceedings, the
complexity or importance of the issues
of fact or law involved, and public in-
terest warrants such argument.

(b) How requested. Any participant in
a proceeding before the Commission for
decision may request oral argument be-
fore the Commission by filing a timely
motion pursuant to § 3001.21. In a pro-
ceeding before the Commission on ex-
ceptions to an intermediate decision,
such motion shall be filed no later than
the date for the filing of briefs on ex-
ceptions. Motions requesting oral argu-
ment may be included in briefs or
briefs on exceptions or in a separate
document.

(c) Notice of oral argument. The Com-
mission shall rule on requests for oral
argument, and if argument is allowed,
the Commission shall notify the par-
ticipants of the time and place set for
argument, the amount of time allowed
each participant, and the issue or
issues on which oral argument is to be
heard. Unless otherwise ordered by the
Commission, oral argument shall be
limited to matters properly raised on the
record and in the briefs before the
Commission.

(d) Use of documents at oral argument.
Charts, graphs, maps, tables and other
written material may be presented to
the Commission at oral argument only
if limited to facts in the record of the
case being argued and if copies of such
documents are filed with the Secretary
and served on all parties at least 7 days
in advance of the argument. Enlarge-
ments of such charts, graphs, maps and
tables may be used at the argument
provided copies are filed and served as
required by this paragraph.

§ 3001.38 Omission of intermediate de-
cisions.

(a) Basis of omission. In any pro-
ceeding noticed pursuant to §3001.17,
the Commission, on the motion of any
participant or on its own initiative,
may direct the certification of the
record to the Commission and omit any
intermediate decision upon a finding
on the record that due and timely exe-
cution of its functions imperatively
and unavoidably so requires. In pro-
ceedings in which all participants con-
cur in a request by any participant
that any intermediate decision be
omitted, the Commission shall direct
the certification of the record to the
Commission and forthwith render a
final decision unless the Commission
denies such request within 10 days next
following its filing or referral by the
presiding officer.

(b) Requests for omission. Requests for
omission of the intermediate decision
in any proceeding shall be made by mo-
tion pursuant to § 3001.21 or made oral-
ly on the record before the presiding of-
ficer who shall promptly refer the same
requests shall specify (1) the concurrence of other
parties and (2) whether opportunity for
filing briefs or presenting oral argu-
ment to the Commission is desired or
waived. Failure of any party to object
to such request shall constitute a waiv-
er of any objections.

§ 3001.39 Intermediate decisions.

(a) Initial decision by presiding officer.
In any proceedings in which a Commiss-
ioner or hearing officer has presided
at the reception of evidence, such pre-
siding officer, as soon as practicable
after the conclusion of the hearing and
the filing of briefs, shall certify and
file with the Secretary, a copy of the
record of the hearing and his/her initial
decision on the matters and issues pre-
sented for decision in such proceeding.

(b) Tentative decision. Prior to the
issuance of an initial decision by the
presiding officer, the Commission, with
notice to the participants or by order in specific cases or by general rule for a class of cases, may direct the certification of the record to the Commission for the purpose of the issuance of a tentative decision. In such cases, the Commission may issue a tentative decision or require that the presiding officer or any designated responsible officer of the Commission recommend a decision.

(c) Contents. All intermediate decisions shall include findings and conclusions, and the reasons or basis thereof, on all the material issues of fact, law, or discretion presented on the record, and the appropriate intermediate decision pursuant to the Act. An intermediate decision in a proceeding under section 3661 of the Act shall include a determination of the question of whether or not the proposed change in the nature of postal service conforms to the policies established under the Act.

(d) Service and Commission review. All intermediate decisions shall be part of the record, shall be served on the participants to the proceeding by the Secretary pursuant to §3001.12 and shall be subject to review by the Commission on its own initiative, or the filing of exceptions by the participants pursuant to §3001.40.

(e) Unavailability of presiding officer. In any proceeding in which the intermediate decision is not omitted pursuant to §3001.38, if a presiding officer becomes unavailable to issue an intermediate decision on a timely basis, the Commission shall, by a notice served on the participants require the record to be certified to it and it shall either designate a qualified responsible officer of the Commission to issue a recommended decision or will itself issued a tentative decision, as the Commission may deem appropriate.

(f) Effect of intermediate decision. Unless briefs on exceptions are filed to an intermediate decision pursuant to §3001.40 or unless the Commission issues an order to review an intermediate decision on its own initiative, the intermediate decision shall become the final action of the Commission after 30 days from the date of issuance thereof. If briefs on exceptions are timely filed or the Commission initiates review on its own motion, the intermediate decision is stayed until further order of the Commission.

39 CFR Ch. III (7–1–17 Edition)

§ 3001.40 Exceptions to intermediate decisions.

(a) Briefs on exceptions and opposing exceptions. Any participant in a proceeding may file exceptions to any intermediate decision by filing a brief on exceptions with the Commission within 30 days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. Any participant to a proceeding may file a response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the Commission. No further response will be entertained unless the Commission, upon motion for good cause shown or on its own initiative, so orders.

(b) Filing and contents. Briefs on exceptions and briefs opposing exceptions shall be filed in accordance with §3001.34. In briefs on exceptions, the discussion of evidence, reasons and authorities shall be specifically directed to the findings, conclusions and recommendations in the intermediate decision to which exception is taken. Briefs on exceptions need not include a discussion of evidence and authorities on matters and issues to which no exception to the intermediate decision is taken. Briefs on exceptions need not include a statement of the case to the extent that it was correctly stated in either the intermediate decision or the brief on exceptions of another participant to which reference is made.

(c) Failure to except results in waiver. Any participant who fails to except or object to any part of an intermediate decision in its brief on exceptions may not thereafter raise such exceptions or objections which shall be deemed to have been waived.

39 CFR Ch. III (7–1–17 Edition)

§ 3001.41 Rulemaking proceedings.

(a) General notice. Before the adoption of any rule of general applicability, or
§ 3001.43 Public attendance at Commission meetings.

(a) Open Commission meetings. (1) Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in paragraph (c) of this section, every portion of every meeting of the Commission shall be open to public observation.

(2) Members of the public may not participate in open meetings. They may record the proceedings, provided they use battery-operated recording devices at their seats. Cameras may be used by observers to photograph proceedings, provided it is done from their seats and no flash or lighting equipment is used. Persons may electronically record or photograph a meeting, as long as such activity does not impede or disturb the members of the Commission in the performance of their duties, or members of the public attempting to observe, or to record or photograph, the Commission meeting.

(b) Physical arrangements for open meetings. The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate acoustics are provided for public observation of the Commission meetings.

(c) Closed Commission meetings. Except in a case where the Commission finds that the public interest requires otherwise, the second sentence of paragraph (a) shall not apply to any portion of a Commission meeting, and the requirements of paragraphs (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the Commission properly determines that such portion or portions of its meetings or the disclosure of such information is likely to

(1) Disclose matters that are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact

(2) Disclose matters that are (i) specifically authorized under criteria established by the Executive branch to be kept secret in the interests of national defense or foreign policy, (ii) specifically exempted from disclosure by Congress under criteria established by an Executive order, or (iii) otherwise required to be kept secret in the interests of national defense or foreign policy.
properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than section 552 of title 5), provided that such statute (i) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

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

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) 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, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

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

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action, except that paragraph (c)(9) shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(10) Specifically concern the Commission’s issuance of a subpoena or the Commission’s participation in a civil action or appellate proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal Commission adjudication pursuant to the procedures in section 554 of title 5 or otherwise involving a determination on the record after opportunity for a hearing.

(d) Procedures for closing meetings. (1) Action under paragraph (c) of this section shall be taken only when three Commissioners vote to take such action. A separate vote of the Commissioners shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to paragraph (c) of this section, or with respect to any information which is proposed to be withheld under paragraph (c) of this section. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public pursuant to paragraph (c) of this section, or with respect to any information which is proposed to be withheld under paragraph (c) of this section. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (c) (5), (6), or (7) of this section, the Commission upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within 1 day of any vote taken pursuant to paragraph (d)(1) or (2) of
this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Commission shall, within 1 day of the vote taken pursuant to paragraph (d)(1) or (2) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any person may protest a Commission decision to hold a closed meeting under paragraph (d)(1) or (2) of this section by filing a motion to open the meeting. Such motion shall be addressed to the Commission and shall set forth with particularity the statutory or other authority relied upon, the reasons for which the movant believes the meeting should not be closed, and the reasons for which the movant believes that the public interest requires the meeting to be open. Such motion shall be filed with the Secretary no later than 24 hours prior to the time for which the closed meeting is scheduled.

(5) The Commission has determined that a majority of its meetings may be closed to the public pursuant to paragraph (c)(4), (8) or (10) of this section or any combination thereof. Therefore, pursuant to 5 U.S.C. 55b(d)(4), Commission meetings shall be closed to the public pursuant to paragraph (c)(4), (8) or (10) of this section or any combination thereof when three Commissioners vote by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each Commissioner on the question, is made available to the public. The provisions of paragraphs (d)(1), (2), (3), and (e) of this section shall not apply to any portion of a meeting to which paragraph (d)(5) of this section applies: Provided, that the Commission shall, except to the extent that such information is exempt from disclosure under the provisions of paragraph (c) of this section, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e) Scheduling and public announcement. (1) In the case of each meeting, the Commission shall make public announcement, at least 1 week before the meeting, of the time, 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 Commission to respond to requests for information about the meeting. Such announcement shall be made unless three Commissioners determine by a recorded vote that Commission business requires that such meeting be called at an earlier date, in which case the Commission shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (e)(1) of this section only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or a portion of a meeting, to the public, may be changed following the public announcement required by paragraph (e)(1) only if (i) three Commissioners determine by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and (ii) the Commission publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by paragraph (e) of this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(4) The public announcement required by this section may consist of the Secretary:
(i) Publicly posting a copy of the document in the reception area of the Postal Regulatory Commission located at 901 New York Avenue NW., Suite 200, Washington, DC 20268-0001;

(ii) Mailing a copy to all persons whose names are on a mailing list maintained for this purpose;

(iii) Operating a recorded telephone announcement, giving the announcement; and

(iv) Any other means which the Secretary believes will serve to further inform any persons who might be interested.

(f) Certification of closed meetings; transcripts, electronic recordings, and minutes. (1) Before any meeting to be closed pursuant to paragraphs (c) (1) through (10) of this section, the General Counsel of the Commission, or in the General Counsel’s absence, the senior advisory staff attorney available, should publicly certify that, in his/her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission. The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, for a period of at least 2 years after such meeting, or until 1 year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(2) The Commission shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (f)(1) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines by a majority vote of all its members (i) contains information which may be withheld under paragraph (c) of this section, and (ii) is not required by the public interest to be made available. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least 2 years after such meeting, or until 1 year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) Requests to open or close Commission meetings. (1)(i) Any person may request in writing that the Commission open to public observation discussion of a matter which it has earlier decided to close.

(ii) Such requests shall be captioned “Request to open ________ (date) Commission meeting on item ________ (number or description).” The request shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

(iii) Ten copies of such requests must be received by the Office of Secretary and Administration no later than three working days after the issuance of the notice of meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the Office of Secretary and Administration 10 working days after the meeting.

(2)(i) Any person whose interests may be directly affected may request in writing that the Commission close to
§ 3001.45 Motions to Stay Automatic Closure or Reopen Automatically Closed Dockets.

(a) Motion to stay automatic closure. (1) Interested persons, including the Postal Service or a Public Representative, may file a motion to stay automatic closure, pursuant to §3001.21, and request that the docket remain open for a specified term not to exceed 12 months. Motions to stay automatic closure must be filed at least 15 days prior to the automatic closure date.

(2) The Commission may order a docket remain open for a specified term not to exceed 12 months and must include the date on which the docket will automatically close.

(b) Motion to reopen automatically closed docket. (1) If, at any time after a docket has been automatically closed, interested persons, including the Postal Service or a Public Representative, may file a motion to reopen an automatically closed docket, pursuant to §3001.21, and must set forth with particularity good cause for reopening the docket.
§ 3001.71 Applicability.

The rules in this subpart govern the procedure with regard to proposals of the Postal Service pursuant to 39 U.S.C. 3661 requesting from the Commission an advisory opinion on changes in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis. The Rules of General Applicability in subpart A of this part are also applicable to proceedings conducted pursuant to this subpart except that § 3001.21 (Motions); § 3001.25 (Discovery—general policy); § 3001.26 (Interrogatories for purposes of discovery); § 3001.27 (Requests for production of documents or things for the purpose of discovery); § 3001.30 (Hearings); § 3001.33 (Depositions) and § 3001.34 (Briefs) do not apply in proceedings conducted under this subpart.

§ 3001.72 Advisory opinion and special studies.

(a) Issuance of opinion. In the absence of a determination of good cause for extension, the Commission shall issue an advisory opinion in proceedings conducted under this subpart not later than 90 days following the filing of the Postal Service’s request for an advisory opinion.

(b) Special studies. Advisory opinions shall address the specific changes proposed by the Postal Service in the nature of postal services. If, in any proceeding, alternatives or related issues of significant importance arise, the Commission may, in its discretion, undertake an evaluation of such alternative or issues by means of special studies, public inquiry proceedings, or other appropriate means.

§ 3001.73 Computation of time.

In computing any period of time prescribed or allowed by this subpart, the term day means a calendar day unless explicitly specified otherwise. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal holiday for the Commission, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor Federal holiday.

§ 3001.74 Service by the Postal Service.

By filing its request electronically with the Commission, the Postal Service is deemed to have effectively served copies of its formal request and its prepared direct evidence upon those persons, including the officer of the Commission, who participated in the pre-filing conference held under § 3001.81. The Postal Service shall be required to serve hard copies of its formal request and prepared direct evidence only upon those persons who have notified the Postal Service, in writing, during the pre-filing conference(s), that they do not have access to the Commission’s Web site.

§ 3001.75 Motions.

(a) In general. (1) An application for an order or ruling not otherwise specifically provided for in this subpart shall be made by motion. A motion shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and served pursuant to the provisions of §§ 3001.9 through 3001.12. A motion to dismiss proceedings or any other motion that involves a final determination of the proceeding, any motion under § 3001.91, and a motion that seeks to extend the deadline for issuance of an advisory opinion shall be addressed to the Commission. After a presiding officer is designated in a proceeding, all other motions in that proceeding, except those filed under part 3007 of this chapter, shall be addressed to the presiding officer.
Within 5 days after a motion is filed, or such other period as the Commission or presiding officer in any proceeding under this subpart may establish, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 through 3001.12. Such an answer shall state with specificity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(b) Motions to be excused from answering discovery requests. (1) A motion to be excused from answering discovery requests shall be filed with the Commission within 3 days of the filing of the interrogatory, request for production, or request for admission to which the motion is directed. If a motion to be excused from answering is made part of an interrogatory, request for production, or request for admission, the part to which objection is made shall be clearly identified. Claims of privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. Claims of undue burden shall state with particularity the effort that would be required to answer or respond to the request, providing estimates of costs and workhours required, to the extent possible.

(2) An answer to a motion to be excused from answering a discovery request shall be filed within 2 days of the filing of the motion. The text of the discovery request and any answer previously provided by the Postal Service shall be included as an attachment to the answer.

(3) Unless the Commission or presiding officer grants the motion to be excused from answering, the Postal Service shall answer the interrogatory, production request, or request for admission. Answers shall be filed in conformance with §§ 3001.9 through 3001.12 within 3 days of the date on which a motion to be excused from answering is denied.

(4) The Commission or presiding officer may impose such terms and conditions as are just and may, for good cause, issue a protective order, including an order limiting or conditioning interrogatories, requests for production, and requests for admission as justice requires to protect the Postal Service from undue annoyance, embarrassment, oppression, or expense.

(c) Motions to strike. Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. A motion to strike testimony or exhibit materials must be submitted in writing at least 3 days before the scheduled appearance of a witness, unless good cause is shown. Responses to motions to strike are due within 2 days.

(d) Motions for leave to file surrebuttal testimony. Motions for leave to file surrebuttal testimony submitted pursuant to § 3001.91 and any answers thereto must be filed on or before the dates provided in the procedural schedule established by the Commission.

§§ 3001.76–3001.79 [Reserved]

§ 3001.80 Procedural schedule.

(a) Notice. Subject to paragraph (b) of this section, the Commission shall include in the notice of proceeding issued under §3001.17 a procedural schedule based upon the pro forma schedule set forth in Appendix A of this part. The procedural schedule shall include:

(1) A deadline for notices of interventions;

(2) The date(s) for the mandatory technical conference between the Postal Service, Commission staff, and interested parties;

(3) The deadline for discovery on the Postal Service’s direct case;

(4) The deadline for responses to participant discovery on the Postal Service’s case;

(5) The deadline for participants to confirm their intent to file a rebuttal case;

(6) The date for filing participant rebuttal testimony, if any;

(7) The dates for filing motions for leave to file surrebuttal testimony and answers thereto;

(8) The date for filing surrebuttal, if any;
§ 3001.81 Pre-filing requirements.

(a) Pre-filing conference required. Prior to the Postal Service filing a request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to the procedures established in this subpart, the Postal Service shall conduct one or more pre-filing conference(s) with interested persons in the proceeding and shall make a good faith effort to address the concerns of such persons.

(b) Purpose. The purpose of a pre-filing conference is to expedite consideration of the Postal Service’s request for the issuance of advisory opinions by informing interested persons of the Postal Service’s proposal; by providing an opportunity for interested persons to give feedback to the Postal Service that can be used by the Postal Service to modify or refine its proposal before it is filed at the Commission; and by identifying relevant issues and information needed to address those issues during proceedings at the Commission.

(c) Rationale for the proposal. The Postal Service shall make available at the pre-filing conference a representative capable of discussing the policy rationale behind the Postal Service’s proposal with interested persons.

(d) Notice. The Postal Service shall file with the Commission a notice of its intent to conduct any pre-filing conference(s) at least 10 days before the first scheduled conference. The notice filed by the Postal Service shall include a schedule of proposed date(s) and location(s) for the conference(s). Upon receipt of such notice, the Commission shall issue a notice of pre-filing conference(s), which shall be published in the FEDERAL REGISTER, and appoint a Public Representative.

§ 3001.82 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§3001.9 through 3001.11 and §3001.83. The request shall be filed not less than 90 days before the proposed effective date of the change in the nature of postal services involved. Within 5 days after the Postal Service has filed a formal request for an advisory opinion in accordance with this section, the Secretary shall lodge a notice thereof with the director of the Office of the Federal Register for publication in the FEDERAL REGISTER.

§ 3001.83 Contents of formal requests.

(a) General requirements. A formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and interested
§ 3001.84 Filing of prepared direct evidence.

As part of a formal request for an advisory opinion under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed change in the nature of postal services is in accordance with and conforms to the policies of title 39, United States Code. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with §3001.31.

§ 3001.85 Mandatory technical conference.

(a) Date. A date for a mandatory technical conference shall be included in the procedural schedule required by §3001.80. The date for this technical conference shall be set based upon the pro forma schedule set forth in Appendix A to this subpart. The conference shall be held at the offices of the Commission.

(b) Witnesses. The Postal Service shall make available at the technical conference each witness whose prepared direct testimony was filed pursuant to §3001.84. If the Postal Service seeks for any witness to be excused on the basis that the witness’s testimony neither presents nor is based upon technical information, it shall make such a motion concurrent with its request.

(c) Purpose. The purpose of the technical conference is to provide an informal, off-the-record opportunity for participants, the officer of the Commission representing the interests of the general public, and Commission staff to clarify technical issues and to identify and request information relevant to an evaluation of the nature of changes to postal services proposed by the Postal Service. The technical conference is not part of the formal record in the proceeding.

(d) Relation to discovery process. Information obtained during the mandatory technical conference may be used to discover additional relevant information by means of the formal discovery process.
§ 3001.86 Discovery—in general.

(a) Purpose. The rules in this subpart allow discovery that is reasonably calculated to lead to admissible evidence during a proceeding. The notice and scheduling order issued pursuant to §3001.80 shall provide that discovery will be scheduled to end at least 3 days prior to the commencement of hearings.

(b) Informal discovery. The discovery procedures in §§3001.86 and §§3001.87 through 3001.89 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, or by other appropriate means. In the interest of reducing motion practice, participants also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) Failure to obey orders or rulings. If a participant fails to obey an order of the Commission or ruling of presiding officer to provide or permit discovery pursuant to this section or §§3001.86 through 3001.89, the Commission or the presiding officer may issue orders or rulings in regard to the failure as are just. These orders or rulings may, among other things:

1. Direct that certain designated facts are established for the purposes of the proceeding;

2. Prohibit a participant from introducing certain designated matters in evidence;

3. Strike certain evidence, requests, pleadings, or parts thereof; or,

4. Such other relief as the Commission deems appropriate.

§ 3001.87 Interrogatories.

(a) Service and contents. In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant in a proceeding may propound to any other participant no more than a total of 25 written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter of the proceeding. An interrogatory with subparts that are logically or factually subsumed within and necessarily related to the primary question will be counted as one interrogatory. The respondent shall answer each interrogatory and furnish such information as is available. The participant propounding the interrogatories shall file them with the Commission in conformance with §§3001.9 through 3001.12. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the period for intervenor discovery on the Postal Service case ends if the interrogatories are filed within 7 days of receipt of the answer to the previous interrogatory. In extraordinary circumstances, follow-up interrogatories may be filed not less than 6 days prior to the filing date for the participant’s rebuttal or surrebuttal testimony.

(b) Answers. (1) Answers to interrogatories shall be prepared so that they can be incorporated into the record as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the participant who propounded the interrogatory, and the number and text of the question.

(2) Each interrogatory shall be answered separately and fully in writing by the individual responsible for the answer, unless it is objected to, in which event the reasons for objection shall be stated in a motion to be excused from answering in the manner prescribed by paragraph (c) of this section.

(3) An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact.

(4) Answers filed by a respondent shall be filed in conformance with §§3001.9 through 3001.12 within 7 days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding...
Postal Regulatory Commission

§ 3001.89 Admissions.

(a) Service and content. In the interest of expedition, any participant may serve upon any other participant a written request for the admission of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The admission shall be for purposes of the pending proceeding only. The participant requesting the admission shall file its request with the Commission in conformance with §§3001.9 through 3001.12.

(b) Answers. (1) A matter for which admission is requested shall be separately set forth in the request and is deemed admitted unless, within 7 days after the request is filed, or within such other period as may be established by the Commission or presiding officer, the respondent files a written answer or motion to be excused from answering pursuant to paragraph (c) of this section. Answers to requests for admission shall be filed with the Commission in conformance with §§3001.9 through 3001.12.

(2) If the answer filed by the respondent does not admit a matter asserted in the participant’s request, it must either specifically deny the matter or explain in detail why it cannot truthfully admit or deny the asserted matter. When good faith requires, the respondent must admit a portion of the asserted matter. Lack of knowledge for failing to admit or deny can be invoked.
only after reasonable inquiry if the information already possessed or reasonably obtainable is insufficient to enable an admission or denial.

(3) Grounds for objection to requests for admission must be stated. Objections cannot be based solely upon the ground that the request presents a genuine issue for trial.

(c) Motion to be excused from answering. A respondent may, in lieu of answering a request for admission, file a motion pursuant to §3001.75(b) to be excused from answering.

§ 3001.90 Rebuttal testimony.

(a) Timing. Any participant may file rebuttal testimony on or before the date established for that purpose by the procedural schedule issued by the Commission pursuant to §3001.80. Hearing on rebuttal testimony shall proceed as set forth in the procedural schedule.

(b) Limitations. The scope of rebuttal testimony shall be limited to material issues relevant to the specific proposal made by the Postal Service. Rebuttal testimony shall not propose, or seek to address, alternatives to the Postal Service’s proposal.

(c) Intent to file rebuttal testimony. If a participant wishes to file rebuttal testimony with the Commission by the date provided in the procedural schedule, it must file a document confirming its intent to file rebuttal testimony on or before the date established by the procedural schedule issued by the Commission pursuant to §3001.80, the Commission may adjust other dates in the procedural schedule as it deems to be necessary and appropriate.

§ 3001.91 Surrebuttal testimony.

(a) Scope. Surrebuttal testimony shall be limited to material issues relevant to the Postal Service’s proposal and to the rebuttal testimony which the surrebuttal testimony seeks to address. Testimony that exceeds the scope of the Postal Service’s proposal or rebuttal testimony shall not be permitted.

(b) Motion for leave to file surrebuttal. A participant who wishes to file surrebuttal testimony must obtain prior approval by filing with the Commission a motion for leave to file surrebuttal pursuant to §3001.75(d) on or before the date provided in the procedural schedule established by the Commission. The motion must summarize the surrebuttal testimony the participant wishes to file and must identify and explain exceptional circumstances that require the filing of such testimony. The moving participant bears the burden of demonstrating exceptional circumstances that warrant a grant of the motion. Answers to such motions may be filed as provided in §3001.75(d).

(c) Deadline for filing surrebuttal authorized by the Commission. In the event the Commission grants the motion for leave to file surrebuttal testimony, the moving participant must file its proposed surrebuttal testimony by the date provided in the procedural schedule established pursuant to §3001.80.

(d) Adjustment of procedural dates. If no participant files a motion for leave to file surrebuttal testimony, or if the Commission denies all such motions as may be filed, the remaining dates in the procedural schedule may be adjusted by the Commission as it deems to be necessary and appropriate.

§ 3001.92 Hearings.

(a) Initiation. Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice and scheduling order pursuant to §3001.80.

(b) Presiding officer. All hearings shall be held before the Commission sitting en banc with a duly designated presiding officer.

(c) Entering of appearances. The Commission or the presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing on whose behalf each such appearance has been made.

(d) Order of procedure. In requests for advisory opinions before the Commission, the Postal Service shall be the first participant to present its case. Unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of all other participants and issue such other procedural orders as may be necessary.
to assure the orderly and expeditious conclusion of the hearing.

(e)(1) **Presentations by participants.** Each participant shall have the right in public hearings to present evidence relevant to the Postal Service’s proposal, cross-examine (limited to testimony adverse to the participant conducting the cross-examination), object, move, and argue. The participant’s presentation shall be in writing and may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) **Written cross-examination.** Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination shall be served in accordance with §§3001.9 through 3001.12 no later than 3 days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. When a participant designates written cross-examination, two hard copies of the documents (unfastened, single-spaced, not hole-punched) to be included shall simultaneously be submitted to the Secretary of the Commission. (For example, “PR-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997”). When a participant designates written cross-examination, two hard copies of the documents (unfastened, single-spaced, not hole-punched) to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will not be admitted into the record.

(3) **Oral cross-examination.** Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination shall be filed 3 or more days before the announced appearance of the witness and shall include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. A participant intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits shall be filed at least 2 days (including 1 working day) before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the participant. If a participant has obtained permission to receive service of documents in hardcopy form, hardcopy notices of intent to conduct oral cross-examination of witnesses for that participant shall be delivered to counsel for that participant and served 3 or more working days before the announced appearance of the witness. Cross-examination exhibits shall be delivered to counsel for the witness at least 2 days (including 1 working day) before the scheduled appearance of the witness.

(f) **Limitations on presentation of the evidence.** The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately:

1. The number of witnesses to be heard upon any issue,
2. The examination by any participant to specific issues, and
3. The cross-examination of a witness to that required for a full and true disclosure of the facts necessary for exploration of the Postal Service’s proposal, disposition of the proceeding, and the avoidance of irrelevant, immaterial, or unduly repetitious testimony.
§ 3001.93 Initial and reply briefs.

(a) When filed. At the close of the taking of testimony in any proceeding, participants may file initial and reply briefs. The dates for filing initial and reply briefs shall be established in the procedural schedule issued pursuant to § 3001.80. Such dates may be modified by subsequent order issued by the Commission or the presiding officer.

(b) Contents. Each brief filed with the Commission shall be as concise as possible and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise, and definitive statement of the position of the filing participant as to the Postal Service request;

(4) A discussion of the evidence, reasons, and authorities relied upon with precise references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) Length. Initial briefs filed by all participants other than the Postal Service shall not exceed 14,000 words. Initial briefs filed by the Postal Service shall not exceed 21,000 words. Reply briefs filed by all participants other than the Postal Service shall not exceed 7,000 words. Reply briefs filed by the Postal Service shall not exceed 10,500 words. All participants shall attest to the number of words contained in their brief. Tables of cases, tables of citations, and appendices shall not be considered as part of the word count.

(d) Include by reference. Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading, or document.

(e) Excerpts from the record. Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(f) Filing and service. Briefs shall be filed in the form and manner and served as required by §§ 3001.9 through 3001.12.

(g) Statements of Position. As an alternative to filing a formal brief, a participant may file a Statement of Position. To the extent practicable, the contents of each Statement of Position should include a clear, concise, and definitive statement of the position of the filing participant as to the Postal Service request, as well as any points or factors in the existing record that support the participant’s position. Statements of Position shall be limited to the existing record and shall not include any new evidentiary material.
### Postal Regulatory Commission § 3002.2

#### APPENDIX A TO SUBPART D OF PART 3001—PRO FORMA N-CASE PROCEDURAL SCHEDULE

<table>
<thead>
<tr>
<th>Line</th>
<th>Action</th>
<th>Day number</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Pre-Filing Consultations&lt;sup&gt;1&lt;/sup&gt;</td>
<td>n/a.</td>
</tr>
<tr>
<td>2</td>
<td>Commission Order&lt;sup&gt;2&lt;/sup&gt;</td>
<td>n/a.</td>
</tr>
<tr>
<td>3</td>
<td>Filing of Postal Service Request</td>
<td>0.</td>
</tr>
<tr>
<td>4</td>
<td>Commission Notice and Order&lt;sup&gt;3&lt;/sup&gt;</td>
<td>1–3.</td>
</tr>
<tr>
<td>5</td>
<td>Technical Conference</td>
<td>10.</td>
</tr>
<tr>
<td>6</td>
<td>Participant Discovery on Postal Service Case Ends.</td>
<td>28.</td>
</tr>
<tr>
<td>7</td>
<td>Responses to Participant Discovery on Postal Service Case.</td>
<td>35.</td>
</tr>
<tr>
<td>8</td>
<td>Participants Confirm Intent to File a Rebuttal Case.</td>
<td>37.&lt;sup&gt;4&lt;/sup&gt;</td>
</tr>
<tr>
<td>9</td>
<td>Filing of Rebuttal Cases (if submitted)</td>
<td>42.</td>
</tr>
<tr>
<td>10</td>
<td>Deadline for Motions to Leave to File Surrebuttal.</td>
<td>44.&lt;sup&gt;5&lt;/sup&gt;</td>
</tr>
<tr>
<td>11</td>
<td>Deadline for Answers to Motions for Surrebuttal.</td>
<td>46.</td>
</tr>
<tr>
<td>12</td>
<td>Filing of Surrebuttal Cases (if authorized)</td>
<td>49.&lt;sup&gt;6&lt;/sup&gt;</td>
</tr>
<tr>
<td>13</td>
<td>Hearings.</td>
<td>49–51.</td>
</tr>
<tr>
<td>14</td>
<td>Initial Briefs</td>
<td>(7 days after conclusion of hearings).</td>
</tr>
<tr>
<td>15</td>
<td>Reply Briefs</td>
<td>(7 days after filing of initial briefs).</td>
</tr>
<tr>
<td>16</td>
<td>Target Issuance Date of Advisory Opinion</td>
<td>90.</td>
</tr>
</tbody>
</table>

<sup>1</sup>The Postal Service would initiate pre-filing consultations and would file a notice with the Commission of such consultations prior to their commencement.

<sup>2</sup>This order would appoint a Public Representative.

<sup>3</sup>This notice and order would announce the Postal Service request, set a deadline for interventions, set a date for a technical conference, and establish a procedural schedule.

<sup>4</sup>If no participant elects to file a rebuttal case, hearings begin on Day 42.

<sup>5</sup>If no surrebuttal cases are requested, hearings begin on Day 49.

<sup>6</sup>If one or more surrebuttal cases are requested (whether or not authorized by the Commission), hearings begin on Day 54.

## Subparts E-L [Reserved]

### PART 3002—ORGANIZATION

Sec.
3002.1 Purpose.
3002.2 Statutory functions.
3002.3 Official seal.
3002.4–3002.9 [Reserved]
3002.10 The Commission and its offices.
3002.11 Office of Secretary and Administration.
3002.12 Office of Accountability and Compliance.
3002.13 Office of the General Counsel.
3002.14 The Public Representative.
3002.15 Office of Public Affairs and Government Relations.
3002.16 Office of Inspector General.


**SOURCE:** 78 FR 27045, May 9, 2013, unless otherwise noted.

### § 3002.1 Purpose.

This part is published in compliance with 5 U.S.C. 552(a)(1) and constitutes a general description of the Postal Regulatory Commission.

### § 3002.2 Statutory functions.

(a) **Areas of jurisdiction.** The Commission develops and maintains regulations for a modern system of rate regulation, including maintaining the market dominant and competitive product lists in the Mail Classification Schedule and ensuring that rates meet the requirements of 39 U.S.C. 3622 and 3633. The Commission consults with the Postal Service on delivery service standards and performance measures and with the Department of State on international postal policies. The Commission adjudicates rate and service complaints filed pursuant to 39 U.S.C. 3662 and offers advisory opinions on proposed changes to postal services pursuant to 39 U.S.C. 3661. Pursuant to 39 U.S.C. 3651, the Commission provides an annual report to the President and Congress, and pursuant to 39 U.S.C. 3653, the Commission issues an annual report as required by 5 U.S.C. 552(a)(1).
§ 3002.3 Compliance determination to assess whether the Postal Service's rates, fees, and services comport with the requirements of title 39. Pursuant to 39 U.S.C. 404(d)(5), the Commission acts on postal patrons' appeals concerning Postal Service decisions to close or consolidate post offices.

(b) Public participation. Interested persons may participate in formal proceedings described in §§ 3001.17 and 3001.18 of this chapter as formal intervenors (§ 3001.20 of this chapter), limited participators (§ 3001.20a of this chapter), or commenters (§ 3001.20b of this chapter). Pursuant to 39 U.S.C. 3662(a) and part 3030 of this chapter, any interested person may lodge rate and service complaints with the Commission. Persons served by a post office that the Postal Service decides to close or consolidate may appeal such determinations in accordance with 39 U.S.C. 404(d) and part 3025 of this chapter.

§ 3002.3 Official seal.

(a) Authority. The Seal described in this section is hereby established as the official seal of the Postal Regulatory Commission.

(b) Description. (1) On a gold color (yellow) pentagon device, the base-line formed as a “V,” edged with a black border, a black triangle point down and between the inscription at top “Postal Regulatory Commission” in white letters and in base at the point of the triangle three Celeste mullets two, two and one, the American Eagle with branch and arrows derived from the Great Seal of the United States charged on the breast with the Commission’s earlier round seal inscribed “Postal Regulatory Commission” and the date “2006,” all in gold (yellow).

(2) The official seal of the Postal Regulatory Commission is modified when reproduced in black and white and when embossed, as it appears in this section.

(c) Custody and authorization to affix. (1) The seal is the official emblem of the Postal Regulatory Commission and its use is permitted only as provided in this part.
Postal Regulatory Commission

(2) The seal shall be kept in the custody of the Secretary and is to be used to authenticate records of the Postal Regulatory Commission and for other official purposes.

(3) Use by any person or organization outside of the Commission may be made only with the Commission’s prior written approval. Such request must be made in writing to the Secretary.

§§ 3002.4–3002.9 [Reserved]

§ 3002.10 The Commission and its offices.

(a) The Commissioners. The Postal Regulatory Commission is an independent establishment of the executive branch of the federal government created by the Postal Accountability and Enhancement Act (39 U.S.C. 501).

(b) The Chairman and Vice-Chairman. The Chairman has the administrative responsibility for assigning the business of the Commission to the other Commissioners and to the offices and employees of the Commission. He/She has the administrative duty to preside at the meetings and sessions of the Commission and to represent the Commission in matters specified by statute or executive order or as the Commission directs. The Commission shall elect annually a member of the Commission to serve as Vice-Chairman of the Commission for a term of one year or until a successor is elected. In case of a vacancy in the Office of the Chairman of the Commission, or in the absence or inability of the Chairman to serve, the Vice-Chairman, unless otherwise directed by the Chairman, shall have the administrative responsibilities and duties of the Chairman during the period of vacancy, absence, or inability.

(c) The Commission’s offices are located at 901 New York Avenue NW., Suite 200, Washington, DC 20268-0001. On these premises, the Commission maintains offices for Commissioners and staff; a docket room where documents may be filed with the Commission pursuant to § 3001.9 of this chapter and examined by interested persons, a public reading room where the Commission’s public records are available for inspection and copying; and a hearing room where formal evidentiary proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the Internet, on its Web site at http://www.prc.gov.

§ 3002.11 Office of Secretary and Administration.

(a) The incumbent head of the office utilizes the title of “Secretary”.

(b) The Office of Secretary and Administration is responsible for the Commission’s budget and accounting. In this role, the Office of Secretary and Administration develops, implements, and administers the Commission’s financial management system and accounting activities including those relating to the budget and the payroll; is responsible for the Commission’s strategic planning; and serves as the point of contact for all Commission contracts and audits.

(c) The Office of Secretary and Administration is responsible for the Commission’s human resources and personnel. In this role, the Office of Secretary and Administration is responsible for Commission employee hiring, training, travel, personnel policy and compliance, and human capital planning. In addition, the Office of Secretary and Administration serves as an Equal Employment Opportunity Officer for the Commission and manages the Commission’s continuity of operations planning.

(d) The Office of Secretary and Administration manages the Commission’s records, including the Commission’s seal, administrative policies, orders, reports, and official correspondence. In this role, the Office of Secretary and Administration manages the Commission’s dockets and docket room, Web site, reference materials, inter-agency reporting, and Freedom of Information Act responsibilities. All orders and other actions of the Commission shall be authenticated or signed by the Secretary or any such other person as may be authorized by the Commission.

(e) The Office of Secretary and Administration is responsible for the Commission’s facilities and infrastructure. In this role, the Office of Secretary and Administration manages facility security; provides information
§ 3002.12 Office of Accountability and Compliance.

(a) The Office of Accountability and Compliance is responsible for technical analysis and the formulation of policy recommendations for the Commission in both domestic and international matters, including those governed by the Universal Postal Union.

(b) The Office of Accountability and Compliance provides the analytic support to the Commission for the review of rate changes, negotiated service agreements, classification of products, the Annual Compliance Determination, the Annual Report, changes to postal services, post office closings and other issues which come before the Commission. The functional areas of expertise within this office are:

(1) The economic analysis of the market for postal services including the alternative sources for such services and the users of the service;

(2) The analysis of the operational characteristics of the postal system and its interface with various segments of the economy; and

(3) The analysis of the costs of operating the Postal Service and how such costs are influenced by operational characteristics, changes in volume, and changes in other relevant factors.

(c) These functional activities are combined in the evaluation of the Postal Service’s proposed rates, proposed service changes, proposed changes to the Mail Classification Schedule, and product list designations, as well as formal complaints, the Annual Compliance Determination, and all other proceedings, reports, and filings before the Commission requiring such analysis.

(d) The Office of Accountability and Compliance also collects, analyzes, and periodically summarizes financial and various other statistical information for use in its ongoing activities and for the development of future methods, techniques, and systems of analysis and reporting.

§ 3002.13 Office of the General Counsel.

(a) The General Counsel directs and coordinates the functions of the Office of the General Counsel. The General Counsel does not appear as an attorney in any proceeding before the Commission and takes no part in the preparation of evidence or argument presented in such hearings.

(b) The Office of the General Counsel provides legal assistance on matters involving the Commission’s responsibilities; defends Commission decisions before the courts; and advises the Commission on the legal aspects of proposed legislation, rulemaking, and policies on procurement, contracting, personnel matters, ethics, and other internal legal matters.

§ 3002.14 The Public Representative.

(a) Pursuant to 39 U.S.C. 505, the Commission appoints a staff member, on a case-by-case basis, to serve as a representative of the general public’s interests in public proceedings before the Commission. This appointee is called the Public Representative.

(b) Individuals appointed to represent the general public are subject to the same ex parte prohibitions as apply to all other interested persons in the cases to which they are assigned to the role of the Public Representative.

§ 3002.15 Office of Public Affairs and Government Relations.

(a) The Office of Public Affairs and Government Relations facilitates prompt and responsive communications for the Commission with the public, members of Congress, the Postal Service, state and local governments, and the media.

(b) The Office of Public Affairs and Government Relations has three primary areas of responsibility: Government Relations, Consumer Affairs, and Communications.

(1) Government Relations. The Office of Public Affairs and Government Relations is the principal liaison between the Commission and Members of Congress. It develops and maintains effective working relationships with Congressional staff; monitors legislative activity; and advises the Commission and its staff on legislative actions and
policies related to the Commission and its mission. The Office of Public Affairs and Government Relations works in conjunction with all Commission offices to ensure that lawmakers are informed of regulatory decisions and policies and that the Commission is responsive to Congressional inquiries for technical information. The Office of Public Affairs and Government Relations also prepares Commissioners and Commission staff when called upon to provide Congressional testimony.

(2) Consumer Affairs. As the principal source of outreach and education to the public, the Office of Public Affairs and Government Relations provides information to postal consumers and assists in the resolution of rate and service inquiries from members of the public pursuant to part 3031 of this chapter. It supports the impartial resolution of those inquiries through use of the Postal Service’s Office of Consumer Advocate and reports the results to the Commission. The Office of Public Affairs and Government Relations also utilizes procedures available under the Commission’s rules and applicable law to assist relevant stakeholders in appeals of Postal Service decisions to close or consolidate individual post offices; maintains a record of service-related inquiries; and posts calendar updates and other public information on the Commission’s Web site.

(3) Communication. The Office of Public Affairs and Government Relations also develops public outreach strategies for the Commission, responds to media inquiries, and disseminates information concerning Commission decisions and activities to the public.

§ 3002.16 Office of Inspector General.
(a) The Office of Inspector General has the duty and responsibility to:
(1) Provide policy direction and conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Commission;
(2) Review existing and proposed legislation and regulations relating to programs and operations of the Commission;
(3) Make recommendations in semiannual reports concerning the impact of such legislation or regulations on the economy and efficiency of programs and operations administered or financed by the Commission or on the prevention and detection of fraud and abuse in the Commission’s programs and operations;
(4) Recommend policies and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of preventing and detecting fraud and abuse in its programs and operations;
(5) Recommend policies and coordinate communications between the Commission and other federal agencies, state and local government agencies, and nongovernment entities for:
   (i) All matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; or
   (ii) The identification and prosecution of participants in such fraud and abuse;
(6) Keep the Commission and Congress fully and currently informed through reports concerning fraud and other serious problems, abuses, and deficiencies relating to programs and operations administered or financed by the Commission; recommend corrective action concerning such problems, abuses, and deficiencies; and report on the progress made in implementing such corrective action.
(b) [Reserved]
§ 3003.1 Purpose and scope.

This part implements the Privacy Act of 1974 (5 U.S.C. 552a) by establishing Commission policies and procedures that permit individuals to obtain access to and request amendment of information about themselves that is maintained in systems of records. This part does not expand or restrict any rights granted under the Privacy Act of 1974.

§ 3003.2 Definitions.

For purposes of this part:
(a) Commission means the Postal Regulatory Commission.
(b) Individual, record, and system of records have the meanings specified in 5 U.S.C. 552a(a).
(c) Day means a calendar day and does not include Saturdays, Sundays, and legal holidays.


§ 3003.3 Procedures for requesting inspection, copying, or correction.

(a) An individual who—
(1) Wishes to know whether a Commission system of records contains a record about him or her,
(2) Seeks access to a Commission record about him or her that is maintained in a system of records (including the accounting of disclosures), or
(3) Seeks to amend a record about him or her that is maintained in a system of records, may file a written request with the chief administrative officer of the Commission at the Commission’s current address (901 New York Avenue NW., Suite 200, Washington, DC 20268–0001). The request should state on the outside of the envelope and in the request that it is a Privacy Act request.

(b) A request for amendment must describe the information sought to be amended and the specific reasons for the amendment.

(c) A requester—
(1) May request an appointment to inspect records at the Commission’s offices between the hours of 8 a.m. and 4:30 p.m. on any day;
(2) Must present suitable identification, such as a driver’s license, employee identification card, or Medicare card;
(3) If accompanied by another individual, must sign a statement, if requested by the chief administrative officer, authorizing discussion of his or her record in the presence of that individual;
(4) Who files a request by mail must include his or her date of birth, dates of employment at the Commission (if applicable), and suitable proof of identity, such as a facsimile of a driver’s license, employee identification card, or Medicare card; and
(5) Must, if requested by the chief administrative officer, provide additional proof of identification.

§ 3003.4 Response to a request.

(a) In the case of a request for notice of the existence of a record, the chief administrative officer shall respond within 10 days of receipt of a request and shall inform the individual whether a system of records maintained by the Commission contains such a record.
(b) In the case of a request for access to a record or for a copy of a record, the chief administrative officer shall acknowledge the request within 10 days and shall promptly thereafter—
(1) Fulfill the request by mail or arrange for an inspection by the requester in the Commission’s offices; or
(2) If the request is denied, notify the requester of the denial, the reasons for the denial, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.
(c) In the case of a request for amendment, the chief administrative officer shall:
(1) Acknowledge the request in writing within 10 days;
(2) Promptly review the record; and
(3)(i) Make any requested amendment of a record found to be not accurate, relevant, timely, or complete; notify the requester of the change and provide a copy of the corrected record; and notify any previous recipient of the record (excluding Commission staff who obtained the record in the performance of their duties and recipients under the Freedom of Information Act) of any change; or
(i) Inform the requester of a refusal to amend the record, the reasons for the refusal, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

§ 3003.5 Appeals of denials of access or amendment.

(a) If a request for access to or amendment of a record is denied, the requester may file a written appeal with the Chairman of the Commission. The Chairman will decide each appeal within 30 days of receipt unless the Chairman has, for good cause, extended the period for another 30 days.

(b) If an appeal is denied, the requester will be notified of the decision, the reasons for the denial, the right to file a concise statement of disagreement, the procedures for filing a statement of disagreement, the subsequent uses of a statement of disagreement, and of the right to seek judicial review in accordance with subsection (g) of the Privacy Act.

§ 3003.6 Fees.

The first copy of any record furnished under the Privacy Act of 1974 will be provided without charge. Additional copies will be charged at the cost of reproduction.

§ 3003.7 Exemptions.

The Postal Regulatory Commission has not established any exempt system of records.


PART 3004—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

Sec. 3004.1 Purpose. § 3004.2
3004.2 Presumption of openness.
3004.3 How to make a request.
3004.10 Public records.
3004.11 Use of exemptions.
3004.12 Reading room.
3004.13 Notice and publication of public information.
3004.20 Commission procedure when served a subpoena.
3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission’s procedures for according appropriate confidentiality.

3004.40 Hard copy requests for records and for expedited processing.
3004.41 Electronic requests for records and for expedited processing.
3004.42 Tracking of requests.
3004.43 Response to requests.
3004.44 Appeals.
3004.45 Extension of response time limit.
3004.50 Fees—definitions as used in this part.
3004.51 Fees—request category.
3004.52 Fees—general provisions.
3004.53 Fee schedule.
3004.54 Procedure for assessing and collecting fees.
3004.60 Chief Freedom of Information Act Officer.
3004.61 Freedom of Information Act Public Liaison.
3004.70 Third-party submission of non-public materials.


SOURCE: 74 FR 57256, Nov. 5, 2009, unless otherwise noted.

§ 3004.1 Purpose.

(a) This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, and describes the procedures by which a person may request copies of Commission records pursuant to FOIA. It contains the rules that the Commission follows in handling requests, such as the amount of time it has to make a determination regarding release of records and what fees to charge. It also describes how a submitter of trade secrets or confidential business information can identify information that the submitter believes to be exempt from disclosure under 5 U.S.C. 552(b).

(b) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in 39 CFR part 3002, and on the Commission’s Web site at http://www.prc.gov. The Commission’s guide to FOIA, all required FOIA indexes, and recent annual FOIA reports are also available on the Web site.

(c) Section 3004.10 identifies records that the Commission has determined to be public.

§ 3004.2 Presumption of openness.

(a) The Commission shall be proactive and timely in identifying and posting public records and other frequently requested records to its Web site.
(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness. The Commission will only withhold information if it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption, as enumerated in §3004.11, or disclosure is otherwise prohibited by law.

[82 FR 12507, Mar. 6, 2017]

§ 3004.3 How to make a request.

(a) To request Commission records, please contact the Secretary of the Commission via letter or use the online request form provided on the Commission’s Web site at http://www.prc.gov/foia/onlinerequest.

(b) Requests must describe the records sought in sufficient detail to enable the Commission to locate them with a reasonable amount of effort. To the extent possible, the requests should provide any specific information that might assist the Commission in responding to the request.

(c) Requesters must provide contact information to assist the Commission in communicating with them concerning requests and responding to the request.

[82 FR 12507, Mar. 6, 2017]

§ 3004.10 Public records.

(a) Except as provided in §3004.11 and in §3007.10 of this chapter, the public records of the Commission include all submissions and filings as follows:

(1) Requests of the Postal Service for decisions or advisory opinions, notices, public reports, complaints (both formal and informal), and other papers seeking Commission action;

(2) Financial, statistical and other reports to the Commission, and other filings and submittals to the Commission in compliance with the requirements of any statute, executive order, or Commission rule, regulation or order;

(3) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts and briefs in any matter or proceeding;

(4) Exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of any of the foregoing; and

(5) Commission correspondence related to the foregoing.

(b) All other parts of the formal record in any matter or proceeding before the Commission and correspondence related thereto, including:

(1) Notices or Commission orders initiating the matter or proceeding;

(2) Designation of the presiding officer;

(3) Transcript of hearings;

(4) Offers of proof, motions and stipulations made during a hearing;

(5) Exhibits received in evidence during a hearing;

(6) Certifications to the Commission; and

(7) Anything else upon which action of a presiding officer or the Commission may be based.

(c) Proposed testimony or exhibits filed with the Commission but not yet offered or received in evidence.

(d) Presiding officer actions and all presiding officer correspondence and memoranda to or from anyone other than staff assigned to provide assistance to the presiding officer.

(e) Commission decisions, reports, opinions, orders, notices, findings, determinations and other actions in any matter or proceeding and all Commission minutes which have been approved.

(f) Commission correspondence relating to any data or information request directed to the Postal Service.

(g) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department, or agency.

(h) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress, but only if and after authorized for release or publication by that office, the Commission, or the Member of Congress involved.

(i) Commission correspondence on the interpretation or applicability of
Postal Regulatory Commission

any statute, rule, regulation, decision, advisory opinion, or public report issued by the Commission and letters of opinion on that subject signed by the General Counsel and sent to persons other than the Commission, a Commissioner, or any of the staff.

(j) Copies of all filings by the Commission, and all orders, judgments, decrees, and mandates directed to the Commission in court proceedings involving Commission action and all correspondence with the courts, or clerks of court.

(k) The Commission’s administrative and operating manuals as issued.

§ 3004.11 Use of exemptions.

(a) Under FOIA, there are nine exemptions which may be used to protect information from disclosure. The Commission has paraphrased the exemptions in paragraphs (b) through (j) of this section. These paraphrases are not intended to be interpretations of the exemptions.

(b) National security information concerning national defense or foreign policy, provided that such information has been properly classified, in accordance with an Executive Order.

(c) Information related solely to the internal personnel rules and practices of an agency.

(d) Information specifically exempted from disclosure by statute, for example, 39 U.S.C. 410(c):

(1) The name or address, past or present, of any postal patron;

(2) 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;

(3) Information prepared for use in connection with the negotiation of collective bargaining agreements under 39 U.S.C. chapter 12, or minutes of, or notes kept during negotiating sessions conducted under such chapter;

(4) Information prepared for use in connection with proceedings under 39 U.S.C. chapter 36; and

(5) The reports and memoranda of consultants or independent contractors except to the extent that they would be required to be disclosed if prepared within the agency.

(e) Trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential.

(f) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency. This exemption shall not apply to records created 25 years or more before the date on which the records were requested.

(g) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(h) Records or information compiled for law enforcement purposes, the release of which:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source and investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(5) Could reasonably be expected to endanger the life or physical safety of any individual.

(i) Information contained in or related to examination, operating, or condition reports, prepared by, or on behalf of, or for the use of an agency responsible for regulating or supervising financial institutions.

(j) Geological and geophysical information and data, including maps, concerning wells.

(k) It is Commission policy to make records publicly available upon request, unless the record qualifies for exemption under one or more of the nine exemptions. It is Commission policy to make discretionary releases; however, a discretionary release is not normally appropriate for records exempt under exemptions identified in paragraphs (b), (d), (e), (g), (h)(3) and (h)(5) of this section. The remainder of the exemptions are discretionary.
§ 3004.12 Reading room.
(a) The Commission maintains a public reading room at its offices (901 New York Avenue, NW, Suite 200, Washington, DC 20268–0001) and an electronic reading room at http://www.prc.gov. The public reading room at its offices is open during business hours.
(b) The records available for public inspection and printing include, for example, decisions; reports; opinions; orders; notices; findings; determinations; statements of policy; copies of selected records released under FOIA; indexes required to be maintained under FOIA; and records described in §3004.10 relating to any matter or proceeding before the Commission.
(c) The Commission shall make available, in an electronic and physical reading room, records previously released under FOIA and which the Commission determines are or are likely to become of significant public interest, including agency records that have been requested three or more times.

§ 3004.13 Notice and publication of public information.
(a) Decisions, advisory opinions, orders, public reports, and agency records that have been requested three or more times will be made available to the public by posting on the Commission’s Web site at http://www.prc.gov.
(b) Descriptions of the Commission’s organization, its methods of operation, statements of policy and interpretations, and procedural and substantive rules, are published in the FEDERAL REGISTER publication system, and are available on the Commission’s Web site, http://www.prc.gov.

§ 3004.20 Commission procedure when served a subpoena.
If an officer or employee of the Commission is served with a subpoena duces tecum, material that is not part of the public files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

§ 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission’s procedures for according appropriate confidentiality.
(a) Coverage. FOIA applies to all Commission records and provides the public with access to government records.
(b) Requesting records subject to the Privacy Act. A request by an individual for his or her own records contained in a system of records is governed by the Privacy Act. Release will first be considered under the Privacy Act pursuant to part 3003 of this chapter. However, if there is any record that the Commission need not release under the Privacy Act, the Commission will also consider the request under FOIA, and will release the record if FOIA requires it.
(c) Requesting another individual’s record. Request for records of individuals which may not be granted under the Privacy Act shall be considered under FOIA.
552a(b), the Commission will rely on the Privacy Act to govern the disclosure.

(2) In some circumstances, the Privacy Act may prohibit the Commission’s ability to release records which may be released under FOIA.

d) Requesting a Postal Service record. The Commission maintains custody of records that are both Commission and Postal Service records.

(1) A request made pursuant to FOIA for records designated as non-public by the Postal Service shall be referred to the Postal Service; and

(2) A request made pursuant to part 3007 of this chapter for records designated as non-public by the Postal Service shall be considered under the applicable standards set forth in that part.

e) Requesting a third-party record submitted under seal. The Commission maintains records of a confidential nature submitted by third parties as non-public materials.

(1) A request made pursuant to FOIA for records designated as non-public by a third party shall be considered in light of all applicable exemptions; and

(2) A request made pursuant to part 3007 of this chapter for records designated as non-public by a third party shall be considered under the applicable standards set forth in that part.

§ 3004.40 Hard copy requests for records and for expedited processing.

(a) A hard copy request for records must:

(1) Be in writing;

(2) Include the name and address of the requester;

(3) Reasonably describe the records sought;

(4) Include a daytime telephone number;

(5) Be clearly identified as “Freedom of Information Act Request” both in the text of the request and on the envelope;

(6) Identify the request category under §3004.51; and

(7) Be submitted to the Secretary of the Commission at the offices of the Commission (901 New York Avenue, NW., Suite 200, Washington, DC 20268–0001).

(b) Expedited processing. A person demonstrating a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v) may request expedited processing at the time of an initial request (or appeal) or at a later time. In addition to the requirements in paragraph (a) of this section, an expedited request for records must:

(1) Demonstrate a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v);

(2) Be clearly identified as “Expedited Freedom of Information Act Request” both in the text of the request and on the envelope; and

(3) Certify the statement of compelling need to be true and correct to the best of the requester’s knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

§ 3004.41 Electronic requests for records and for expedited processing.

(a) An electronic request for records must:

(1) Be submitted using the Commission’s online FOIA request form at http://www.prc.gov;

(2) Reasonably describe the records sought;

(3) Include a daytime telephone number and valid e-mail address; and

(4) Identify the request category under §3004.51.

(b) Expedited processing. A person satisfying the requirements of paragraph (a) of this section may request expedited processing at the time of the initial request or at a later time by:

(1) Demonstrating a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v);

(2) Clearly identifying the request as an “Expedited Freedom of Information Act Request” in the body of the submission; and

(3) Certifying the statement of compelling need to be true and correct to the best of the requester’s knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

§ 3004.42 Tracking of requests.

(a) Upon receipt of a request, the Commission shall assign a unique tracking number to the request and within 3 days (excluding Saturdays, Sundays and legal holidays) provide
§ 3004.43 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of a request for a Commission record, the Secretary or Assistant Secretary will notify the requester of its determination to grant or deny the request and the right to seek assistance from the Commission's FOIA Public Liaison. In the case of an adverse determination, the Commission will notify the requester of their right to appeal and right to seek dispute resolution services from the Commission's FOIA Public Liaison or the Office of Government Information Services.

(b) Granting request. If granting the request, the Secretary, or Assistant Secretary will notify the requester of any fees that must be paid.

(c) Partial granting of request. If the Commission is unable to grant the request in its entirety, any reasonably segregable portion of the request shall be provided, with deleted portions treated as specified in paragraph (d) of this section, and the Secretary or Assistant Secretary will notify the requester of any fees that must be paid.

(d) Denying request. If denying the request, in whole or in part, the Secretary or Assistant Secretary will inform the requester in writing of:

(1) The reason for the denial, including each exemption used as a basis for withholding of the records sought and, if applicable, the harm to an interest protected by a statutory exemption;

(2) An estimate of the volume of requested matter that was denied;

(i) If disclosure of a record has been partially denied, the amount of information deleted will be indicated on the released portion if technically feasible; and

(ii) If revealing the amount or location of a denied record will harm an interest protected by an exemption, then the description of the amount or location of deleted information shall be withheld.

(3) The right to appeal the denial to the Commission within 1 year.

(e) Expedited processing. Within 10 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for expedited processing, the Secretary or Assistant Secretary will:

(1) Grant the request for expedited processing and process the request for records as soon as practicable; or

(2) Deny the request for expedited processing by informing the individual of:

(i) The denial in writing;

(ii) The right to appeal the denial to the Commission in writing; and

(iii) The procedures for appealing the denial.

(3) Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing.

(f) Where a compelling need is not shown in an expedited request as specified in §3004.41(b)(1), the Commission may grant requests for expedited processing at its discretion.

[74 FR 57256, Nov. 5, 2009, as amended at 82 FR 12508, Mar. 6, 2017]

§ 3004.44 Appeals.

(a) The Commission may review any decision of the Secretary or Assistant Secretary on its own initiative.

(b) A requester who seeks to appeal any adverse determination must file an appeal with the Commission within 1 year of the date of the Commission's response.

(c)(1) The Commission will grant or deny the appeal in writing within 20 days (excluding Saturdays, Sundays, and legal holidays) of the date the appeal is received. If on appeal the adverse determination is upheld, the Commission will notify the requester of the availability of dispute resolution services from the Office of Government Information Services as a voluntary, non-exclusive alternative to litigation and the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c).
Postal Regulatory Commission

§ 3004.50 Fees—definitions as used in this part.

Commercial use means a request from or on behalf of a person seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

Direct costs means the expenditures the Commission incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee(s) performing work (the basic pay rate of such employee(s) plus 16 percent to cover benefits).

Duplication means copying the documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

Educational institution means a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

Noncommercial scientific institution means an institution, not operated on a commercial basis (as referenced above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

Representative of the news media means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of "news") who make their products available for purchase or by subscription or by free distribution to the general public. These examples are not all inclusive and may include alternate media to disseminate news. A freelance journalist shall be regarded as working for a news media entity if the journalist can demonstrate a solid basis for expecting publication through that entity (e.g., by a publication contract or prior publication record), whether or not the journalist is actually employed by the entity.

Review means examining documents located in response to a request to determine whether any portion is exempt from disclosure, and processing or preparing documents for release, but not...
§ 3004.51 Fees—request category.

(a) The level of fee charged depends on the request category.

(1) Commercial use. A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(2) Educational and noncommercial scientific institutions. A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(3) News media. A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(4) Other requesters. A request from any other person will be charged the full direct cost of searching for, reviewing, and duplicating records responsive to the request, except that the first 100 pages of duplication and the first 2 hours of search/review will be furnished without charge.

(b) Privacy Act. A request by an individual for his or her own records in a system of records will be charged fees as provided under the Commission’s Privacy Act regulations in part 3003 of this chapter.

§ 3004.52 Fees—general provisions.

(a) The Commission may charge search fees even if no records are found or if the records found are exempt from disclosure.

(b) Except in the case of commercial use requesters, the first 100 pages of duplication and the first 2 hours of search time are provided without charge.

(1) A page for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy.

(2) Search time for these purposes refers to manual searching; if the search is performed by computer, the 2 hours provided without charge will be equal to 2 hours’ salary of the person performing the search.

(c) No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for 2 hours’ search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(d) Records will be provided without charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§ 3004.43 and 3004.44, unless:

(1) The Commission extends the time limit for its response due to unusual circumstances, pursuant to §3004.45(a), and the Commission completes its response within the extension of time provided under that section; or

(2) The Commission extends the time limit for its response due to unusual circumstances and more than 5,000 pages are necessary to respond to the request and the Commission has discussed with the requester how they could effectively limit the scope of the request or made at least three good faith attempts to do so; or

(3) A court has determined that exceptional circumstances exist and excused the Commission from responding by court order.

(f) The Commission may, however, charge fees for review, and in some
Postal Regulatory Commission

§ 3004.70

Third-party submission of non-public materials.

(a) Overlap with treatment of non-public materials. Any person who submits materials to the Commission (submitter) that the submitter reasonably believes to be exempt from public disclosure may submit materials under seal and lodge an application for non-public treatment as described in § 3007.10 of this chapter.

(b) Notice of request. Except as provided in § 3004.30(d), if a FOIA request seeks materials designated as non-public materials, the Commission will provide the submitter with notice of the request. The Commission may require the requester to pay an advance payment of the estimated fee together with either the past due fees (plus applicable interest) or proof that the past fees were paid.

(2) When advance payment is required, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) (§ 3004.43) begin only after such payment has been received.

(b) Interest at the rate published by the Secretary of the Treasury as prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

§ 3004.61 Freedom of Information Act Public Liaison.

The Commission designates the Director of the Office of Public Affairs and Government Relations or his or her designee as the FOIA Public Liaison who shall assist in the resolution of any dispute between a requester and the Commission. The FOIA Public Liaison may be contacted via e-mail at PRC-PAGR@prc.gov or telephone at 202-789-6800.

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§ 3004.60 Chief Freedom of Information Act Officer.

The Commission designates the Secretary of the Commission as the Chief FOIA Officer. The Chief FOIA Officer shall be responsible for the administration of and reporting on the Commission's Freedom of Information Act program.

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provide notice when it has reason to believe that third-party materials possibly exempt from disclosure may fall within the scope of any FOIA request.

(c) Objections to disclosure. A submitter may file written objections to the request specifying all grounds for withholding the information under FOIA within 7 days of the date of the notice. If the submitter fails to respond to the notice, the submitter will be considered to have no objection, beyond those objections articulated in its application for nonpublic treatment pursuant to §3007.10 of this chapter, to the disclosure of the information.

(d) Notice of decision. If, after considering the submitter’s objections to disclosure the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter’s objections. The actual disclosure will not be made before 3 days after publication of the Commission’s decision.
Postal Regulatory Commission

§ 3005.13

Protect a covered person from oppression, or undue burden or expense, including the following:

(1) That disclosure may be had only on specified terms and conditions, including the designation of the time or place;

(2) That certain matters not be inquired into, or that the scope of disclosure be limited to certain matters;

(3) That disclosure occur with no one present except persons designated by the Commission;

(4) That a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way as provided in part 3007 of this chapter; and

(5) Such other conditions deemed necessary and appropriate under the circumstances presented.

(e) Subpoenas shall be served in the manner provided by § 3005.14.

§ 3005.12 Subpoenas issued without receipt of a third-party request.

(a) A subpoena duly authorized by a majority of the Commissioners then holding office may be issued by the Chairman, a designated Commissioner, or an administrative law judge under § 3005.11 without a request having been made by a third party under § 3005.13.

(b) Except as provided in paragraph (c) of this section, a subpoena shall not be issued until after the covered person has been provided an opportunity to produce the requested information voluntarily.

(c) A subpoena may be issued summarily without first providing an opportunity to produce the requested information voluntarily if a delay in the issuance of the subpoena could unreasonably limit or prevent production of the information being sought.

(d) Subpoenas issued under this section shall be issued subject to the right of the Postal Service and other interested persons to file a motion pursuant to § 3001.21(a) of this chapter to quash the subpoena, to limit the scope of the subpoena, or to condition the subpoena as provided in § 3005.11(d). Such motion shall include any objections to the subpoena that are personal to the covered person responsible for providing the information being sought. Motions alleging undue burden or cost must state with particularity the basis for such claims. Answers to the motion may be filed by any interested person pursuant to § 3001.21(b) of this chapter. Pending the resolution of any such motion, the covered person shall secure and maintain the requested information.

§ 3005.13 Subpoenas issued in response to a third-party request.

(a) Procedure for requesting and issuing subpoenas when hearings have been ordered. A participant in any proceeding in which a hearing has been ordered by the Commission may request the issuance of a subpoena to a covered person pursuant to § 3005.11.

(1) Subpoenas may be requested to enforce an order to compel previously issued pursuant to the rules of practice with which the Postal Service has failed to comply.

(2) Requests for subpoenas under this section shall be made by written motion filed with the presiding officer in the manner provided in § 3001.21 of this chapter. The Postal Service shall transmit a copy of the request to any covered person that it deems likely to be affected by the request and shall provide the person requesting the subpoena with the name, business address and business phone number of the persons to whom the request has been transmitted.

(3) Answers to the motion may be filed by the Postal Service, by any person to whom the Postal Service has transmitted the request, and by any other participant. Answers raising objections, including allegations of undue burden or cost, must state with particularity the basis for such claims. Answers shall be filed as required by § 3001.21(b) of this chapter.

(4) The presiding officer shall forward copies of the motion and any responses to the Commission together with a recommendation of whether or not the requested subpoena should be issued and, if so, the scope and content thereof and conditions, if any, that should be placed on the subpoena. Copies of the presiding officer’s recommendation shall be served in accordance with § 3001.12 of this chapter.

(5) Following receipt of the materials forwarded by the presiding officer, the
§ 3005.13  Commissioners shall determine whether the requested subpoena should be issued and, if so, whether any conditions should be placed on the scope or content of the subpoena or on the responses to the subpoena. The Commissioners may, but are not required, to entertain further oral or written submissions from the Postal Service or the participants before acting on the request. In making their determination, the Commissioners are not bound by any recommendation of a presiding officer.

(b) Procedure for requesting and issuing subpoenas when no hearings have been ordered. Any person may request the issuance of a subpoena to a covered person pursuant to §3005.11 to enforce an information request issued by the Commission or a Commissioner even though no hearings have been ordered by the Commission.

(1) A request for the issuance of a subpoena shall be made by motion as provided by §3001.21 of this chapter. A copy of the request shall be served upon the Postal Service as provided by §3001.12 of this chapter and by forwarding a copy to the General Counsel of the Postal Service, or such other person authorized to receive process by personal service, by Express Mail or Priority Mail, or by First-Class Mail, Return Receipt requested. The Postal Service shall transmit a copy of the request to any covered person that it deems likely to be affected by the request and shall provide the person requesting the subpoena with the name, business address and business phone number of the persons to whom the request has been transmitted. Proof of service of the request shall be filed with the Secretary by the person requesting the subpoena. The Secretary shall issue a notice of the filing of proof of service and the deadline for filing answers to the request.

(2) Answers to the motion may be filed by the Postal Service, by any person to whom the Postal Service has transmitted the request, and by any other person. Answers raising objections, including allegations of undue burden or cost, must state with particularity the basis for such claims. Answers shall be filed as required by §3001.21(b) of this chapter.

(3) Following receipt of the request and any answers to the request, the Commissioners shall determine whether the requested subpoena should be issued and, if so, whether any conditions should be placed on the scope or content of the subpoena or on the responses to the subpoena. The Commissioners may, but are not required, to entertain further oral or written submissions before acting. A majority of the Commissioners then holding office must concur in writing before a subpoena may be issued.

(c) Contents of requests for subpoenas. Each motion requesting the issuance of a subpoena shall include the following:

(1) A demonstration that the subpoena is being requested with respect to a proceeding conducted by the Commission or a Commissioner even though no hearings have been ordered by the Commission.

(2) A showing of the relevance and materiality of the testimony, documentary or other evidence being sought;

(3) Specification with particularity of any books, papers, documents, writings, drawings, graphs, charts, photographs, sound recordings, images, or other data or data compilations stored in any medium from which information can be obtained, including, without limitation, electronically stored information which is being sought from the covered person;

(4) In situations in which a hearing has been ordered, the request must include in addition to the information required by paragraphs (c)(1), (2) and (3) of this section, a certification that the covered person has failed to comply with an order compelling discovery previously issued pursuant to the Commission’s rules of practice; and

(5) In situations in which a hearing has not been ordered, the request must include in addition to the information required by paragraphs (c)(1), (2) and (3) of this section, an explanation of the reason for the request and the purposes for which the appearance, testimony, documentary or other evidence is being sought, and a certification that the Postal Service has failed to comply.
Postal Regulatory Commission

§ 3005.14 Service of subpoenas.

(a) Manner of service—(1) Existing Postal Service officers and employees. In addition to electronic service as provided by §3001.12(a) of this chapter, subpoenas directed to existing Postal Service officers and employees must be served by personal service upon the General Counsel of the Postal Service or upon such other representative of the Postal Service as is authorized to receive process. Upon receipt, the subpoena shall be transmitted and delivered by the Postal Service to the existing officers and employees responsible for providing the information being sought by the subpoena. Subpoenas served upon the Postal Service and transmitted to Postal Service officers and employees shall be accompanied by a written notice of the return date of the subpoena.

(2) Existing Postal Service agents and contractors. In addition to electronic service as provided by §3001.12(a) of this chapter, subpoenas directed to existing Postal Service agents and contractors must be served by personal service upon the General Counsel of the Postal Service or upon such other representative of the Postal Service as is authorized to receive process. Upon receipt, the subpoena shall be transmitted and delivered by the Postal Service to existing agents and contractors responsible for providing the information being sought by the subpoena. Service upon such agents and contractors shall be accompanied by a written notice of the return date of the subpoena.

(3) Prior Postal Service officers, employees, agents, and contractors. Subpoenas directed to Postal Service officers, employees, agents, and contractors who, at the time the subpoena is issued, are no longer officers or employees of the Postal Service or are no longer agents or contractors in an existing agency or contract relationship with the Postal Service, must be served by personal service. Service upon such officers, employees, agents, or contractors shall be accompanied by a written notice of the return date of the subpoena.

(b) Return of service and proof of transmission—(1) Return of service. Proof of service under §3001.14(a) of this chapter must be filed with the Secretary within 2 business days following service, unless a shorter or longer period is ordered by the Commission, and must be accompanied by certifications of:

(i) The manner, date, and time of delivery of the subpoena;

(ii) The name, business address, telephone number, and e-mail address of the person upon whom the subpoena was served; and

(iii) The return date of the subpoena.

(2) Proof of transmission. The Postal Service shall within 2 business days of transmission of a subpoena by the Postal Service to an existing Postal Service officer, employee, agent, or contractor pursuant to §§3001.14(a)(i) or (ii) of this chapter, or such shorter or longer period ordered by the Commission, file with the Secretary a certification of:

(i) The manner, date, and time of delivery of the subpoena;

(ii) The name, business address, telephone number, and e-mail address of the person to whom the subpoena was transmitted; and

(iii) The return date of the subpoena.

(c) Notice of service, proof of transmission, and return date. The Secretary shall post a notice of service and proof of transmission upon the Commission’s Web site which specifies the return date of the subpoena.

§ 3005.15 Duties in responding to a subpoena.

(a) A covered person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena.

(b) If a subpoena does not specify the form or forms for producing electronically stored information, a covered
§ 3005.16 Enforcement of subpoenas.

In the case of contumacy or failure to obey a subpoena issued under this subpart, the Commission may apply for an order to enforce its subpoena as permitted by 39 U.S.C. 504(f)(3).

Subpart C—Depositions and Written Interrogatories

§ 3005.21 Authority to order depositions and responses to written interrogatories.

The Chairman, any designated Commissioner, or any administrative law judge may order the taking of depositions and responses to written interrogatories by a covered person with respect to any proceeding conducted under title 39 of the United States Code or to obtain information to be used to prepare a report under that title.

person responding to a subpoena must produce the information in a form or forms in which the covered person ordinarily maintains it or in a form or forms that are reasonably usable.

(c) A covered person responding to a subpoena need not produce the same electronically stored information in more than one form.

(d) A covered person commanded to produce and permit inspection or copying of designated electronically stored information, books, papers, or documents need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

(e) A covered person who fails or refuses to disclose or provide discovery of information on the grounds that the information is privileged or subject to protection as a trade secret or other confidential research, development, or commercial information must expressly support all such claims and shall provide a description of the nature of the information and the potential harm that is sufficient to enable the Commission to evaluate and determine the propriety of the claim.

(f) Request for confidential treatment of information shall be made in accordance with part 3007 of this chapter.
APPENDIX A TO PART 3005—SUBPOENA FORM

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

In the Matter of

[Case Name – If Applicable] [Docket No. – If Applicable]
[Report Name – If Applicable]

SUBPOENA

TO:

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to provide testimony in the above matter.

PLACE OF TESTIMONY

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above matter.

PLACE OF DEPOSITION

DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (attach additional sheet if necessary).

PLACE

DATE AND TIME

ISSUING OFFICIAL'S SIGNATURE

DATE

ISSUING OFFICIAL'S NAME AND PHONE NUMBER

ISSUING OFFICIAL IS (CHECK ONE):

☐ CHAIRMAN
☐ COMMISSIONER DESIGNATED BY THE CHAIRMAN
☐ ADMINISTRATIVE LAW JUDGE APPOINTED UNDER 3 U.S.C. 3105

I HEREBY CERTIFY THAT THE MAJORITY OF THE COMMISSIONERS CURRENTLY HOLDING OFFICE HAVE PREVIOUSLY CONCUERED IN WRITING WITH THE ISSUANCE OF THIS SUBPOENA.

ISSUING OFFICIAL'S SIGNATURE

DATE
PART 3007—TREATMENT OF NON-PUBLIC MATERIALS PROVIDED BY THE POSTAL SERVICE

§ 3007.1 Definitions for purposes of this part.

(a) Authorized representative means any Commissioner designated by the Chairman, any administrative law judge appointed by the Commission under 5 U.S.C. 3105, and any employee of the Commission designated by the Commission. The authorized representative may administer oaths, examine witnesses, take depositions, and receive evidence with respect to any proceeding before the Commission under title 39 of the U.S. Code or obtain information to assist the Commission in the preparation of a report or performance of a function under title 39 of the U.S. Code.

(b) Non-public materials means any information, documents, and things filed with the Commission which are claimed to be exempt from disclosure by the Postal Service pursuant to 39 U.S.C. 504(g), 3652(f) or 3654(f), or claimed to be protectable under Federal Rule of Civil Procedure 26(c) by a third party with a proprietary interest in the materials. Non-public materials cease to be non-public if the status has expired or been terminated by the Commission pursuant to this part.

§ 3007.2 Scope.

The Commission or its authorized representative may require the Postal Service to provide any information, documents, and things in its possession or control, or any information, documents, and things that it can obtain through reasonable effort and expense, that are likely to materially assist the Commission in its conduct of proceedings, in its preparation of reports,

APPENDIX A TO PART 3007—STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

Postal Regulatory Commission

§ 3007.10 Submission of non-public materials under seal.

(a) Non-public materials shall not be filed electronically pursuant to §3001.9 of this chapter, but shall be filed in sealed envelopes clearly marked “Confidential. Do Not Post on Web.” The person filing the non-public materials shall submit two copies consisting, where practicable, of two paper hard copies as well as two copies in easily usable electronic form such as compact discs (CDs) or digital video discs (DVDs) of the non-public materials which shall also be clearly marked “Confidential. Do Not Post on Web.” Spreadsheets submitted in electronic form shall display the formulas used, their links to related spreadsheets, and shall not be password protected. All workpapers or data shall be submitted in a form, and be accompanied by sufficient explanation and documentation to allow them to be replicated using a publicly available PC application. Each page of any paper hard copy non-public materials submitted shall be clearly marked as non-public.

§ 3007.10 Submission of non-public materials under seal.

(a) Non-public materials shall not be filed electronically pursuant to §3001.9 of this chapter, but shall be filed in sealed envelopes clearly marked “Confidential. Do Not Post on Web.” The person filing the non-public materials shall submit two copies consisting, where practicable, of two paper hard copies as well as two copies in easily usable electronic form such as compact discs (CDs) or digital video discs (DVDs) of the non-public materials which shall also be clearly marked “Confidential. Do Not Post on Web.” Spreadsheets submitted in electronic form shall display the formulas used, their links to related spreadsheets, and shall not be password protected. All workpapers or data shall be submitted in a form, and be accompanied by sufficient explanation and documentation to allow them to be replicated using a publicly available PC application. Each page of any paper hard copy non-public materials submitted shall be clearly marked as non-public.

(b) The person submitting the non-public materials shall also file an electronic public (redacted) copy of the non-public materials pursuant to §3001.9 of this chapter. The electronic public (redacted) copy of the materials which are not spreadsheets, data files, or programs must be submitted in a searchable electronic format, but need not be submitted in its native format. As part of its publicly available electronic filing, the Postal Service must appropriately redact materials that contain both public and non-public information. For example, the Postal Service may not identify a whole page or a whole table as non-public materials if the page or table contains both public and non-public information, but must redact only the information it claims to be non-public. If practicable, the Postal Service shall sequentially number each page of the materials identified as non-public.

(c) The Postal Service or third party shall use the graphical redaction (blackout) method for all redacted materials. Should the Postal Service wish to use any other method, it must state with particularity the competitive harm associated with use of the graphical redaction method to justify the use of any other method, and indicate the number of lines or pages removed at each redaction.

(d) The Postal Service or third party shall mark each page, item, and thing,
or portion thereof, that it seeks to protect from disclosure in a manner reasonably calculated to alert custodians to the confidential nature of the information or materials.

§ 3007.20 Application for non-public treatment.

(a) Whenever the Postal Service files non-public materials with the Commission, it shall at the same time file an application for non-public treatment under § 3007.21.

(b) Before the Postal Service files non-public materials with the Commission which the Postal Service has reason to believe may implicate a third-party proprietary interest, the Postal Service shall inform each such third party:

(1) Of the nature and scope of the filing with the Commission, including the pertinent docket, and

(2) That it may address its confidentiality concerns directly with the Commission.

(c) A third party with a proprietary interest in the materials may, if it deems necessary, independently seek non-public treatment under § 3007.22.

§ 3007.21 Content of the Postal Service application for non-public treatment.

(a) Whenever the Postal Service files non-public materials with the Commission, it must submit an application for non-public treatment that clearly identifies all non-public materials and describes the circumstances causing them to be submitted to the Commission.

(b) An application for non-public treatment is to fulfill the burden of persuasion that the non-public materials should be withheld from the public.

(c) The application for non-public treatment must include a specific and detailed statement setting forth:

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

(2) Identiﬁcation, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials, or if such an identiﬁcation is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

(4) Particular identiﬁcation of the nature and extent of commercial harm alleged and the likelihood of such harm;

(5) At least one speciﬁc hypothetical, illustrative example of each alleged harm;

(6) The extent of protection from public disclosure deemed to be necessary;

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

(8) Any other factors or reasons relevant to support the application.

§ 3007.22 Content of third-party application for non-public treatment.

(a) The application for relief from public disclosure submitted by a party other than the Postal Service must clearly identify all materials believed to be protected from disclosure.

(b) The application for non-public treatment must include a specific and detailed statement setting forth:

(1) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

(2) Particular identiﬁcation of the nature and extent of the harm alleged and the likelihood of such harm; and

(3) Any other factors or reasons relevant to support the application.

§ 3007.23 Treatment of non-public materials.

The Commission or its authorized representative will not publicly disclose or grant access to non-public materials except as provided in the rules of this part.
Postal Regulatory Commission

§ 3007.24 Commission and court access to non-public materials.

(a) Non-public materials may be disclosed to the following persons:

(1) Members of the Commission;

(2) Commission employees including public representatives carrying out their appropriate responsibilities;

(3) Contractors, attorneys, or other subject matter experts assisting the Commission in carrying out its statutory duties;

(4) Reviewing courts and their staffs; or

(5) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.

(b) Access to non-public materials for all persons not covered by this section is pursuant to §§ 3007.40 and 3007.50.

§ 3007.25 Use of non-public materials.

Except as pursuant to this part, persons with access to non-public materials under § 3007.24 may not:

(a) Use such materials for purposes other than the purposes for which they are supplied.

(b) Permit anyone who is not allowed access under § 3007.24 to have access to any such materials.

§ 3007.30 Termination of non-public status.

Ten years after the date of filing with the Commission, non-public materials shall lose non-public status unless the Commission or its authorized representative enters an order extending the duration of that status.

§ 3007.31 Request for early termination of non-public status.

(a) Any person may make a request to the Commission that non-public materials be publicly disclosed. Each such request shall provide a specific and detailed statement justifying why the non-public materials should be made public, giving specific recognition to any pertinent rationale(s) provided in the application for relief submitted pursuant to § 3007.21 or § 3007.22. The request, however, shall not publicly disclose any of the non-public materials. If it is necessary to use the non-public materials to formulate the argument in favor of public disclosure, the argument utilizing the non-public materials shall be filed under seal.

(b) Any interested person, including the Postal Service, may file a response to the request within 7 days after such a request is filed, unless a longer period is specified by the Commission.

(c) Unless the Commission otherwise provides, no reply to a response filed pursuant to paragraph (a) of this section shall be filed.

(d) Following the filing of responses, if any, the Commission will issue an order determining the appropriate degree of protection, if any, to be accorded to the materials claimed to be non-public by the Postal Service or third party with a proprietary interest in the materials.

§ 3007.32 Preliminary determination of non-public status.

(a) Whenever the Postal Service files non-public materials, the Commission may issue a notice of preliminary determination concerning the appropriate degree of protection, if any, to be accorded to such materials.

(b) Any interested person, including the Postal Service, may file a response to the Commission’s notice of preliminary determination within 7 days after such a notice is filed, unless a longer period is specified.

(c) Unless the Commission otherwise provides, no reply to a response filed pursuant to paragraph (b) of this section shall be filed.

(d) Following the filing of responses, if any, the Commission will issue an order determining the appropriate degree of protection, if any, to be accorded to the materials claimed to be non-public by the Postal Service or third party with a proprietary interest in the materials.

§ 3007.33 Standard for decision for early termination of non-public status.

(a) In determining whether to publicly disclose non-public materials filed by the Postal Service, the Commission shall balance the nature and extent of the likely commercial injury identified
§ 3007.40 Request for access to nonpublic materials.

(a) During a Commission proceeding, any person may file a motion pursuant to §3001.21 of this chapter requesting access to non-public materials. The motion shall include:

(1) A detailed statement providing justification for access; and

(2) A list of relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the party requesting access, and whether that party is affiliated with the delivery services, communications or mailing industries.

(b) To expedite the process, each person seeking access to non-public materials may attach to the motion an executed copy of protective conditions such as those provided in Appendix A of this part.

(1) If an executed copy of protective conditions is attached and if actual notice of the motion has been provided by conversation or e-mail exchange to all persons identified by the Postal Service under §3007.2(c), answers are due within 3 days after such a motion is filed.

(2) In all other circumstances, answers are due within 7 days after such a motion is filed.

(c) Unless the Commission otherwise provides, no reply to an answer filed pursuant to paragraph (b)(1) or paragraph (b)(2) of this section shall be filed.

(d) Following the filing of answers, if any:

(1) The Commission will issue an order allowing or denying access and setting forth the appropriate protective conditions, if any, to be accorded non-public materials, or

(2) If the Postal Service or third party with a proprietary interest does not contest a person’s access subject to agreed protective conditions, the Commission or its authorized representative may issue an order allowing access subject to the agreed protective conditions.

§ 3007.41 Termination of access to non-public materials.

(a) Except as provided in paragraph (b) of this section, access to non-public materials obtained under §3007.40 terminates either when the Commission issues a final order or report in the relevant proceeding or the person withdraws or is otherwise no longer involved in the proceeding, whichever occurs first. For purposes of this section, an order or report is not considered final until after the possibility of judicial review expires.

(b) Access to non-public materials shall continue for persons seeking continued access under §3007.50.

(c) Upon termination of access under paragraph (a) of this section, all non-public materials in a person’s possession must be destroyed, and the form attached to the protective conditions certifying destruction must be executed and filed with the Commission.

§ 3007.42 Standard for decision for request for access to non-public materials.

In determining whether to grant a request for access to non-public materials, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

§ 3007.50 Request for access to non-public materials relevant to compliance.

(a) Any person may file a motion pursuant to §3001.21 of this chapter requesting access to, or continued access to, non-public materials relevant to compliance under 39 U.S.C. 3653. The motion shall include:

(1) A detailed statement providing justification for access, including reference to the materials’ relevance to compliance under chapter 36 of title 39 of the U.S. Code; and

(2) A list of relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the party requesting access.
Postal Regulatory Commission § 3007.61

access, and whether that party is affiliated with the delivery services, communications or mailing industries.

(b) To expedite the process, each person seeking access to non-public materials may attach to the motion an executed copy of protective conditions such as those provided in Appendix A of this part.

(1) If an executed copy of protective conditions is attached and if actual notice of the motion has been provided by conversation or e-mail exchange to all persons identified by the Postal Service under §3007.21(c), answers are due within 3 days after such a motion is filed.

(2) In all other circumstances, answers are due within 7 days after such a motion is filed.

(c) Unless the Commission otherwise provides, no reply to an answer filed pursuant to paragraph (b)(1) or paragraph (b)(2) of this section shall be filed.

(d) Following the filing of answers, if any:

(1) The Commission will issue an order allowing or denying access and setting forth the appropriate protective conditions, if any, to be accorded the non-public materials, or

(2) If the Postal Service or third party with a proprietary interest does not contest a person’s access subject to agreed protective conditions, the Commission or its authorized representative may issue an order allowing access subject to the agreed protective conditions.

§ 3007.51 Termination of access to non-public materials relevant to compliance.

(a) Access to non-public materials obtained under §3007.50 terminates either when the Commission issues its next Annual Compliance Determination (ACD) or the person withdraws or is otherwise no longer involved in the relevant proceeding, whichever occurs first.

(b) Access to non-public materials shall continue for persons seeking continued access under §3007.50.

(c) Upon termination of access under paragraph (a) of this section, all non-public materials in a person’s possession must be destroyed, and the form attached to the protective conditions certifying destruction must be executed and filed with the Commission.

§ 3007.52 Standard for decision for request for access to non-public materials relevant to compliance.

In determining whether to grant a request for access to non-public materials relevant to compliance, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

§ 3007.60 Limitations on access to non-public materials.

To afford appropriate confidentiality to non-public materials during any stage of a proceeding before the Commission, or in connection with any other purpose under title 39 of the U.S. Code, the Commission may, based on Federal Rule of Civil Procedure 26(c):

(a) Prohibit the public disclosure of the non-public materials;

(b) Specify terms for public disclosure of the non-public materials;

(c) Order a specific method for disclosing the non-public materials;

(d) Restrict the scope of the disclosure of the non-public materials as they relate to certain matters;

(e) Restrict who may have access to non-public materials;

(f) Require that a trade secret be revealed only in a specific and limited manner or to limited or specified persons; and

(g) Order other relief as appropriate including, but not limited to, sealing a deposition or part of a proceeding.

§ 3007.61 Continued effectiveness of protective conditions.

(a) If a court or other administrative agency issues a subpoena or orders production of non-public materials which a person has obtained under protective conditions ordered by the Commission, the target of the subpoena or order shall, within 2 days of receipt of the subpoena or order for production, notify the Postal Service of the pendency of the subpoena or order to allow the Postal Service time to object to the production or to seek a protective order or seek such other relief as it deems appropriate.
(b) Any person seeking to disclose non-public materials shall make a good faith effort to obtain protective conditions at least as effective as those set forth in the Commission order establishing the protective conditions.

(c) Protective conditions ordered by the Commission or its authorized representative shall remain in effect throughout any subsequent review unless overridden by the action of the reviewing court.

§ 3007.62 Sanctions for violations of protective conditions.

(a) No person who has been granted access to materials subject to protective conditions shall disseminate the materials in whole or in part to any person not authorized to obtain access under the protective conditions imposed by the Commission. If a person who has been granted access to such non-public materials under a protective order violates the terms of such order, the Commission or its authorized representative shall impose sanctions on the person who violated the protective order or the individuals or entities on whose behalf the person was acting, or both. The sanctions may include:

1. Dismissing the proceeding in whole or in part;
2. Ruling by default against the person who violated the protective order; and
3. Such other sanctions as the Commission or its authorized representative deems appropriate.

(b) The Postal Service, in its discretion, may pursue any remedies available to it under the law against the individual who violated the protective order, or the individuals or entities on whose behalf the person was acting, or both.
Appendix A to Part 3007—Statement of Compliance with Protective Conditions

The Postal Service (or a third party) has filed non-public materials identified as __________ in Commission Docket No. (if any) __________. The Postal Service (or a third party) requests confidential treatment of the materials (hereinafter “these materials”).

The following protective conditions limit access to these materials identified as __________ by the Postal Service (or third party). Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for the Postal Service.

1. Access to these materials is limited to a person as defined in rule 5(f), 39 CFR 3001.5(f), or an individual employed by such person, or acting as agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matter identified as __________. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information shall be granted access to these materials. “Involved in competitive decision-making” includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with a person or entity having a proprietary interest in the protected material.

2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.

3. Immediately after access has terminated under 39 CFR 3007.41 or 3007.51, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:

(a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and
(b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.

4. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.

5. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

6. These conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matter identified as ________.

7. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 9 and 10, below.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

9. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary’s office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.

10. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2 business days) notify the Postal Service of the pendency of the subpoena or order to allow it time to object to that production or seek a protective order.
CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as _____________ by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as _____________. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name
Firm
Title
Representing
Signature
Date
PART 3008—EX PARTE COMMUNICATIONS

Sec.
3008.1 Applicability.
3008.2 Definition of ex parte communications.
3008.3 Definition of a matter before the Commission.
3008.4 Definitions of persons subject to ex parte communication rules.
3008.5 Prohibitions.
3008.6 Required action upon ex parte communication.
3008.7 Penalty for violation of ex parte communication rules.

AUTHORITY: 39 U.S.C. 404(d)(5); 503; 504; 3661(c); 3662.

SOURCE: 81 FR 42541, June 30, 2016, unless otherwise noted.

§ 3008.1 Applicability.

(a) The rules in this section are applicable to all Commission proceedings except for the instances identified in paragraphs (b) through (d) of this section.

(b) The rules in this section are not applicable to public inquiry (PI) proceedings, undertaken to gather information and which are not intended to result in a binding Commission decision.

(c) The rules in this section are not applicable to international mail (IM) proceedings undertaken pursuant to part 3017 of this chapter.

(d) The rules in this section are not applicable to specifically identified proceedings upon written directive from the Commission.

§ 3008.2 Definition of ex parte communications.

(a) Subject to the exceptions specified in paragraph (b) of this section, ex parte communications include all communications, oral or written (including electronic), between Commission decision-making personnel, and the Postal Service or public stakeholders regarding matters before the Commission.

(b) Ex parte communications do not include:
Postal Regulatory Commission

§ 3008.4 Definitions of persons subject to ex parte communication rules.

(a) Commission decision-making personnel include:
(1) The Commissioners and their staffs;
(2) The General Counsel and staff;
(3) The Director of the Office of Accountability and Compliance and staff;
(4) Contractors, consultants, and others hired by the Commission to assist with the Commission’s analysis and decision; and
(5) Any other employee who may reasonably be expected to be involved in the decisional process.

(b) The Postal Service includes all Postal Service employees, contractors, consultants, and others with an interest in a matter before the Commission. Any interaction between the Postal Service and Commission decision-making personnel concerning a matter before the Commission expresses an interest in the matter before the Commission.

(c) Public stakeholders include all other persons not previously described, with an interest in a matter before the Commission. This includes the Commission non-decision-making personnel identified in paragraph (d) of this section. Any interaction between a public stakeholder and Commission decision-making personnel concerning a matter before the Commission expresses an interest in the matter before the Commission.

(d) Commission non-decision-making personnel include:
(1) All Commission personnel other than decision-making personnel;
§ 3008.5

(2) Commission personnel not participating in the decisional process owing to the prohibitions of §3001.8 of this chapter regarding no participation by investigative or prosecuting officers;

(3) The Public Representative and other Commission personnel assigned to represent the interests of the general public pursuant to 39 U.S.C. 505 in the specific case or controversy at issue (regardless of normally assigned duties); and

(4) Contractors, consultants, and others hired by the Commission to provide an independent analysis of issues before the Commission (and Commission employees assigned thereto).

§ 3008.6 Required action upon ex parte communications.

(a) Commission decision-making personnel who receive ex parte communications relevant to the merits of the proceeding shall decline to listen to such communications and explain that the matter is pending for determination. Any recipient thereof shall advise the communicator that the communication will not be considered, and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action.

(b) Commission decision-making personnel who receive, or who make or knowingly cause to be made, ex parte communications prohibited by this part shall promptly place, or cause to be placed, on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1) and (2) of this section.

(c) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which have been placed on the public record of the proceeding pursuant to paragraph (b) of this section may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. In lieu of actually receiving rebuttal material, the Commission may in its discretion direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

§ 3008.7 Penalty for violation of ex parte communication rules.

(a) The penalties for violation of ex parte communication rules specified in this section are applicable only to:

(1) Nature of postal service proceedings conducted pursuant to 39 U.S.C. 3661(c);

(2) Appeal of Postal Service decisions to close or consolidate any post office conducted pursuant to 39 U.S.C. 404(d)(5); and

(3) Rate or service complaints conducted pursuant to 39 U.S.C. 3662.

(b) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of §3008.5(a), the Commission or presiding officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) The Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, consider a violation of §3008.5(a)
Postal Regulatory Commission

sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

Subpart A—General Provisions

Sec. 3010.1 Definitions.
(a) The definitions in paragraphs (b) through (m) of this section apply in this part.

3010.2 Applicability.
3010.3 Types of rate adjustments for market dominant products.
3010.4 Type 1–A rate adjustment—in general.
3010.5 Type 1–B rate adjustment—in general.
3010.6 Type 1–C rate adjustment—in general.
3010.7 Type 2 rate adjustment—in general.
3010.8 Type 3 rate adjustment—in general.
3010.9 Schedule for Regular and Predictable Rate Adjustments.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1–A and 1–B Rate Adjustments)

3010.10 Notice.
3010.11 Proceedings for Type 1–A, Type 1–B, and Type 1–C rate adjustment filings.

Subpart C—Rules for Determining the Maximum Rate Adjustment

3010.20 Calculation of maximum rate adjustment.
3010.21 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are 12 or more months apart.
3010.22 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are less than 12 months apart.
3010.23 Calculation of percentage change in rates.
3010.24 Treatment of volume associated with negotiated service agreements and rate incentives that are not rates of general applicability.
3010.25 Limitation on application of unused rate adjustment authority.
3010.26 Calculation of unused rate adjustment authority for Type 1–A and Type 1–B rate adjustments.
3010.27 Calculation of unused rate adjustment authority for Type 1–C rate adjustments.
3010.28 Application of unused rate adjustment authority.
3010.29 Maximum size of Type 1–B rate adjustments.
3010.30 De minimis rate increases.

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

3010.40 Negotiated service agreements.
3010.41 Notice.
3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.
3010.43 Data collection plan and report.
3010.44 Proceedings for Type 2 rate adjustments.

Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)

3010.60 Applicability.
3010.61 Contents of exigent requests.
3010.62 Supplemental information.
3010.63 Treatment of unused rate adjustment authority.
3010.64 Expi​etious treatment of exigent requests.
3010.65 Special procedures applicable to exigent requests.
3010.66 Deadline for Commission decision.


SOURCE: 78 FR 52704, Aug. 26, 2013, unless otherwise noted.

Subpart A—General Provisions

§ 3010.1 Definitions.

(a) The definitions in paragraphs (b) through (m) of this section apply in this part.

(b) Annual limitation means:

(1) In the case of a notice of a Type 1–A or Type 1–B notice of rate adjustment filed 12 or more months after the last Type 1–A or Type 1–B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to §3010.21;

(2) In the case of a notice of a Type 1–A or Type 1–B notice of rate adjustment filed less than 12 months after the last Type 1–A or Type 1–B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to §3010.22; and

(3) In the case of a notice of a Type 1–C rate adjustment, the annual limitation calculated pursuant to §3010.21 or §3010.22, as applicable, for the most recent notice of a Type 1–A or Type 1–B rate adjustment.
(c) **Class** means a class of market dominant postal products.

(d) **De minimis rate increase** means a rate adjustment described in §3010.30.

(e) **Maximum rate adjustment** means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type 1–A or Type 1–B rate adjustment. The maximum rate adjustment is calculated in accordance with §3010.20.

(f) **Most recent Type 1–A or Type 1–B notice of rate adjustment**, when used in reference to a notice of rate adjustment for a class, means the most recent Type 1–A or Type 1–B notice of rate adjustment for that class.

(g) **Rate of general applicability** means a rate applicable to all mail meeting standards established by the Mail Classification Schedule, the Domestic Mail Manual, and the International Mail Manual. A rate is not a rate of general applicability if eligibility for the rate is dependent on factors other than the characteristics of the mail to which the rate applies. A rate is not a rate of general applicability if it benefits a single mailer. A rate that is only available upon the written agreement of both the Postal Service and a mailer, a group of mailers, or a foreign postal operator is not a rate of general applicability.

(h) **Type 1–A rate adjustment** means a rate adjustment described in §3010.4.

(i) **Type 1–B rate adjustment** means a rate adjustment described in §3010.5.

(j) **Type 1–C rate adjustment** means a rate adjustment described in §3010.6.

(k) **Type 2 rate adjustment** means a rate adjustment described in §3010.7.

(l) **Type 3 rate adjustment** means a rate adjustment described in §3010.8.

(m) **Unused rate adjustment authority** means:

(1) In the case of a Type 1–A or Type 1–B rate adjustment, the percentage calculated pursuant to §3010.26; and

(2) In the case of a Type 1–C rate adjustment, the percentage calculated pursuant to §3010.27.

[79 FR 33831, June 12, 2014]

§ 3010.2 **Applicability.**

The rules in this part implement provisions in 39 U.S.C. chapter 36, subchapter I, establishing rate setting policies and procedures for market dominant products. With the exception of Type 3 rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service’s planned rate adjustments. Type 3 rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.


§ 3010.3 **Types of rate adjustments for market dominant products.**


(b)(1) The Postal Service may combine Type 1–A, Type 1–B, and Type 2 rate adjustments for purposes of filing with the Commission.

(2) The Postal Service may not combine a Type 1–C rate adjustment with any other type of rate adjustment. The Postal Service may file a Type 1–C rate adjustment and a de minimis rate increase contemporaneously, but the Type 1–C rate adjustment and the de minimis rate increase must be contained in separate notices of rate adjustment.

[79 FR 33832, June 12, 2014]

§ 3010.4 **Type 1–A rate adjustment—in general.**

(a) A Type 1–A rate adjustment is an adjustment based on the annual limitation.

(b) A Type 1–A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(c) A Type 1–A rate adjustment for any class that is less than the applicable annual limitation results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent rate adjustment.
Postal Regulatory Commission

§ 3010.9

Schedule for Regular and Predictable Rate Adjustments.

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Adjustments. The Commission shall display the Schedule for Regular and Predictable Rate Adjustments on the Commission Web site, http://www.prc.gov.

(b) The Schedule for Regular and Predictable Rate Adjustments shall provide mailers with estimated implementation dates for future Type 1–A rate adjustments for each separate class of mail, should such adjustments be necessary and appropriate. Rate adjustments will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Adjustments shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate adjustments.

(d) The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the Schedule for Regular and Predictable Rate Adjustments.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide a succinct explanation for such variation with its Type 1–A filing. No explanation is required.

§ 3010.5

Type 1–B rate adjustment—in general.

A Type 1–B rate adjustment is an adjustment that is based on the annual limitation and that uses unused rate adjustment authority in whole or in part.

§ 3010.6

Type 1–C rate adjustment—in general.

(a) A Type 1–C rate adjustment is an adjustment to a rate of general applicability that contains only a decrease. A rate adjustment that includes both an increase and a decrease in rates of general applicability is a Type 1–A or Type 1–B rate adjustment; it is not a Type 1–C rate adjustment.

(b)(1) Except as provided in paragraph (b)(2) of this section, a Type 1–C rate adjustment may generate unused rate adjustment authority, as described in §3010.27.

(2) A Type 1–C rate adjustment filed immediately after a Type 3 rate adjustment (that is, with no intervening Type 1–A or Type 1–B rate adjustment) may not generate unused rate adjustment authority.

(3) The Postal Service may elect not to generate unused rate adjustment authority in a Type 1–C rate adjustment.

§ 3010.7

Type 2 rate adjustment—in general.

A Type 2 rate adjustment is based on a negotiated service agreement. A negotiated service agreement entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

§ 3010.8

Type 3 rate adjustment—in general.

(a) A Type 3 rate adjustment is a rate adjustment that is authorized only when justified by exceptional or extraordinary circumstances.

(b) A Type 3 rate adjustment is not subject to the annual limitation or the restrictions on the use of unused rate adjustment authority, and does not implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

§ 3010.9

Schedule for Regular and Predictable Rate Adjustments.

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Adjustments. The Commission shall display the Schedule for Regular and Predictable Rate Adjustments on the Commission Web site, http://www.prc.gov.

(b) The Schedule for Regular and Predictable Rate Adjustments shall provide mailers with estimated implementation dates for future Type 1–A rate adjustments for each separate class of mail, should such adjustments be necessary and appropriate. Rate adjustments will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Adjustments shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate adjustments.

(d) The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the Schedule for Regular and Predictable Rate Adjustments.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide a succinct explanation for such variation with its Type 1–A filing. No explanation is required.
for variations involving smaller than predicted rate adjustments.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1–A and 1–B Rate Adjustments)

§ 3010.10 Notice.

(a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1–A, Type 1–B, or Type 1–C rate adjustment for a class shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 45 days prior to the intended implementation date of the rate adjustment; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date of the rate adjustment.

(b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended rate adjustments include classification changes or operations changes likely to have a material impact on mailers.

§ 3010.11 Proceedings for Type 1–A, Type 1–B, and Type 1–C rate adjustment filings.

(a) The Commission will establish a docket for each notice of Type 1–A, Type 1–B, or Type 1–C rate adjustment filing, promptly publish notice of the filing in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 20 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) Public comments should focus primarily on whether planned rate adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter I:

(1) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the annual limitation calculated under §§ 3010.21 or 3010.22, as applicable; and

(2) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the limitation established in § 3010.29.

(c) Public comments may also address other relevant statutory provisions and applicable Commission orders and directives.

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under § 3010.21 or § 3010.22, as applicable, the limitation set forth in § 3010.29, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

(e) If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Governors.

(f) If planned rate adjustments are found inconsistent with applicable law by the Commission, the Postal Service will submit an amended notice of rate adjustment that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(g) The Commission will post any amended notice of rate adjustment filing on its Web site and allow a period of 7 days from the date of the filing for public comment. Comments in the amended notice of rate adjustment
§ 3010.12 Contents of notice of rate adjustment.

(a) A Type 1–A, Type 1–B, or Type 1–C notice of rate adjustment must include the following information:
  (1) A schedule of the planned rates;
  (2) The planned effective date(s) of the planned rates;
  (3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and
  (4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) The notice of rate adjustment shall be accompanied by the following information:
  (1) The annual limitation calculated as required by §3010.21 or §3010.22, as applicable. This information must be supported by workpapers in which all calculations are shown and all input values, including all relevant CPI-U values, are listed with citations to the original sources.
  (2) A schedule showing unused rate adjustment authority available for each class of mail calculated as required by §3010.23. This information must be supported by workpapers in which all calculations are shown.
  (3) The percentage change in rates for each class of mail calculated as required by §3010.23. This information must be supported by workpapers in which all calculations are shown and all input values, including current rates, new rates, and billing determinants, are listed with citations to the original sources.
  (4) The amount of new unused rate adjustment authority, if any, that will be generated by the rate adjustment calculated as required by §3010.26 or §3010.27, as applicable. All calculations are to be shown with citations to the original sources. If new unused rate adjustment authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment.
  (5) A schedule of the workshare discounts included in the planned rates, and a companion schedule listing the avoided costs that underlie each such discount. This information must be supported by workpapers in which all calculations are shown and all input values are listed with citations to the original sources.
  (6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs.
(7) A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).

(8) A discussion that demonstrates the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629.

(9) For a notice that includes a rate incentive:
   (i) If the rate incentive is a rate of general applicability, sufficient information to demonstrate that the rate incentive is a rate of general applicability; and
   (ii) Whether the Postal Service has excluded the rate incentive from the calculation of the percentage change in rates under §3010.23(e) or §3010.24.

(10) For a Type 1–C rate adjustment, whether the Postal Service elects to generate unused rate adjustment authority.

(11) A schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments.

(12) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.

(c) Whenever the Postal Service establishes a new workshare discount rate, it must include with its filing:
   (1) A statement explaining its reasons for establishing the discount;
   (2) All data, economic analyses, and other information relied on to justify the discount; and
   (3) A certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d) Whenever the Postal Service establishes a new discount or surcharge it does not believe is a workshare discount, it must include with its filing:
   (1) An explanation of the basis for its belief that the discount or surcharge is not a workshare discount; and
   (2) A certification that the Postal Service applied approved analytical principles to the discount or surcharge.

(e) The notice of rate adjustment shall identify for each affected class how much existing unused rate adjustment authority is used in the planned rates calculated as required by §3010.28. All calculations are to be shown, including citations to the original sources.

(f) All cost, avoided cost, volume, and revenue figures submitted with the notice of rate adjustment shall be developed from the most recent applicable Commission approved analytical principles.


Subpart C—Rules for Determining the Maximum Rate Adjustment

§ 3010.20 Calculation of maximum rate adjustment.

(a) Rate adjustments for each class of market dominant products in any 12-month period are limited.

(b) Type 1–A and Type 1–B rate adjustments are subject to an inflation-based annual limitation computed using CPI–U values as detailed in §§3010.21(a) and 3010.22(a).

(c) An exception to the annual limitation allows a limited annual recapture of unused rate adjustment authority. The amount of unused rate adjustment authority is measured separately for each class.

(d) In any 12-month period the maximum rate adjustment applicable to a class is:
   (1) For a Type 1–A notice of rate adjustment, the annual limitation for the class; and
   (2) For a Type 1–B notice of rate adjustment, the annual limitation for the class plus the unused rate adjustment authority for the class that the Postal Service elects to use, subject to the limitation under §3010.29.

(e) There is no limitation on the amount of a rate decrease contained in a notice of Type 1–C rate adjustment.

§ 3010.21 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are 12 or more months apart.

(a) The monthly CPI–U values needed for the calculation of the full year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is "CUUR0000SA0."

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed 12 or more months after the most recent Type 1–A or Type 1–B notice of rate adjustment, then the calculation of an annual limitation for the class (referred to as the full year limitation) involves three steps. First, a simple average CPI–U index is calculated by summing the most recently available 12 monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI–U index is similarly calculated by summing the 12 monthly CPI–U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the full year limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(c) The formula for calculating a full year limitation for a notice of rate adjustment filed 12 or more months after the last notice is as follows: Full Year Limitation = (Recent Average/Base Average) – 1.

§ 3010.22 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are less than 12 months apart.

(a) The monthly CPI–U values needed for the calculation of the partial year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is “CUUR0000SA0.”

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed less than 12 months after the most recent Type 1–A or Type 1–B notice of rate adjustment, then the partial year limitation for the class (referred to as the partial year limitation) will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(c) The applicable partial year limitation is calculated in two steps. First, a simple average CPI–U index is calculated by summing the 12 most recently available monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(d) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 12 months after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) – 1.

§ 3010.23 Calculation of percentage change in rates.

(a) Definitions. In this section:

(1) Current rate—(i) In general. Except as provided in paragraphs (a)(1)(ii) and (iii) of this section, the term current rate means the rate in effect when the Postal Service files the notice of rate adjustment.

(ii) Seasonal and temporary rates. When used with respect to a seasonal or temporary rate, as described in paragraph (a)(2) of this section, the term current rate means the most recent rate in effect for the rate cell, regardless of whether the seasonal or temporary rate is available at the time the Postal Service files the notice of rate adjustment.
(iii) Exception. When used with respect to a rate cell that corresponds to a rate incentive that was previously excluded from the calculation of the percentage change in rates under paragraph (e)(1) of this section, the term current rate means the full undiscounted rate in effect for the rate cell at the time of the filing of the notice of rate adjustment, not the discounted rate in effect for the rate cell at such time. For example, if a rate incentive provides a 5-cent discount on a 25-cent rate and the Postal Service previously elected to exclude the rate incentive from the calculation of the percentage change in rates, the Postal Service may choose to begin including the discounted rate in its calculation of the percentage change in rates. If the Postal Service makes that choice, the current rate for the discounted rate cell will be 25 cents (the full undiscounted rate).

(2) Rate cell. The term rate cell means each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. A seasonal or temporary rate shall be identified and treated as a rate cell separate and distinct from the corresponding non-seasonal or permanent rate.

(3) Rate incentive means a discount that is not a workshare discount and that is designed to increase or retain volume, improve the value of mail for mailers, or improve the operations of the Postal Service.

(b) Calculation—(1) Type 1–A and Type 1–B rate adjustments. For a Type 1–A or Type 1–B rate adjustment, for each class of mail and product within the class, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and the resulting products are summed. Then, the same set of rate cell volumes are multiplied by the corresponding current rate for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(2) Type 1–C rate adjustments. For a Type 1–C rate adjustment, for each class of mail and product within the class, the percentage change in rates is calculated by amending the workpapers attached to the Commission’s order relating to the most recent Type 1–A or Type 1–B notice of rate adjustment to replace the planned rates under the most recent Type 1–A or Type 1–B notice of rate adjustment with the corresponding planned rates applicable to the class from the Type 1–C notice of rate adjustment.

(c) Formula. The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

\[
\text{Percentage change in rates} = \frac{\sum_{i=1}^{N} (R_{i,n})V_i}{\sum_{i=1}^{N} (R_{i,c})V_i} - 1
\]

Where,

\( N \) = number of rate cells in the class
\( i \) = denotes a rate cell (\( i = 1, 2, \ldots, N \))
\( R_{i,n} \) = planned rate of rate cell \( i \)
\( R_{i,c} \) = current rate of rate cell \( i \) (for a Type 1–A or Type 1–B rate adjustment) or rate from most recent Type 1–A rate adjustment for rate cell \( i \) (for a Type 1–C rate adjustment)
\( V_i \) = volume of rate cell \( i \)

(3) Basis for adjustments. Whenever possible, adjustments shall be based on known mail characteristics or historical volume data, as opposed to forecasts of mailer behavior.
Postal Regulatory Commission

§ 3010.26

(4) Adjustment for deletion of rate cell when alternate rate cell is not available. For an adjustment accounting for the effects of the deletion of a rate cell when an alternate rate cell is not available, the Postal Service should adjust the billing determinants associated with the rate cell to zero. If the Postal Service does not adjust the billing determinants for the rate cell to zero, the Postal Service shall include a rationale for its treatment of the rate cell with the information required under paragraph (d)(2) of this section.

(e) Treatment of rate incentives. (1) Rate incentives may be excluded from a percentage change in rates calculation. If the Postal Service elects to exclude a rate incentive from a percentage change in rates calculation, the rate incentive shall be treated in the same manner as a rate under a negotiated service agreement (as described in §3010.24).

(2) A rate incentive may be included in a percentage change in rates calculation if it meets the following criteria:

(i) The rate incentive is in the form of a discount or can be easily translated into a discount;

(ii) Sufficient billing determinants are available for the rate incentive to be included in the percentage change in rate calculation for the class, which may be adjusted based on known mail characteristics or historical volume data (as opposed to forecasts of mailer behavior); and

(iii) The rate incentive is a rate of general applicability.

§ 3010.25 Limitation on application of unused rate adjustment authority.

Unused rate adjustment authority may only be applied after applying the annual limitation calculated pursuant to §3010.21 or §3010.22.

§ 3010.26 Calculation of unused rate adjustment authority for Type 1–A and Type 1–B rate adjustments.

(a) Unused rate adjustment authority accrues during the entire period between notices of Type 1–A and Type 1–B rate adjustments. When notices of Type 1–A or Type 1–B rate adjustments are filed 12 months apart or less, the unused rate adjustment authority is the annual unused rate adjustment authority calculated under paragraph (b) of this section. When notices of Type 1–A or Type 1–B rate adjustments are filed more than 12 months apart, unused rate adjustment authority is the sum of the annual unused rate adjustment authority calculated under paragraph (b) of this section plus the interim unused rate adjustment authority calculated under paragraph (c)(2) of this section, less any interim unused rate adjustment authority used in accordance with paragraph (d) of this section.

(b) When notices of Type 1–A or Type 1–B rate adjustments are filed 12 months apart or less, annual unused rate adjustment authority will be calculated. Annual unused rate adjustment authority for a class is equal to the difference between the annual limitation calculated pursuant to §3010.21 or §3010.22 and the percentage change in rates for the class calculated pursuant to §3010.23(b)(1).

(c)(1) When notices of Type 1–A or Type 1–B rate adjustments are filed...
more than 12 months apart, annual unused rate adjustment authority will be calculated for the 12-month period ending on the date on which the second notice is filed and interim unused rate adjustment authority will be calculated for the period beginning on the date the first notice is filed and ending on the day before the date that is 12 months before the second notice is filed.

(2) Interim unused rate adjustment authority is equal to the Base Average applicable to the second notice of rate adjustment (as developed pursuant to §3010.21(b)) divided by the Recent Average utilized in the first notice of rate adjustment (as developed pursuant to §3010.21(b)) and subtracting 1 from the quotient. The result is expressed as a percentage.

(d) Interim unused rate adjustment authority may be used to make a rate adjustment pursuant to the notice of rate adjustment that led to its calculation. If interim unused rate adjustment authority is used to make such a rate adjustment, the interim unused rate adjustment authority generated pursuant to the notice shall first be added to the schedule of unused rate adjustment authority devised and maintained under paragraph (f) of this section. Then, any interim unused rate adjustment authority used in accordance with this paragraph shall be subtracted from the existing unused rate adjustment authority using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

(e) Unused rate adjustment authority generated under this section lapses 5 years after the date of filing of the notice of rate adjustment leading to its calculation.

(f) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority for that class.

Postal Regulatory Commission

§ 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.

Whenever the Postal Service proposes to establish or change rates, fees, or the Mail Classification Schedule first-out (FIFO) method, beginning 5 years before the instant notice.


§ 3010.29 Maximum size of Type 1–B rate adjustments.

Unused rate adjustment authority used to make a Type 1–B rate adjustment for any class in any 12-month period may not exceed 2 percentage points.


§ 3010.30 De minimis rate increases.

(a) The Postal Service may elect to file a Type 1–A notice of rate adjustment as a de minimis rate increase if:

(1) For each affected class, the rate increases contained within the notice of a Type 1–A rate adjustment do not result in the percentage change in rates for the class equaling or exceeding 0.001 percent; and

(2) For each affected class, the sum of all rate increases included in de minimis rate increases since the most recent Type 1–A, Type 1–B, or Type 3 rate adjustment that was not a de minimis rate increase does not result in the percentage change in rates for the class equaling or exceeding 0.001 percent.

(b) No unused rate adjustment authority will be added to the schedule of unused rate adjustment authority maintained under §3010.26(f) as a result of a de minimis rate increase.

(c) No rate decreases may be taken into account when determining whether rate increases comply with paragraphs (a)(1) and (2) of this section.

(d) In the next notice of a Type 1–A or Type 1–B rate adjustment for a class that is not a de minimis rate increase:

(1) The annual limitation shall be calculated as if the de minimis rate increase had not been filed; and

(2) For purposes of calculating the percentage change in rates, the current rate shall be the current rate from the de minimis rate increase.

(e) The Postal Service shall file supporting workpapers with each notice of de minimis rate increase that demonstrate that the sum of all rate increases included in de minimis rate increases since the most recent Type 1–A, Type 1–B, or Type 3 notice of rate adjustment that was not de minimis does not result in a percentage change in rates for the class equaling or exceeding 0.001 percent.

[79 FR 33834, June 12, 2014]

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

§ 3010.40 Negotiated service agreements.

(a) In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10). Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or

(2) Enhance the performance of operational functions (39 U.S.C. 3622(c)(10)(A)(ii)).

(b) Negotiated service agreements may not cause unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

(c) Negotiated service agreements must be available on public and reasonable terms to similarly situated mailers.

§ 3010.41 Notice.

The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 2 rate adjustment for a market dominant postal product shall provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and transmit a notice of agreement to the Commission no later than 45 days prior to the intended implementation date.

§ 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.

Whenever the Postal Service proposes to establish or change rates, fees, or the Mail Classification Schedule...
§ 3010.43 Data collection plan and report.

(a) The Postal Service shall include with any notice of agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10).

(b) A data report under the plan is due 60 days after each anniversary date of implementation and shall include, at a minimum, the following information for each 12-month period the agreement has been in effect:

(1) The change in net financial position of the Postal Service as a result of the agreement. This calculation shall include for each year of the agreement:

(i) The actual mailer-specific costs, volumes, and revenues of the Postal Service;

(ii) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement;

(iii) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs; and

(iv) An explanation of the basis for that belief; and

(ii) A projection of the change in net financial position resulting from the agreement made using the Postal Service’s alternative methodology.

(g) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement;

(h) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace; and

(i) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.

[78 FR 52704, Aug. 26, 2013, as amended by Order 1786, 78 FR 67952, Nov. 13, 2013]
Postal Regulatory Commission

§ 3010.61

the costs that are used shall be provided, including a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

(2) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement.

(3) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

§ 3010.44 Proceedings for Type 2 rate adjustments.

(a) The Commission will establish a docket for each notice of Type 2 rate adjustment filed, promptly publish notice of the filing in the Federal Register, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 10 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission shall review the planned Type 2 rate adjustments and the comments thereon, and issue an order announcing its findings. So long as such adjustments are not inconsistent with 39 U.S.C. 3622, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(c) Commission findings that a planned Type 2 rate adjustment is not inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review.

Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)

§ 3010.60 Applicability.

The Postal Service may request to adjust rates for market dominant products in excess of the maximum rate adjustment due to extraordinary or exceptional circumstances. In this subpart, such requests are referred to as exigent requests.

§ 3010.61 Contents of exigent requests.

(a) Each exigent request shall include the following:

(1) A schedule of the proposed rates;

(2) Calculations quantifying the increase for each affected product and class;

(3) A full discussion of the extraordinary or exceptional circumstances giving rise to the request, and a complete explanation of how both the requested overall increase and the specific rate adjustments requested relate to those circumstances;

(4) A full discussion of why the requested rate adjustments are necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;

(5) A full discussion of why the requested rate adjustments are reasonable and equitable as among types of users of market dominant products;

(6) An explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent rate adjustments in whole or in part;

(7) An analysis of the circumstances giving rise to the exigent request, which should, if applicable, include a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action; and

(8) Such other information as the Postal Service believes will assist the
§ 3010.62 Supplements to the Postal Service’s rate adjustments.

(a) The Commission to issue a timely determination of whether the requested rate adjustments are consistent with applicable statutory policies.

(b) The Postal Service shall identify one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification related to each topic specified in paragraph (a) of this section.

§ 3010.63 Treatment of unused rate adjustment authority.

(a) Each exigent request will identify the unused rate adjustment authority available as of the date of the request for each class of mail and the available amount for each of the preceding 5 years.

(b) Pursuant to an exigent request, rate adjustments may use existing unused rate adjustment authority in amounts greater than the limitation described in §3010.28 of this subpart.

(c) Exigent increases will exhaust all unused rate adjustment authority for each class of mail before imposing additional rate adjustments in excess of the maximum rate adjustment for any class of mail.

§ 3010.64 Expedious treatment of exigent requests.

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.

§ 3010.65 Special procedures applicable to exigent requests.

(a) The Commission will establish a docket for each exigent request, promptly publish notice of the request in the Federal Register, and post the filing on its Web site. The notice shall include:

1. The general nature of the proceeding;
2. A reference to legal authority under which the proceeding is to be conducted;
3. A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule;
4. The identification of an officer of the Commission to represent the interests of the general public in the docket;
5. A specified period for public comment; and
6. Such other information as the Commission deems appropriate.

(b) The Commission will hold a public hearing on the Postal Service request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service’s request and the supporting information provided in response to the topics specified in §3010.61(a).

(c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with §3001.9 of this chapter, and will become part of the administrative record of the proceeding.

(d) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and completeness of the supporting materials provided with the request.

(e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

(f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:

1. The sufficiency of the justification for an exigent rate adjustment;
Postal Regulatory Commission

§ 3015.5  
(a) When the Postal Service determines to change a rate or rates of general applicability for any competitive product that results in a decrease in the average rate of that product, it shall file notice of the change with the Commission no later than the date of publication of the decision in the Federal Register concerning such change, but at least 30 days before the effective date of the change.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and a schedule of the changed rates.

(c) In addition to the notice, the Postal Service shall file with the Commission:

(1) Sufficient revenue and cost data for the 12-month period following the effective date of the rate to demonstrate that each affected competitive product will be in compliance with 39 U.S.C. 3633(a)(2); and

(2) A certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).

§ 3015.4  
(a) In the case of a change in class of general applicability, the Postal Service shall file notice of the change with the Commission no later than the date of publication of the decision in the Federal Register, but at least 30 days before the effective date of the increase.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and the record of proceedings regarding such decision.

§ 3015.5  
(a) When the Postal Service determines to add or change a rate or class not of general applicability, it shall file notice of its decision with the Commission at least 15 days before the effective date of the change.
§ 3015.6

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, the rate and class decision, and the record of proceedings regarding such decision.

(c) In addition to the notice, the Postal Service shall file with the Commission:

(1) Sufficient revenue and cost data for the 12-month period following the effective date of the rate or class to demonstrate that each affected competitive product will be in compliance with 39 U.S.C. 3633(a)(2); and

(2) A certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).

§ 3015.6 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the Commission determines additional information is necessary to enable it to evaluate whether competitive products will be in compliance with 39 U.S.C. 3633(a)(2); and

§ 3015.7 Standards for compliance.

For purposes of determining competitive products’ compliance with 39 U.S.C. 3633, the Commission will apply the following standards:

(a) Incremental costs will be used to test for cross-subsidies by market dominant products of competitive products. To the extent that incremental cost data are unavailable, the Commission will use the sum of competitive products’ volume-variable costs and product-specific costs supplemented to include causally related, group-specific costs to test for cross-subsidies.

(b) Each competitive product must recover its attributable costs as defined in 39 U.S.C. 3631(b). Pursuant to 39 U.S.C. 3631(b), the Commission will calculate a competitive product’s attributable costs as the sum of its volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product’s incremental costs.

(c) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively is, at a minimum, 5.5 percent of the Postal Service’s total institutional costs.


PART 3017—PROCEDURES RELATED TO COMMISSION VIEWS

Sec.
3017.1 Definitions in this part.
3017.2 Purpose.
3017.3 Establishment and scope of docket.
3017.4 Comment deadline(s).
3017.5 Commission discretion as to treatment of comments.


SOURCE: 81 FR 877, Jan. 8, 2016, unless otherwise noted.

§ 3017.1 Definitions in this part.

(a) Modern rate regulation refers to the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622.

(b) Views refers to the opinion the Commission provides to the Secretary of State pursuant to 39 U.S.C. 407(c)(1) on the consistency with modern rate regulation of a proposed treaty, convention, or amendment that establishes a market dominant rate or classification.

§ 3017.2 Purpose.

The rules in this part are intended to facilitate public participation in, and promote the transparency of, the development of Commission views.

§ 3017.3 Establishment and scope of docket.

(a) On or about 150 days before a Universal Postal Union Congress convenes or such advance time as the Commission determines for any other 39 U.S.C. 407(c)(1) matter, the Commission will establish a docket to solicit comments on the general principles that should guide the Commission’s development of views on relevant proposals, in a general way, and on specific relevant proposals, if the Commission is able to make these available.
Postal Regulatory Commission

(b) The docket established pursuant to paragraph (a) of this section may also include matters related to development of the Commission’s views, such as the availability of relevant proposals, Commission views, other documents, or related actions.

(c) The Commission shall arrange for publication in the Federal Register of the notice establishing each docket authorized under this part.

§ 3017.4 Comment deadline(s).

(a) The Commission shall establish a deadline for comments upon establishment of the docket that is consistent with timely submission of the Commission’s views to the Secretary of State. The Commission may establish other deadlines for comments as appropriate.

(b) The Commission may suspend or forego solicitation of comments if it determines that such solicitation is not consistent with timely submission of Commission views to the Secretary of State.

§ 3017.5 Commission discretion as to treatment of comments.

The Commission will review timely filed comments responding to a Commission solicitation under this part prior to submitting its views to the Secretary of State.

PART 3020—PRODUCT LISTS

Subpart A—Product Lists and the Mail Classification Schedule

Sec.
3020.1 Applicability.
3020.2 Product lists.
3020.3 Notice of product list change.
3020.4 Mail Classification Schedule.
3020.5 Modifications to the Mail Classification Schedule.

APPENDIX A TO SUBPART A OF PART 3020—MARKET DOMINANT PRODUCT LIST

APPENDIX B TO SUBPART A OF PART 3020—COMPETITIVE PRODUCT LIST

Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists

3020.30 General.
3020.31 Contents of a request.
3020.32 Supporting justification.
3020.33 Docket and notice.
3020.34 Review.
3020.35 Further proceedings.

Subpart C—Requests Initiated by Users of the Mail to Modify the Product Lists

3020.50 General.
3020.51 Contents of a request.
3020.52 Supporting justification.
3020.53 Docket and notice.
3020.54 Postal Service notice and reply.
3020.55 Review.
3020.56 Further proceedings.

Subpart D—Proposal of the Commission to Modify the Product Lists

3020.70 General.
3020.71 Contents of a proposal.
3020.72 Supporting justification.
3020.73 Docket and notice.
3020.74 Postal Service notice and reply.
3020.75 Review.
3020.76 Further proceedings.

Subpart E—Requests Initiated by the Postal Service To Make Material Changes or Minor Corrections to the Mail Classification Schedule

3020.80 Material changes to product descriptions.
3020.81 Supporting justification for material changes to product descriptions.
3020.82 Docket and notice of material changes to product descriptions.
3020.83 Commission review of material changes to product descriptions.
3020.84–3020.89 [Reserved]
3020.90 Minor corrections to product descriptions.
3020.91 Docket and notice of minor corrections to product descriptions.
3020.92 Commission review of minor corrections to product descriptions.

Subpart F—Size and Weight Limitations for Mail Matter

3020.110 General.
3020.111 Limitations applicable to market dominant mail matter.
3020.112 Limitations applicable to competitive mail matter.

AUTHORITY: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

SOURCE: 72 FR 63698, Nov. 9, 2007, unless otherwise noted.

Subpart A—Product Lists and the Mail Classification Schedule

SOURCE: 81 FR 38954, June 15, 2016, unless otherwise noted.
§ 3020.1 Applicability.

(a) The rules in this part require the Postal Regulatory Commission to establish and maintain lists of Postal Service products and a Mail Classification Schedule.

(b) The product lists shall categorize postal products as either market dominant or competitive. As established, the market dominant and competitive product lists shall be consistent with the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a). The market dominant and competitive product lists shall also include products identified as market tests pursuant to 39 U.S.C. 3641 and non-postal pursuant to 39 U.S.C. 404(e).

(c) The Mail Classification Schedule shall provide current price and classification information applicable to the products appearing on the market dominant and competitive product lists.

(d) Once established, the product lists and the Mail Classification Schedule may be modified subject to the procedures specified in this part.

§ 3020.2 Product lists.

(a) Market Dominant Product List. The market dominant product list shall be published in the Federal Register at Appendix A to subpart A of part 3020—Market Dominant Product List.

(b) Competitive Product List. The competitive product list shall be published in the Federal Register at Appendix B to subpart A of part 3020—Competitive Product List.

§ 3020.3 Notice of product list change.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the Federal Register.

(b) Notice shall be submitted to the Federal Register for publication within 6 months of the issue date of the applicable final order that affects the change.

(c) Modifications pending publication in the Federal Register are effective immediately upon written direction from the Postal Regulatory Commission.

(d) The Federal Register document shall:

(1) Identify modifications to the current list of market dominant products and the current list of competitive products; and

(2) Indicate how and when the previous product lists have been modified.

§ 3020.4 Mail Classification Schedule.

(a) The Postal Regulatory Commission shall publish a Mail Classification Schedule (including both current and previous versions) on its Web site at http://www.prc.gov. Copies of the Mail Classification Schedule also shall be available during regular business hours for reference and public inspection at the Postal Regulatory Commission located at 901 New York Avenue NW., Suite 200, Washington, DC 20268-0001.

(b) The Mail Classification Schedule shall include, but shall not be limited to:

(1) Front matter, including:

(i) A cover page identifying the title of the document as the Mail Classification Schedule, the source of the document as the Postal Regulatory Commission (including Commission seal), and the publication date;

(ii) A table of contents;

(iii) A table specifying the revision history of the Mail Classification Schedule; and

(iv) A table identifying Postal Service trademarks; and

(2) Information concerning market dominant products, including:

(i) A copy of the Market Dominant Product List;

(ii) Descriptions of each market dominant product organized by the class of product, including:

(A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each market dominant product;

(B) A schedule listing the rates and fees for each market dominant product;

(C) Where applicable, the identification of a product as a special classification within the meaning of 39 U.S.C. 3622(e)(10) for market dominant products;
Postal Regulatory Commission

(D) Where applicable, the identification of a product as an experimental product undergoing a market test; and
(E) Where applicable, the identification of a product as a nonpostal product; and
(3) Information concerning competitive products, including:
   (i) A copy of the competitive product list; and
   (ii) Descriptions of each competitive product, including:
      (A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each competitive product;
      (B) A schedule listing the current rates and fees for each competitive product of general applicability;
      (C) The identification of each product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products;
      (D) Where applicable, the identification of a product as an experimental product undergoing a market test; and
      (E) Where applicable, the identification of a product as a nonpostal product; and
   (4) A glossary of terms and conditions; and
   (5) A list of country codes for international mail prices.

§ 3020.5 Modifications to the Mail Classification Schedule.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the Mail Classification Schedule, it shall update the Mail Classification Schedule appearing on its Web site at http://www.prc.gov in accordance with paragraph (b) of this section.
(b) Modification to the Mail Classification Schedule shall be incorporated within 3 months of the issue date of the final order.
(c) Modifications pending incorporation into the Mail Classification Schedule are effective immediately upon written direction from the Postal Regulatory Commission.

APPENDIX A TO SUBPART A OF PART 3020—MARKET DOMINANT PRODUCT LIST

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

Part A—Market Dominant Products

1000 Market Dominant Product List

First-Class Mail*
Single-Piece Letters/Postcards
Presorted Letters/Postcards
Flats
Parcels
Outbound Single-Piece First-Class Mail International
Inbound Letter Post
USPS Marketing Mail (Commercial and Nonprofit)*
High Density and Saturation Letters
High Density and Saturation Flats/Parcels
Carrier Route Letters
Flats
Parcels
Every Door Direct Mail—Retail Periodicals*
In-County Periodicals
Outside County Periodicals
Package Services*
Alaska Bypass Service
Bound Printed Matter Flats
Bound Printed Matter Parcels
Media Mail/Library Mail Special Services*
Ancillary Services
International Ancillary Services
Address Management Services
Caller Service
Credit Card Authentication
International Reply Coupon Service
International Business Reply Mail Service
Money Orders
Post Office Box Service
Customized Postage
Stamp Fulfillment Services
Negotiated Service Agreements*
Domestic*
PHI Acquisitions, Inc. Negotiated Service Agreement
International*
Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1
Inbound Market Dominant Express Service Agreement 1
Inbound Market Dominant Registered Service Agreement 1
Inbound Market Dominant PRIME Tracked Service Agreement
Nonpostal Services*
Alliances with the Private Sector to Defray Cost of Key Postal Functions
Philatelic Sales
Market Tests*

[82 FR 18701, Apr. 21, 2017]

APPENDIX B TO SUBPART A OF PART 3020—COMPETITIVE PRODUCT LIST

Part B—Competitive Products

2000 Competitive Product List

Domestic Products*
Priority Mail Express
Priority Mail
Parcel Select
Parcel Return Service
First-Class Package Service
USPS Retail Ground

International Products*
Outbound International Expedited Services
Inbound Parcel Post (at UPU rates)
Outbound Priority Mail International
International Priority Airmail (IPA)
International Surface Air List (ISAL)
International Direct Sacks—M-Bags
Outbound Single-Piece First-Class Package International Service

Negotiated Service Agreements*

Domestic*
Priority Mail Express Contract 16
Priority Mail Express Contract 19
Priority Mail Express Contract 20
Priority Mail Express Contract 21
Priority Mail Express Contract 23
Priority Mail Express Contract 26
Priority Mail Express Contract 27
Priority Mail Express Contract 29
Priority Mail Express Contract 30
Priority Mail Express Contract 31
Priority Mail Express Contract 32
Priority Mail Express Contract 34
Priority Mail Express Contract 35
Priority Mail Express Contract 36
Priority Mail Express Contract 37
Priority Mail Express Contract 38
Priority Mail Express Contract 39
Priority Mail Express Contract 40
Priority Mail Express Contract 41
Priority Mail Express Contract 42
Priority Mail Express Contract 43
Priority Mail Express Contract 44
Priority Mail Express Contract 45
Parcel Return Service Contract 5
Parcel Return Service Contract 6
Parcel Return Service Contract 7

Parcel Return Service Contract 8
Parcel Return Service Contract 9
Parcel Return Service Contract 10
Priority Mail Contract 59
Priority Mail Contract 63
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Priority Mail Contract 132
Priority Mail Contract 133
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Priority Mail Contract 136
Priority Mail Contract 137
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Priority Mail Express & Priority Mail Contract 10
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Priority Mail Express & Priority Mail Contract 30
Priority Mail Express & Priority Mail Contract 31
Priority Mail Express & Priority Mail Contract 32
Priority Mail Express & Priority Mail Contract 33
Priority Mail Express & Priority Mail Contract 34
Parcel Select & Parcel Return Service Contract 3
Parcel Select & Parcel Return Service Contract 5
Parcel Select & Parcel Return Service Contract 6
Parcel Select Contract 2
Parcel Select Contract 8
Parcel Select Contract 9
Parcel Select Contract 10
Parcel Select Contract 11
Parcel Select Contract 12
Parcel Select Contract 13
Parcel Select Contract 14
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Parcel Select Contract 16
Parcel Select Contract 17
Parcel Select Contract 18
Parcel Select Contract 19
Parcel Select Contract 20
Parcel Select Contract 21
Priority Mail—Non-Published Rates
Priority Mail—Non-Published Rates 1
First-Class Package Service Contract 36
First-Class Package Service Contract 37
First-Class Package Service Contract 38
First-Class Package Service Contract 39
First-Class Package Service Contract 40
First-Class Package Service Contract 41
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<td>Alternative Delivery Provider (ADP) Contracts</td>
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Postal Regulatory Commission

§ 3020.31 Contents of a request.

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Provide a copy of the Governor’s decision supporting the request, if any;

(c) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or transfer a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(d) Indicate whether each product that is the subject of the request is:

1. A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

2. A product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products; or

3. A non-postal product.

(e) Provide all supporting justification upon which the Postal Service proposes to rely; and

(f) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.
§ 3020.32 Supporting justification.

Supporting justification shall be in the form of a statement from one or more knowledgeable Postal Service official(s) who sponsors the request and attests to the accuracy of the information contained within the statement. The justification shall:

(a) Demonstrate why the change is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

§ 3020.33 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(a) The general nature of the proceeding;

(b) A reference to legal authority to which the proceeding is to be conducted;

(c) A concise description of the proposals for changes in the Mail Classification Schedule;

(d) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(e) A specified period for public comment; and

(f) Such other information as the Commission deems appropriate.

§ 3020.34 Review.

The Commission shall review the request and responsive comments. The Commission shall either:

(a) Approve the request to modify the market dominant and competitive product lists;

(b) Institute further proceedings to consider all or part of the request if it finds that there is substantial likelihood that the modification is inconsistent with statutory policies or Commission rules, and explain its reasons for not approving the request to modify the market dominant and competitive product lists;

(c) Provide an opportunity for the Postal Service to modify its request; or

(d) Direct other action as the Commission may consider appropriate.

§ 3020.35 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the concerns expressed by the Commission. Written statements commenting on the Commission’s concerns shall be requested, to be filed 7 days prior to the conference. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;
Postal Regulatory Commission

§ 3020.51 Contents of a request.

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(c) Indicate whether each product that is the subject of the request is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3622(b) for competitive products; or

(3) A non-postal product.

(d) Provide all supporting justification upon which the proponent of the request proposes to rely; and

(e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

§ 3020.52 Supporting justification.

Supporting justification shall be in the form of a statement from a knowledgeable proponent of the request who attests to the accuracy of the information contained within the statement. The justification shall:

(a) Demonstrate why the change is in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C. ;

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3623;

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly, as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission.
§ 3020.53 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:
(a) The general nature of the proceeding;
(b) A reference to legal authority to which the proceeding is to be conducted;
(c) A concise description of the proposals for changes in the Mail Classification Schedule;
(d) The identification of an Office of the Commission to represent the interests of the general public in the docket;
(e) A specified period for public comment; and
(f) Such other information as the Commission deems appropriate.

§ 3020.54 Postal Service notice and reply.

The Secretary of the Commission shall forward to the Postal Service a copy of the request. Within 28 days of the filing of the request, the Postal Service shall provide its preliminary views in regard to the request. The Postal Service may include suggestions for appropriate Commission action in response to the request.

§ 3020.55 Review.

The Commission shall review the request, the Postal Service reply, and any public comment to determine whether the proposed modification to the market dominant and competitive product lists complies with applicable statutory requirements and the Commission’s rules, and whether the proposed modification is consistent with the position of the Postal Service as expressed in its reply. The Commission shall either:
(a) Approve the request to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;
(b) Reject the request;
(c) Institute further proceedings to consider the request to modify the market dominant and competitive product lists; or
(d) Direct other action as the Commission may consider appropriate.

§ 3020.56 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the merits of going forward with the request. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:
(a) Provide for a period of discovery to obtain further information;
(b) Schedule a hearing on the record for further consideration of the request;
(c) Explain the reasons for not going forward with formal proceedings; or
(d) Direct other action as the Commission may consider appropriate.

Subpart D—Proposal of the Commission to Modify the Product Lists

§ 3020.70 General.

The Commission, of its own initiative, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

§ 3020.71 Contents of a proposal.

A proposal to modify the market dominant product list or the competitive product list shall:
(a) Provide the name, and class if applicable, of each product that is the subject of the proposal;
(b) Indicate whether the proposal would add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;
Postal Regulatory Commission

§ 3020.75

(c) Indicate whether each product that is the subject of the proposal is:
(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;
(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b) for competitive products; or
(3) A non-postal product.
(d) Provide justification supporting the proposal; and
(e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

§ 3020.72 Supporting justification.

Supporting justification shall:
(a) Provide an explanation for initiating the docket;
(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);
(c) Explain why, as to competitive products, the addition, subtraction, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;
(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:
(1) Set the price of such product substantially above costs;
(2) Raise prices significantly;
(3) Decrease quality; or
(4) Decrease output.
(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1086 subject to the exceptions set forth in 39 U.S.C. 601;
(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;
(g) Provide any information available on the views of those who use the product involved on the appropriateness of the proposed modification;
(h) Provide a description of the likely impact of the proposed modification on small business concerns; and
(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Postal Service and users of the mail of the nature, scope, significance, and impact of the proposed modification.

§ 3020.73 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:
(a) The general nature of the proceeding;
(b) A reference to legal authority to which the proceeding is to be conducted;
(c) A concise description of the proposals for changes in the Mail Classification Schedule;
(d) The identification of an officer of the Commission to represent the interests of the general public in the docket;
(e) A specified period for public comment; and
(f) Such other information as the Commission deems appropriate.

§ 3020.74 Postal Service notice and reply.

The Secretary of the Commission shall forward to the Postal Service a copy of the notice of proposal. Within 28 days of the filing of the proposal, the Postal Service shall provide its preliminary views in regard to the proposal. The Postal Service may include suggestions for appropriate further procedural steps.

§ 3020.75 Review.

The Commission shall review the Postal Service reply and public comment. The Commission shall either:
(a) Approve the proposal to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;
(b) Withdraw the proposal;
§ 3020.76 Further proceedings.

If the Commission determines that further proceedings are appropriate, a conference shall be scheduled to consider the merits of going forward with the proposal. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the proposal;

(c) Explain the reasons for not going forward with formal proceedings; or

(d) Direct other action as the Commission may consider appropriate.

Subpart E—Requests Initiated by the Postal Service To Make Material Changes or Minor Corrections to the Mail Classification Schedule

Source: 80 FR 35575, June 22, 2015, unless otherwise noted.

§ 3020.80 Material changes to product descriptions.

(a) Whenever the Postal Service proposes material changes to a product description in the Mail Classification Schedule, no later than 30 days prior to implementing the proposed changes, it shall submit to the Commission a request to change the product description in the Mail Classification Schedule.

(b) The request shall:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format; and

(2) Provide all supporting justification for the changes upon which the Postal Service proposes to rely.

(b)(1) As to market dominant products, explain why the changes are not inconsistent with each requirement of 39 U.S.C. 3622(d) and part 3010 of this chapter; or

(2) As to competitive products, explain why the changes will not result in the violation of any of the standards of 39 U.S.C. 3633 and part 3015 of this chapter.

(c) Describe the likely impact that the changes will have on users of the product and on competitors.

§ 3020.82 Docket and notice of material changes to product descriptions.

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.

(b) Establish a docket for each request to change a product description in the Mail Classification Schedule;

(c) Publish notice of the request on its Web site;

(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and

(e) Provide interested persons with an opportunity to comment on whether the proposed changes are consistent with title 39 and applicable Commission regulations.

§ 3020.83 Commission review of material changes to product descriptions.

(a) The Commission shall review the request and any comments filed. The Commission shall take one of the actions identified in paragraphs (b) through (g) of this section.

(b) Approve the proposed changes, subject to editorial corrections, and change the Mail Classification Schedule to coincide with the effective date of the proposed change;

(c) Reject the proposed changes;
Postal Regulatory Commission § 3020.111

(d) Provide the Postal Service with an opportunity to amend the proposed changes;
(e) Direct the Postal Service to make an appropriate filing under a different section;
(f) Institute further proceedings; or
(g) Direct other action that the Commission considers appropriate.

§§ 3020.84–3020.89 [Reserved]

§ 3020.90 Minor corrections to product descriptions.

(a) The Postal Service shall ensure that product descriptions in the Mail Classification Schedule accurately represent the current offerings of the Postal Service.
(b) The Postal Service shall submit minor corrections to product descriptions in the Mail Classification Schedule by filing notice with the Commission no later than 15 days prior to the effective date of the proposed corrections.
(c) The notice shall:
(1) Explain why the proposed corrections do not constitute material changes to the product description for purposes of § 3020.80;
(2) Explain why the proposed corrections are consistent with any applicable provisions of title 39; and
(3) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed corrections therein in legislative format.

§ 3020.91 Docket and notice of minor corrections to product descriptions.

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.
(b) Establish a docket for each proposal to correct a product description in the Mail Classification Schedule;
(c) Publish notice of the proposal on its Web site;
(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and
(e) Provide interested persons with an opportunity to comment on whether the proposed corrections are consistent with title 39 and applicable Commission regulations.

§ 3020.92 Commission review of minor corrections to product descriptions.

(a) The Commission shall review the notice and any comments filed. The Commission shall take one of the actions identified in paragraphs (b) through (g) of this section.
(b) Approve the proposed corrections, subject to editorial corrections, and change the Mail Classification Schedule to coincide with the effective date of the proposed change;
(c) Reject the proposed corrections;
(d) Provide the Postal Service with an opportunity to amend the proposed corrections;
(e) Direct the Postal Service to make an appropriate filing under a different section;
(f) Institute further proceedings; or
(g) Direct other action that the Commission considers appropriate.

Subpart F—Size and Weight Limitations for Mail Matter

§ 3020.110 General.

Applicable size and weight limitations for mail matter shall appear in the Mail Classification Schedule as part of the description of each product.

§ 3020.111 Limitations applicable to market dominant mail matter.

(a) The Postal Service shall inform the Commission of updates to size and weight limitations for market dominant mail matter by filing notice with the Commission 45 days prior to the effective date of the proposed update. The notice shall include a copy of the applicable sections of the Mail Classification Schedule and the proposed updates therein in legislative format.
(b) The Commission shall provide notice of the proposed update in the Federal Register and seek public comment on whether the proposed update is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.
(c) If the Commission finds the proposed update in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C., the Commission shall review the proposed Mail Classification Schedule language for formatting and conformance with the
structure of the Mail Classification Schedule, and subject to editorial changes, shall change the Mail Classification Schedule to coincide with the effective date of the proposed update.

(d) If the Commission finds the proposed update not in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the Commission may direct other action as deemed appropriate.

§ 3020.112 Limitations applicable to competitive mail matter.

The Postal Service shall notify the Commission of updates to size and weight limitations for competitive mail matter pursuant to subpart E of this part.

PART 3025—RULES FOR APPEALS OF POSTAL SERVICE DETERMINATIONS TO CLOSE OR CONSOLIDATE POST OFFICES

Sec.
3025.1 Definitions.
3025.2 Applicability.
3025.10 Starting an appeal.
3025.11 Submitting an appeal and other documents.
3025.12 Duplicate appeals.
3025.13 Deadlines for appeals.
3025.14 Participation by others.
3025.20 The record on review.
3025.21 Filing of the administrative record.
3025.22 Making documents available for inspection by the public.
3025.30 Suspension pending review.
3025.40 Participant statement.
3025.41 Due date for participant statement.
3025.42 Due date for Postal Service response.
3025.43 Due date for replies to the Postal Service.

SOURCE: 77 FR 6679, Feb. 9, 2012, unless otherwise noted.

§ 3025.1 Definitions.

The following definitions apply in this part:

(a) Final determination means the written determination and findings required by 39 U.S.C. 404(d)(3).

(b) Petitioner means a person who files a Petition for Review.

(c) Petition for Review means a written document that the Commission accepts as an appeal of a post office closing or consolidation.

§ 3025.2 Applicability.

(a) The rules in this part apply when:

(1) The Postal Service decides to close or consolidate a post office, and

(2) A patron of that post office appeals the closing or consolidation.

(b) The following sections in part 3001, subpart A of this chapter, apply to appeals of post office closings or consolidations: §§ 3001.1 through 3001.9 of this chapter; § 3001.11(a) of this chapter; § 3001.11(c) through (f) of this chapter; §§ 3001.12 through 3001.17 of this chapter; and §§ 3001.21 and 3001.22 of this chapter.

(c) Answers to motions filed by the Postal Service are due within 10 days.

§ 3025.3 Notice by the Postal Service.

(a) Pursuant to section 404(d) of title 39, United States Code, any decision to close or consolidate a post office must be preceded by 60 days' notice to persons served by such post office, the opportunity for such persons to present their views, and a written determination based upon consideration of each of the factors listed in section 404(d)(2) of title 39, United States Code.

(b) This notice must include a provision stating that, pursuant to section 404(d)(5) of title 39, United States Code, a final Postal Service determination to close or consolidate a post office may be appealed by any person served by such office to the Postal Regulatory Commission at 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001, within 30 days after such determination is made available to such person by the Postal Service.

§ 3025.10 Starting an appeal.

(a) A Postal Service decision to close or consolidate a post office may be appealed only by a person served by that office. An appeal is commenced by submitting a Petition for Review to the Postal Regulatory Commission.

(b) The Petition for Review must state that the person(s) submitting it are served by the post office that the Postal Service has decided to close or
Postal Regulatory Commission

consolidate. The petition should include the name(s) and address(es) of the person(s) filing it and the name or location of the post office to be closed or consolidated. A petitioner may include other information deemed pertinent.

§ 3025.11 Submitting an appeal and other documents.

Petitions for Review, comments, motions, answers, and other documents may be submitted by persons other than the Postal Service by mail, electronically through the Commission’s Web site, http://www.prc.gov, or by delivery to the Commission’s offices at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

§ 3025.12 Duplicate appeals.

If the Commission receives more than one Petition for Review of the same post office closing or consolidation, the petitions will be considered in a single docket.

§ 3025.13 Deadlines for appeals.

(a) In general. If the Postal Service has issued a final determination to close or consolidate a post office, an appeal is due within 30 days of the final determination being made available in conformance with § 3025.3(b).

(b) Appeals sent by mail. If sent by mail, a Petition for Review must be postmarked no later than 30 days after the final determination has been made available.

(c) Appeals sent by other physical delivery. If sent by some other form of physical delivery, a Petition for Review must be received in the Commission’s Docket Section no later than 4:30 p.m., eastern time, on the 30th day after the final determination has been made available.

(d) Appeals sent electronically. If submitted electronically, a Petition for Review must be received in the Commission’s Docket Section no later than 4:30 p.m., eastern time, on the 30th day after the final determination has been made available.

§ 3025.14 Participation by others.

(a) A person served by the post office to be closed or consolidated pursuant to the Postal Service written determination under review who desires to intervene in the proceeding, or any other interested person, or any counsel, agent, or other person authorized or recognized by the Postal Service as such interested person’s representative or the representative of such interested person’s recognized group, such as Postmasters, may participate in an appeal by sending written comments to the Postal Regulatory Commission in the manner described in §3025.11.

(b) Persons may submit comments supporting or opposing a Commission order returning the entire matter to the Postal Service for further consideration. Comments must be filed in accordance with the deadlines established in §§3025.41 through 3025.43. Commenters may use PRC Form 61, which is available on the Commission’s Web site, http://www.prc.gov.

§ 3025.20 The record on review.

(a) The record on review includes:

(1) The final determination;

(2) The notices to persons served by the post office to be closed or consolidated;

(3) The administrative record; and

(4) All documents submitted in the appeal proceeding.

(b) The record shall contain all evidence considered by the Postal Service in making its determination and shall contain no evidence not previously considered by the Postal Service.

§ 3025.21 Filing of the administrative record.

The Postal Service shall file the administrative record within 10 days of the date of posting of a Petition for Review on the Commission’s Web site. The Commission may alter this time for good cause. The Secretary will notify participants that they may view the administrative record at post offices where the final determination was posted.

§ 3025.22 Making documents available for inspection by the public.

Copies of all filings (including the administrative record) related to an appeal shall be available for public inspection at the post offices where the final determination was posted. The Secretary will notify participants that
§ 3025.30 Suspension pending review.

(a) Application. Application for suspension of a determination of the Postal Service to close or consolidate any post office pending the outcome of an appeal to the Postal Regulatory Commission shall be made at the time of the filing of a Petition for Review. The application shall show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by affidavits or other sworn statements or copies thereof. The applicant must be a person served by the affected post office. Immediate notice of the application shall be given to all parties to the proceeding. The application shall be filed with the Secretary of the Commission.

(b) Answer and filing of the relevant record by the Postal Service. Within 10 days after the application for suspension is filed, the Postal Service shall file with the Secretary of the Commission and serve on the petitioners an answer to the application supported by affidavits or other sworn statements or copies thereof.

§ 3025.40 Participant statement.

(a) When a timely Petition for Review of a decision to close or consolidate a post office is filed, the Secretary shall furnish petitioner with a copy of PRC Form 61. This form is designed to inform petitioners on how to make a statement of his/her arguments in support of the petition.

(b) The instructions for PRC Form 61 shall provide:

1. A concise explanation of the purpose of the form;
2. A copy of section 404(d)(2)(A) of title 39, United States Code; and
3. Notification that, if petitioner prefers, he or she may file a brief in lieu of or in addition to completing PRC Form 61.

§ 3025.41 Due date for participant statement.

The statement or brief of petitioner and of any other participant seeking to have the Commission return the entire matter to the Postal Service for further consideration, shall be filed not more than 20 days after the filing of the administrative record.

§ 3025.42 Due date for Postal Service response.

The statement or brief of the Postal Service, and of any other participant opposing return of the matter for further consideration, shall be filed not more than 14 days after the date for filing of petitioner’s statement.

§ 3025.43 Due date for replies to the Postal Service.

Petitioner, and any other participant seeking to have the Commission return the matter for further consideration, may file a reply to the Postal Service response not more than 10 days after the date of the Postal Service response. Replies are limited to issues discussed in the responses of the Postal Service and other participants seeking affirmation of the Postal Service determination.

PART 3030—RULES FOR COMPLAINTS

Subpart A—General

Sec.
3030.1 Applicability.
3030.2 Scope and nature of complaints.

Subpart B—Form and Manner Requirements of Initial Pleadings

3030.10 Complaint contents.
3030.11 Service.
3030.12 Pleadings filed in response to a complaint.
3030.13 Conditions for applying rate or service inquiry procedures to complaints.
3030.14 Answer contents.

Subpart C—Supplemental Information

3030.20 Sufficiency of information.
3030.21 Investigator.

Subpart D—Proceedings

3030.30 Beginning proceedings on complaints.

Subpart E—Settlement

3030.40 Policy on settlement.
3030.41 Satisfaction.
Subpart F—Commission Determinations and Relief

3030.50 Remedies.


SOURCE: 74 FR 16744, Apr. 10, 2009, unless otherwise noted.

Subpart A—General

§ 3030.1 Applicability.

(a) The rules in this part govern the procedure for complaints filed under 39 U.S.C. 3662 that meet the form and manner requirements of subpart B of this part. Part 3001, subpart A of this chapter, applies unless otherwise stated in this part or otherwise ordered by the Commission.

(b) Sections 3001.25 through 27 of this chapter and §3001.33 of this chapter do not apply to this part unless and until the Commission makes a finding under §3030.30(a)(1) that the complaint raises material issues of fact or law.

§ 3030.2 Scope and nature of complaints.

Any interested person (including a duly appointed officer of the Commission representing the interests of the general public) may file a written complaint with the Commission if that person believes that the Postal Service is not operating in conformance with:

(a) The provisions of 39 U.S.C. chapter 36, or 39 U.S.C. 101(d), 401(2), 403(c), 404a, or 601; or

(b) Any rule, order, or other regulatory requirement based on any of these statutory provisions.

Subpart B—Form and Manner Requirements of Initial Pleadings

§ 3030.10 Complaint contents.

(a) A complaint must:

(1) Set forth the facts and circumstances that give rise to the complaint;

(2) Clearly identify and explain how the Postal Service action or inaction violates applicable statutory standards or regulatory requirements including citations to the relied upon section or sections of title 39, order, regulation, or other regulatory requirements;

(3) Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to the complainant;

(4) Include a description of persons or classes of persons known or believed to be similarly affected by the issues involved in the complaint, if applicable;

(5) State the nature of the evidentiary support that the complainant has or expects to obtain during discovery to support the facts alleged in the complaint;

(6) Include an explanation as to why such facts could not reasonably be ascertained by the complainant where claims are premised on information and belief;

(7) State whether the issues presented are pending in or have been resolved by an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party; and if so, provide an explanation why timely resolution cannot be achieved in that forum;

(8) State the specific relief or remedy requested and the basis for that relief; and

(9) Include a certification that states that prior to filing, the complainant attempted to meet or confer with the Postal Service’s general counsel to resolve or settle the complaint, why the complainant believes additional such steps would be inadequate, and the reasons for that belief; and

(10) Include a certification that the complaint has been served on the United States Postal Service as required by §3030.11.

(b) Any rule, order, or other regulatory requirement based on any of these statutory provisions.

§ 3030.11 Service.

Any person filing a complaint must simultaneously serve a copy of the complaint on the Postal Service at the following address: PRCCOMPLAINTS@usps.gov. A complaint is not deemed filed until it is served on the Postal Service. A waiver may be obtained pursuant to §3001.9(a) of this chapter.

[74 FR 54755, Oct. 23, 2009]
§ 3030.12  Pleadings filed in response to a complaint.

(a) Unless otherwise ordered by the Commission, the Postal Service shall file its answer to a complaint within 20 days after the complaint is filed.

(b) If appropriate, the Postal Service may file a dispositive motion or otherwise move to delay disposition of the complaint. If the Postal Service files such a motion, unless otherwise ordered by the Commission, the period of time for filing its answer is altered as follows:
   (1) If the Commission denies the motion or postpones disposition, the answer is due within 10 days of the Commission’s action; or
   (2) If the Commission invokes the rate or service inquiry procedures under §3030.13 to the complaint, the answer is due contemporaneously with the Postal Service’s report under §3031.11 of this chapter if the complaint has not been resolved by that date.

(c) If the Commission determines that application of paragraph (a) of this section is appropriate and the Postal Service is unable to resolve the complaint within 45 days, or such other period of time as ordered by the Commission, the Postal Service shall file its answer in accordance with §3030.12(b)(2).

§ 3030.13  Conditions for applying rate or service inquiry procedures to complaints.

(a) This section applies to complaints that concern rate or service matters that are isolated incidents affecting few mail users provided that the complaint does not either:
   (1) Raise unfair competition issues;
   (2) Raise issues affecting a significant number of mail users;
   (3) Represent a pattern, practice, or systemic issue that affects a significant number of mail users (or is reasonably likely to be evidence that such a pattern has begun); or
   (4) Impact a substantial region of the nation.

(b) The Commission may in its discretion, sua sponte, attempt to resolve a complaint through the rate or service inquiry procedures of §3031.11 of this chapter if the Commission finds that there is a reasonable likelihood that such procedures may result in resolution of the complaint. The Commission will issue an order to apply the procedures of §3031.11 of this chapter prior to the due date for the Postal Service answer set forth in §3030.12.

(c) If the Commission determines that application of paragraph (a) of this section is appropriate and the Postal Service is unable to resolve the complaint within 45 days, or such other period of time as ordered by the Commission, the Postal Service shall file its answer in accordance with §3030.12(b)(2).

§ 3030.14  Answer contents.

(a) An answer must:
   (1) Contain a clear and concise statement of any disputed factual allegations upon which the answer relies;
   (2) Contain a clear and concise statement of any legal interpretation upon which the answer relies;
   (3) Admit or deny, specifically and with explanatory detail, each material factual allegation of the complaint. Denials based on information and belief must include an explanation as to why such facts could not reasonably be ascertained by the Postal Service prior to filing the answer. Each fact alleged in a complaint not thus specifically answered shall be deemed to have been admitted;
   (4) Set forth every defense relied upon. The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, including factual allegations and law upon which the Postal Service relies. Affirmative defenses shall be specifically captioned as such and presented separately from any denials;
   (5) State the nature of the evidentiary support that the Postal Service has or expects to obtain to support its factual allegations and defenses; and
   (6) Include a certification that states that prior to the filing of its answer, the Postal Service met or conferred with the complainant to resolve or settle the complaint, whether the Postal Service believes additional such steps would be inappropriate and the reasons for that belief.

(b) The Commission may waive any of the requirements listed in paragraph
(a) of this section to serve the interests of justice.

Subpart C—Supplemental Information

§ 3030.20 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the Commission determines that additional information is necessary to enable it to evaluate whether the complaint raises material issues of fact or law, the Commission shall, in its discretion, either require the complainant and/or the Postal Service to provide additional information as deemed necessary, issue an appropriate order to appoint an investigator in accordance with §3030.21, or do both.

§ 3030.21 Investigator.

The Commission may appoint an investigator to examine issues raised by the complaint and responses thereto. The investigator will use appropriate due diligence under the circumstances and provide a public, written report to the Commission.

Subpart D—Proceedings

§ 3030.30 Beginning proceedings on complaints.

(a) Within 90 days after receiving a properly filed complaint under this part, the Commission will issue:

(1) A notice and order in accordance with §3001.17 of this chapter that finds the complaint raises one or more material issues of fact or law and begin proceedings on the complaint; or

(2) An order dismissing the complaint.

(b) Orders issued pursuant to paragraph (a) of this section shall include the Commission's written statement setting forth the bases of its determination.

(c) Contemporaneously with, or shortly after issuing a notice and order under paragraph (a)(1) of this section, the Commission will appoint a public representative to represent the interests of the general public in the complaint proceeding.

Subpart E—Settlement

§ 3030.40 Policy on settlement.

It shall be the general policy and practice of the Commission to encourage alternative dispute resolution and settlement of complaints by informal procedures, such as correspondence, conferences between the parties, and the conduct of proceedings off the record with the consent of the parties.

§ 3030.41 Satisfaction.

(a) If a complaint is resolved informally, in whole or in part, subsequent to Commission action under §3030.30(a)(1), the complainant must promptly file:

(1) A statement explaining the resolution; and

(2) A motion to dismiss or amend the complaint based on the resolution.

(b) The Commission may order the submission of additional information before acting on any motion filed under paragraph (a)(2) of this section.

(c) In determining whether to allow the complaint to be dismissed or amended under this section, the Commission will take into consideration whether the issues raised by the complaint may continue to impact a significant segment of the mailing community.

Subpart F—Commission Determinations and Relief

§ 3030.50 Remedies.

(a) If the Commission finds that a complaint is justified, it will order that the Postal Service take such action as the Commission determines appropriate to:

(1) Achieve compliance with the applicable requirements; and

(2) Remedy the effects of any non-compliance.

(b) If the Commission finds deliberate non-compliance on the part of the Postal Service, the Commission may order, based on the nature, circumstances, extent, and seriousness of the non-compliance, a fine for each incidence of non-compliance.

(c) In any case where the Commission is considering the extraordinary relief
described in paragraph (b) of this section, the Commission will provide notice to the participants that such relief is being considered. It will allow the participants a reasonable opportunity to comment and present aggravating and mitigating factors for its consideration.

PART 3031—RULES FOR RATE OR SERVICE INQUIRIES

Subpart A—Rate or Service Inquiry Forms and Procedures

Sec.
3031.10 Rate or service inquiry contents.
3031.11 Rate or service inquiry procedures.
3031.12 Treatment as a complaint.

Subpart B [Reserved]

SOURCE: 74 FR 16746, Apr. 10, 2009, unless otherwise noted.

Subpart A—Rate or Service Inquiry Forms and Procedures

§ 3031.10 Rate or service inquiry contents.
(a) A rate or service inquiry shall be in writing and should contain:
(1) The name, address, and telephone number of the inquiring party;
(2) Details regarding the Postal Service’s action or inaction;
(3) A statement of facts supporting the inquiring party’s allegations; and
(4) The specific relief being sought, if any.
(b) The Commission may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.

§ 3031.11 Rate or service inquiry procedures.
(a) The Commission will forward rate or service inquiries to the Postal Service for investigation. The Postal Service will, within 45 days of receipt of such inquiry, advise the Commission in writing, with a copy to the inquiring party, of its resolution of the inquiry or its refusal or inability to do so.
(b) The Commission will monitor all rate or service inquiries to determine if

PART 3032—SPECIAL RULES FOR COMPLAINTS ALLEGGING VIOLATIONS OF 39 U.S.C. 404a

Subpart A—General

Sec.
3032.1 Applicability.
3032.2–3032.4 [Reserved]

Subpart B—Requirements and Defenses

3032.5 Postal Service rules that create an unfair competitive advantage.
3032.6 Disclosure, transfer, and licensing of intellectual property.
3032.7 Unlawfully obtaining information.
3032.8 Statutorily authorized affirmative defense.

SOURCE: 79 FR 62294, Oct. 16, 2014, unless otherwise noted.

Subpart A—General

§ 3032.1 Applicability.

The rules in this part govern proceedings filed under 39 U.S.C. 3662 alleging violations of 39 U.S.C. 404a that meet the requirements of §§3030.2 and 3030.10 of this chapter.
Postal Regulatory Commission

§§ 3032.2–3032.4 [Reserved]

Subpart B—Requirements and Defenses

§ 3032.5 Postal Service rules that create an unfair competitive advantage.

(a) A complaint alleging a violation of 30 U.S.C. 404(a)(1) must show that a Postal Service rule, regulation, or standard has the effect of:
   (1) Precluding competition; or
   (2) Establishing the terms of competition.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404(a)(1), the Postal Service may demonstrate that the rule, regulation, or standard at issue does not create an unfair competitive advantage for itself or any entity funded, in whole or in part, by the Postal Service.

(c) As used in this section, the term rule, regulation, or standard includes, among other things, documents or policies issued by the Postal Service to exercise its regulatory authority or otherwise act as a governmental entity.

§ 3032.6 Disclosure, transfer, and licensing of intellectual property.

(a) A complaint alleging a violation of 39 U.S.C. 404(a)(2) must show that the Postal Service has compelled or attempted to compel the disclosure, transfer, or licensing of the intellectual property of the person filing the complaint to a third party.

(b) As used in this section, the term intellectual property includes, among other things, patents, copyrights, trademarks, trade secrets, and proprietary information.

(c) As used in this section, the term disclosure, transfer, or licensing of intellectual property includes, among other things, an action that has an adverse effect on the value of intellectual property.

§ 3032.7 Unlawfully obtaining information.

(a) A complaint alleging a violation of 39 U.S.C. 404(a)(3) must show that:
   (1) The person filing the complaint has provided or sought to provide a product;
   (2) The Postal Service obtained information about such product from the person filing the complaint; and
   (3) The Postal Service offers or offered a postal service that uses or is based, in whole or in part, on the information obtained from the person filing the complaint.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404(a)(3), the Postal Service may demonstrate that substantially the same information was obtained (or was obtainable) from an independent source or is otherwise obtained (or obtainable) through lawful means.

(c) As an affirmative defense to a complaint under 39 U.S.C. 404(a)(3), the Postal Service may show that the information obtained was provided by written consent.

§ 3032.8 Statutorily authorized affirmative defense.

(a) As an affirmative defense to an allegation of a violation of 39 U.S.C. 404(a), the Postal Service may demonstrate that it is specifically authorized by law to take the action or inaction alleged to be a violation of that section.

(b) Authority under 39 U.S.C. 401 or 39 U.S.C. 404 may not form the basis of an affirmative defense under paragraph (a) of this section.

(c) Paragraph (b) of this section does not preclude the Postal Service from arguing that a particular Postal Service regulation or other action (or inaction) does not have the requisite effect to violate 39 U.S.C. 404(a).

PART 3035—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

Sec. 3035.1 Applicability.
3035.2 Advance notice.
3035.3 Contents of notice.
3035.4 Review.
3035.5 Commission action.
3035.6 Changes in market test.
3035.7–3035.9 [Reserved]
3035.10 Duration.
3035.11 Extension of market test.
3035.12 Cancellation of market test.
3035.13–3035.14 [Reserved]
3035.15 Dollar amount limitation.
3035.16 Exemption from dollar amount limitation.
3035.17 Prevention of market disruption.
§ 3035.1

3035.18 Filing for permanent product status.
3035.19 [Reserved]
3035.20 Data collection and reporting requirements.


SOURCE: 79 FR 54563, Sept. 11, 2014, unless otherwise noted.

§ 3035.1 Applicability.

The rules in this part apply to market tests of experimental products undertaken pursuant to 39 U.S.C. 3641.

§ 3035.2 Advance notice.

The Postal Service shall file notice with the Commission of its determination to initiate a market test at least 30 days before initiating the market test.

§ 3035.3 Contents of notice.

(a) Notices of proposed market tests shall include:

(1) The basis for the Postal Service’s determination that the market test is governed by 39 U.S.C. 3641, which shall:
   (i) Describe, from the viewpoint of mail users, how the experimental product is significantly different from all products offered by the Postal Service within the 2 fiscal years preceding the start of the market test;
   (ii) Establish that the introduction or continued offering of the experimental product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns, as defined in §3001.5(v) of this chapter; and
   (iii) Identify the experimental product as either market dominant or competitive for purposes of the market test, and explain the reasoning for the categorization in accordance with the criteria set forth in 39 U.S.C. 3642(b)(1).

(2) A description of the nature and the scope of the market test that:
   (i) Describes the market test and experimental product;
   (ii) Demonstrates why the market test is not inconsistent with the requirements of 39 U.S.C. 3641;
   (iii) Identifies the beginning and ending dates of the market test;
   (iv) Describes the geographic market(s) where the market test may be conducted;
   (v) Estimates the total revenue that is anticipated by the Postal Service for each fiscal year of the market test, including available supporting documentation; and
   (vi) Includes a data collection plan for the market test, including a description of the specific data items to be collected. The minimum data collection plan requirements are described in §3035.20.

§ 3035.4 Review.

(a) The Commission will establish a docket for each market test initiated under this part, promptly publish a notice in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall:
   (1) Describe the general nature of the proceeding;
   (2) Refer to the legal authority under which the proceeding is to be conducted;
   (3) Identify an officer of the Commission to represent the interests of the general public in the docket;
   (4) Specify a period for public comment; and
   (5) Include such other information as the Commission deems appropriate.

(b) [Reserved]

§ 3035.5 Commission action.

(a) The Commission shall review the Postal Service notice together with any comments for initial compliance with the statutory requirements of 39 U.S.C. 3641, and:
   (1) Find that the market test is consistent with the requirements of 39 U.S.C. 3641;
   (2) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;
   (3) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and order that the market test not go into effect; or
   (4) Direct other action as the Commission may consider appropriate.

(b) [Reserved]

§ 3035.6 Changes in market test.

(a) The Postal Service shall file a notice with the Commission describing each material change made to the market test or services offered under the
market test at least 10 days before implementing such changes. Material changes are changes that may affect compliance with 39 U.S.C. 3641 and include, without limitation, adjustments to prices, geographic scope, eligibility for service, and termination date.

(b) The Commission may, in its discretion, notice the filing and provide an opportunity for comment.

§§ 3035.7–3035.9 [Reserved]

§ 3035.10 Duration.

A market test may not exceed 24 months in duration unless the Commission authorizes an extension pursuant to a request filed by the Postal Service under §3035.11.

§ 3035.11 Extension of market test.

(a) The Postal Service may request an extension of the duration of a market test, not to exceed an additional 12 months, if such an extension is necessary to determine the feasibility or desirability of a product being tested. The Postal Service must file a written request for extension with the Commission at least 60 days before the market test is scheduled to terminate.

(b) The request for extension shall:

(1) Explain why an extension is necessary to determine the feasibility or desirability of the experimental product;

(2) List the new end date for the market test;

(3) Calculate the total revenue received by the Postal Service from the market test for each fiscal year the market test has been in operation and provide supporting documentation for the calculations;

(4) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year remaining on the market test, including the requested extension period, and provide available supporting documentation; and

(5) Provide any additional information necessary for the Commission to evaluate the continued consistency with the requirements of 39 U.S.C. 3641.

(c) The Commission shall review the Postal Service request for extension to ensure that an extension is necessary in order to determine the feasibility or desirability of the experimental product and:

(1) Find that the extension is consistent with the requirements of 39 U.S.C. 3641;

(2) Find that the extension is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the extension is inconsistent with the requirements of 39 U.S.C. 3641 and deny the extension; or

(4) Direct other action as the Commission considers appropriate.

§ 3035.12 Cancellation of market test.

(a) The Postal Service may cancel a market test at any time. It shall file notice of cancellation with the Commission within 10 days of cancelling the market test.

(b) Pursuant to 39 U.S.C. 3641(f), the Commission may direct the Postal Service to demonstrate that the market test continues to meet the requirements of 39 U.S.C. 3641 and the Commission’s rules. The Commission, in its discretion, may provide an opportunity for comments.

(c) Based upon its review, the Commission may:

(1) Find that the market test is consistent with the requirements of 39 U.S.C. 3641;

(2) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and cancel the market test; or

(4) Direct other action as the Commission may consider appropriate.

§§ 3035.13–3035.14 [Reserved]

§ 3035.15 Dollar amount limitation.

(a) The Consumer Price Index used for calculations under this part is the CPI–U index, as specified in §§3010.21(a) and 3010.22(a) of this chapter.

(b) An experimental product may only be tested if total revenues that are anticipated or received by the Postal Service do not exceed $10,000,000 in any fiscal year, as adjusted for the change in the CPI–U index, as specified in paragraph (d) of this section ($10
§ 3035.16 Exemption from dollar amount limitation.

(a) The Postal Service may request an exemption from the $10 Million Adjusted Limitation by filing a written request with the Commission. In no instance shall the request for exemption exceed the market test dollar amount limitation of $50,000,000 in any fiscal year, as adjusted for the change in the CPI–U Index, as specified in paragraph (c) of this section ($50 Million Adjusted Limitation).

(b) For each fiscal year, the $50 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as described in paragraph (c) of this section. The Commission shall publish this figure annually, after the close of the fiscal year, on its Web site at http://www.prc.gov.

(c) The calculation of the $50 Million Adjusted Limitation involves the following steps. First, a simple average CPI–U index was calculated for fiscal year 2008 by summing the monthly CPI–U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.5. Then, a second simple average CPI–U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI–U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying $50,000,000 by the Recent Average divided by 214.5. The result is expressed as a number, rounded to the nearest dollar.

(d) The formula for calculating the $50 Million Adjusted Limitation is as follows:

\[
\text{Adjusted Limitation} = \frac{\text{Recent Average}}{214.5} 
\]

(e) The Postal Service shall file its request for exemption at least 45 days before it expects to exceed the $10 Million Adjusted Limitation.

(f) The request for exemption shall:

1. Explain how the experimental product will:
   (i) Benefit the public and meet an expected demand;
   (ii) Contribute to the financial stability of the Postal Service; and
   (iii) Not result in unfair or otherwise inappropriate competition;
2. Calculate the total revenue received by the Postal Service from the market test for each fiscal year the market test has been in operation, and provide supporting documentation;
3. Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year remaining on the market test, including any extension period granted by the Commission in accordance with §3035.11(c), and provide available supporting documentation; and
4. Quantify the product specific costs associated with the development of the market test; that is, costs incurred before the market test is implemented.
(g) The Commission shall review the request for exemption for consistency with the statutory requirements of 39 U.S.C. 3641 and:

(1) Find that the exemption is consistent with the requirements of 39 U.S.C. 3641;

(2) Find that the exemption is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the exemption is inconsistent with the requirements of 39 U.S.C. 3641 and deny the exemption; or

(4) Direct other action as the Commission may consider appropriate.

§ 3035.17 Prevention of market disruption.

Notwithstanding the $10 Million Adjusted Limitation or any adjustment granted pursuant to §3035.16, the Commission may limit the amount of revenues the Postal Service may obtain from any particular geographic market as necessary to prevent the creation of an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns, as defined in §3001.5(v) of this chapter.

§ 3035.18 Filing for permanent product status.

(a) If the Postal Service determines to make an experimental product permanent, it shall file a request, pursuant to 39 U.S.C. 3642 and part 3020, subpart B of this chapter, to add a new product or price category to the market dominant or competitive product list. Requests to make existing experimental products permanent must be filed at least 60 days before the market test expires (including any extension period granted) or the market test exceeds any authorized adjusted limitation in any fiscal year, whichever is earlier.

(b) A request to make an experimental product permanent must, among other things, quantify the product-specific costs associated with the development of the market test; that is, costs incurred before the market test is implemented.

(c) The Postal Service shall also file a notice of its request to make an experimental product permanent in the market test proceeding’s docket. The notice shall include the applicable docket number(s) for the proceeding evaluating the request.

§ 3035.19 [Reserved]

§ 3035.20 Data collection and reporting requirements.

(a) A notice of a market test shall include a data collection plan for the market test as required by §3035.3(a)(2)(vi). Data collection plans shall include, at a minimum:

(1) The revenue by fiscal quarter received to date by the Postal Service from the market test;

(2) Attributable costs incurred in conducting the market test, including product-specific costs related to the administration of the market test; and

(3) Volumes of the experimental product by fiscal quarter.

(b) The Commission may request additional information or data as it deems appropriate.

(c) To assess the potential impact of a market test in a particular geographic market, the Commission may require the Postal Service to report the revenues from the market test for specified geographic markets.

(d) The Postal Service shall file the information required by the data collection plan in data collection reports. Data collection reports must be filed within 40 days after the close of each fiscal quarter during which the market test is offered, or such other period as the Commission may prescribe.

(e) The Postal Service shall file in its Annual Compliance Report information on each market test conducted during the fiscal year pursuant to §3050.21(h) of this chapter.

PART 3050—PERIODIC REPORTING

Sec. 3050.1 Definitions applicable to this part.

3050.2 Documentation of periodic reports.

3050.3 Access to information supporting Commission reports or evaluations.

3050.10 Analytical principles to be applied in the Postal Service’s annual periodic reports to the Commission.

3050.11 Proposals to change an accepted analytical principle applied in the Postal Service’s annual periodic reports to the Commission.
§ 3050.1 Definitions applicable to this part.

(a) Accepted analytical principle refers to an analytical principle that was applied by the Commission in its most recent Annual Compliance Determination unless a different analytical principle subsequently was accepted by the Commission in a final rule.

(b) Accepted quantification technique refers to a quantification technique that was applied in the most recent iteration of the periodic report applying that quantification technique or was used to support a new analytical principle adopted in a subsequent rule 3050.11 proceeding.

(c) Analytical principle refers to a particular economic, mathematical, or statistical theory, precept, or assumption applied by the Postal Service in producing a periodic report to the Commission.

(d) Annual Compliance Determination refers to the report that 39 U.S.C. 3653 requires the Commission to issue each year evaluating the compliance of the Postal Service.

(e) Annual periodic reports to the Commission refers to all of the reports that the Postal Service is required to provide to the Commission each year.

(f) Quantification technique refers to any data entry or manipulation technique whose validity does not require the acceptance of a particular economic, mathematical, or statistical theory, precept, or assumption. A change in quantification technique should not change the output of the analysis in which it is employed.

(g) Section 3652 report refers to the annual compliance report provided by the Postal Service to the Commission pursuant to 39 U.S.C. 3652, but does not include the reports required by 39 U.S.C. 2803 and 2804.

§ 3050.2 Documentation of periodic reports.

(a) At the time that it submits any periodic report to the Commission, the Postal Service shall identify any input data that have changed, list any quantification techniques that it has changed, and list any corrections that it has made since that report was last submitted to and accepted by the Commission. It shall provide a brief narrative explanation of each listed change.

(b) If workpapers are required to support a periodic report, they shall:

(1) Show all calculations employed in producing each estimate;

(2) Be sufficiently detailed to allow all numbers used in such calculations to be traced back to public documents or to primary data sources; and

(3) Be submitted in a form, and be accompanied by sufficient explanation and documentation, to allow them to be replicated using a publicly available PC application.

(c) Spreadsheets used in preparing periodic reports shall be submitted in electronic form. They shall display the formulas used, their links to related
Postal Regulatory Commission

§ 3050.11 Proposals to change an accepted analytical principle applied in the Postal Service’s annual periodic reports to the Commission.

(a) To improve the quality, accuracy, or completeness of the data or analysis of data contained in the Postal Service’s annual periodic reports to the Commission, the Commission, acting on its own behalf, may issue a notice of proceeding to change an accepted analytical principle. In addition, any interested person, including the Postal Service or a public representative, may submit a petition to the Commission to initiate such a proceeding.

(b) Form and content of notice or petition. The notice of proceeding or petition shall identify the accepted analytical principle proposed for review, explain its perceived deficiencies, and suggest how those deficiencies should be remedied.

(1) If the notice of proceeding or petition proposes that a specific alternative analytical principle be followed, it should include the data, analysis, and documentation on which the proposal is based, and, where feasible, include an estimate of the impact of the proposed change on the relevant characteristics of affected postal products, including their attributable cost, avoided cost, average revenue, or service attainment.

(2) If the petitioner requests access to data from the Postal Service to support the assertions or conclusions in its petition, and such data are not otherwise available, it shall accompany the petition with a request to gain access to such data. The petitioner’s request should identify the data sought, and include the reasons for believing that the data will support its petition. To expedite its evaluation of the data request, the Commission may, after reasonable public notice, order that answers or objections be presented orally or in writing.

(c) Procedures for processing a notice or petition. To better evaluate a notice or petition to change an accepted analytical principle, the Commission may order that it be made the subject of discovery. By request of any interested person, or on its own behalf, the Commission may order that the petitioner and/or the Postal Service provide experts on the subject matter of the proposal to participate in technical conferences, prepare statements clarifying or supplanting their views, or answer questions posed by the Commission or its representatives.

(d) Action on the notice or petition. (1) After the conclusion of discovery procedures, if any, the Commission shall determine whether to issue a notice of proposed rulemaking based on the petition and the supporting material received. Such notice shall be evaluated by procedures that are consistent with 5 U.S.C. 553. Interested parties will be afforded an opportunity to present

(b) Form and content of notice or petition. The notice of proceeding or petition shall identify the accepted analytical principle proposed for review, explain its perceived deficiencies, and suggest how those deficiencies should be remedied.

(1) If the notice of proceeding or petition proposes that a specific alternative analytical principle be followed, it should include the data, analysis, and documentation on which the proposal is based, and, where feasible, include an estimate of the impact of the proposed change on the relevant characteristics of affected postal products, including their attributable cost, avoided cost, average revenue, or service attainment.

(2) If the petitioner requests access to data from the Postal Service to support the assertions or conclusions in its petition, and such data are not otherwise available, it shall accompany the petition with a request to gain access to such data. The petitioner’s request should identify the data sought, and include the reasons for believing that the data will support its petition. To expedite its evaluation of the data request, the Commission may, after reasonable public notice, order that answers or objections be presented orally or in writing.

(c) Procedures for processing a notice or petition. To better evaluate a notice or petition to change an accepted analytical principle, the Commission may order that it be made the subject of discovery. By request of any interested person, or on its own behalf, the Commission may order that the petitioner and/or the Postal Service provide experts on the subject matter of the proposal to participate in technical conferences, prepare statements clarifying or supplanting their views, or answer questions posed by the Commission or its representatives.

(d) Action on the notice or petition. (1) After the conclusion of discovery procedures, if any, the Commission shall determine whether to issue a notice of proposed rulemaking based on the petition and the supporting material received. Such notice shall be evaluated by procedures that are consistent with 5 U.S.C. 553. Interested parties will be afforded an opportunity to present
§ 3050.12 Obsolescence of special studies relied on to produce the Postal Service’s annual periodic reports to the Commission.

The Postal Service shall provide a list of special studies whose results are used to produce the estimates in its annual periodic reports to the Commission. It shall indicate the date the study was completed and whether the study reflects current operating conditions and procedures. The Postal Service shall update the list annually.

§ 3050.13 Additional documentation required in the Postal Service’s section 3652 report.

At the time the Postal Service files its section 3652 report, it shall include a brief narrative explanation of any changes to accepted analytical principles that have been made since the most recent Annual Compliance Determination was issued and the reasons that those changes were accepted.

§ 3050.14 Format of the Postal Service’s section 3652 report.

The Postal Service’s Cost and Revenue Analysis (CRA) report shall be presented in a format reflecting the classification structure in the Mail Classification Schedule.

§ 3050.20 Compliance and other analyses in the Postal Service’s section 3652 report.

(a) The Postal Service’s section 3652 report shall include an analysis of the information that it contains in sufficient detail to demonstrate the degree to which, in the fiscal year covered by its report, each of its products (market dominant and competitive) comply with all of the applicable provisions of title 39 of the United States Code and the regulations promulgated thereunder, and promote the public policy objectives set out in title 39 of the United States Code.

(b) Its analysis shall be applied to products individually, and, where appropriate, to products collectively.

(c) It shall address such matters as non-compensatory rates, discounts greater than avoided costs, and failures to achieve stated goals for on-time delivery standards. A more detailed analysis is required when the Commission observed and commented upon the same matter in its Annual Compliance Determination for the previous fiscal year.

§ 3050.21 Content of the Postal Service’s section 3652 report.

(a) No later than 90 days after the close of each fiscal year, the Postal Service shall submit a report to the Commission analyzing its cost, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of the United States Code. The report shall provide the items in paragraphs (b) through (j) of this section.

(b) The volume and revenue generated by each product;

(c) The attributable costs of, and the contribution to institutional costs made by, each product;

(d) The quality of service received by each market dominant product, including the speed of delivery and the reliability of delivery;

(e) For each market dominant workshare discount offered during the reporting year:

(1) The per-item cost avoided by the Postal Service by virtue of such discount;

(2) The percentage of such per-item cost avoided that the per-item workshare discount represents;

(3) The per-item contribution made to institutional costs; and

(4) The factual and analytical bases for its conclusion that one or more of the exception provisions of 39 U.S.C. 3622(e)(2)(A) through (D) apply.

(f) For each market dominant negotiated service agreement:

(1) Identify its rates and service features;

(2) Estimate its costs, volumes, and revenues;
Postal Regulatory Commission

§ 3050.22 Documentation supporting attributable cost estimates in the Postal Service’s section 3652 report.

(a) The items in paragraphs (b) through (p) of this section shall be reported when they have changed from those used in the most recent Annual Compliance Determination.

(b) The CRA report, including relevant data on international mail services;

(c) The Cost Segments and Components (CSC) report;

(d) All input data and processing programs used to produce the CRA report, to include:

   (1) CSC Reconciliation to Financial Statement and Account Reallocations;

   (2) Manual Input Requirement (reflecting direct accounting or modeled costs);

   (3) The CSC “A” report (showing how indirect costs are distributed to products based on the distribution of direct costs);

   (4) The CSC “B” report (showing how indirect Property Equipment Supplies Services and Administrative (PESSA) costs are distributed to products);

   (5) The CSC “D” report (showing final adjustments to total attributable and product-specific costs);

   (6) The CSC “F” report (containing distribution keys for indirect labor components);

   (7) The control file that includes the CRA program control string commands used to produce the CRA and the above-described CSC reports; and

   (8) The master list of cost segment components, including all of the components used as distribution keys in the development of the CSC report and its accompanying reports.

(e) Spreadsheet workpapers underlying development of the CSC report by component. These workpapers shall include the updated factors and input data sets from the supporting data systems used, including:

   (1) The In-Office Cost System (IOCS);

   (2) The Management Operating Data System (MODS);

   (3) The City Carrier Cost System (CCCS);

   (4) The City Carrier Street Time Sampling System (CCSTS);

   (5) The Rural Carrier Cost System (RCCS);

(3) Analyze its effect on the operational performance of the Postal Service, specifying the affected operations and, to the extent possible, quantifying the effect;

(4) Analyze the contribution of the agreement to institutional costs for its most recent year of operation. The year analyzed shall end on the anniversary of the negotiated service agreement that falls within the fiscal year covered by the Postal Service’s annual periodic reports to the Commission and include the 12 preceding months. The analysis shall show all calculations and fully identify all inputs. Inputs used to estimate the effect on total contribution to the Postal Service, such as unit costs and price elasticities, shall be updated using fiscal year values; and

(5) Analyze the effect of the negotiated service agreement (and other functionally equivalent negotiated service agreements) on the marketplace. If there were harmful effects, explain why those effects were not unreasonable.

(g) For each competitive negotiated service agreement:

   (1) Identify its rates and service features; and

   (2) Estimate its costs, volumes, and revenues.

(h) For market tests of experimental products:

   (1) Estimate their costs, volumes, and revenues individually, and in aggregate, by market dominant and by competitive product group;

   (2) Estimate the quality of service of each individual experimental product; and

   (3) Indicate whether offering the experimental product has created an inappropriate competitive advantage for the Postal Service or any mailer.

(i) For each nonpostal service, estimate its costs, volumes, and revenues; and

(j) Provide any other information that the Postal Service believes will help the Commission evaluate the Postal Service’s compliance with the applicable provisions of title 39 of the United States Code.
§ 3050.23 Documentation supporting incremental cost estimates in the Postal Service’s section 3652 report.

Input data, processing programs, and output of an incremental cost model shall be reported.

§ 3050.24 Documentation supporting estimates of costs avoided by worksharing and other mail characteristics in the Postal Service’s section 3652 report.

(a) The items in paragraphs (b) through (l) of this section shall be reported, including supporting calculations and derivations.

(b) Letter, card, flat, parcel and non-flat machinable mail processing cost models with Delivery Point Sequence percentages calculated, which shall include:

1. Coverage factors for any equipment where coverage is less than 100 percent;
2. MODS productivities;
3. Piggyback factors and supporting data;
4. Entry profiles, bundle sorts, and pieces per bundle;
5. Bundle breakage, handlings, and density;
6. Mail flow density and accept rates;
7. Remote Computer Reader finalization costs, cost per image, and Remote Bar Code Sorter leakage;
8. Percentage of mail finalized to carrier route;
9. Percentage of mail destinating at post office boxes; and
10. Wage rates and premium pay factors.

(c) Pallet cost models for Periodicals;
(d) Sack cost models for Periodicals;
(e) Bundle cost models for Periodicals;
(f) Other container cost models for Periodicals;
(g) Analysis of Periodicals container costs;
(h) Business Reply Mail cost supporting material;
(i) Mail processing units costs for Carrier Route, High Density, and Saturation mail;
(j) Mail processing unit costs by shape and cost pool for each product and benchmark category;
(k) Delivery costs by product, shape, presort level, automation compatibility, and machinability, including Detached Address Label cost calculations; and
(l) Dropship cost avoidance models.
Postal Regulatory Commission

§ 3050.25 Volume and revenue data.
(a) The items in paragraphs (b) through (e) of this section shall be provided.
(b) The Revenue, Pieces, and Weight (RPW) report, including estimates by shape, weight, and indicia, and the underlying billing determinants, broken out by quarter, within 90 days of the close of each fiscal year;
(c) Revenue, pieces, and weight by rate category and special service by quarter, within 30 days of the close of the quarter;
(d) Quarterly Statistics Report, including estimates by shape, weight, and indicia, within 30 days of the close of the quarter; and
(e) Billing determinants within 40 days of the close of the quarter.

§ 3050.26 Documentation of demand elasticities and volume forecasts.
By January 20 of each year, the Postal Service shall provide econometric estimates of demand elasticity for all postal products accompanied by the underlying econometric models and the input data sets used; and a volume forecast for the current fiscal year, and the underlying volume forecasting model.

§ 3050.27 Workers’ Compensation Report.
The Workers’ Compensation Report, including summary workpapers, shall be provided by March 1 of each year.

§ 3050.28 Monthly and pay period reports.
(a) The reports in paragraphs (b) through (f) of this section shall be provided within 15 days of the close of the relevant period or as otherwise stated.
(b) Monthly Summary Financial Report on the 24th day of the following month, except that the report for the last month of each quarter shall be provided at the time that the Form 10-Q report is provided.
(1) The report shall follow the formats as shown below.

Table 1—USPS Monthly Financial Statement
Month, Fiscal Year

<table>
<thead>
<tr>
<th></th>
<th>Current Period</th>
<th>Year-to-Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
<td>Plan</td>
</tr>
<tr>
<td>Operating Revenue:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mail and Services Revenue:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Government Appropriations:</td>
<td></td>
<td></td>
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<tr>
<td>Total Operating Revenue:</td>
<td></td>
<td></td>
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<tr>
<td>Operating Expenses:</td>
<td></td>
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<tr>
<td>Personnel Compensation and Benefits:</td>
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<tr>
<td>Transportation:</td>
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<tr>
<td>Supplies and Services:</td>
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<tr>
<td>Other Expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Operating Expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Net Operating Income:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest Income:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest Expense:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Net Income:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Operating Statistics:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mail Volume (Millions):</td>
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<td></td>
</tr>
<tr>
<td>Total Market Dominant Volumes:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Competitive Product Volumes:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Mail Volume:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Workhours (Millions):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Career Employees:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Non-Career Employees:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Table 2—Mail Volume and Mail Revenue

Month, Fiscal Year

[Thousands]

<table>
<thead>
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<th></th>
<th>Current Period</th>
<th>Year-to-Date</th>
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</thead>
<tbody>
<tr>
<td></td>
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<td>Market Dominant Products:</td>
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<tr>
<td>First Class:</td>
<td></td>
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<tr>
<td>Volume</td>
<td></td>
<td></td>
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<tr>
<td>Revenue</td>
<td></td>
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<tr>
<td>Periodicals:</td>
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<tr>
<td>Volume</td>
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<tr>
<td>Revenue</td>
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<tr>
<td>Standard Mail:</td>
<td></td>
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<tr>
<td>Volume</td>
<td></td>
<td></td>
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<tr>
<td>Revenue</td>
<td></td>
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<tr>
<td>Package Services:</td>
<td></td>
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<tr>
<td>Volume</td>
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<td></td>
</tr>
<tr>
<td>Revenue</td>
<td></td>
<td></td>
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<tr>
<td>All Other Market Dominant Mail:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Volume</td>
<td></td>
<td></td>
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<tr>
<td>Revenue</td>
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<td></td>
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<tr>
<td>Total Market Dominant Products:</td>
<td></td>
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</tr>
<tr>
<td>Volume</td>
<td></td>
<td></td>
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<tr>
<td>Revenue</td>
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<tr>
<td>Total Competitive Products:</td>
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<tr>
<td>Volume</td>
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<tr>
<td>Revenue</td>
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<td>Total All Mail:</td>
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<tr>
<td>Volume</td>
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<tr>
<td>Revenue</td>
<td></td>
<td></td>
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</table>
Postal Regulatory Commission § 3050.28

Table 3—USPS Expenses
Month, Fiscal Year

<table>
<thead>
<tr>
<th></th>
<th>Current Period</th>
<th>Year-to-Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
<td>Plan</td>
</tr>
<tr>
<td>Personnel Expenses:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Salaries and Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>City Delivery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mail Processing</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Customer Services and Retail</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rural Delivery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other, including Plant and Vehicle Maintenance</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Operational Support, Postmasters, and Administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Salaries and Benefits</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Personnel Related Expenses</td>
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<td></td>
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<tr>
<td>Retirement Benefits</td>
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<td></td>
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<tr>
<td>Workers’ Compensation</td>
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<tr>
<td>All Other Personnel Related Expenses</td>
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<tr>
<td>Total Other Personnel Related Expenses</td>
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<tr>
<td>Total Personnel Compensation and Benefits</td>
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<tr>
<td>Non-Personnel Expenses:</td>
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<td>Transportation</td>
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<td>Supplies and Services</td>
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<td>Depreciation and Amortization</td>
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<td>Rent and Utilities</td>
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<td>Vehicle Maintenance Service</td>
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<td>Information Technology</td>
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<tr>
<td>Rural Carrier Equipment Maintenance</td>
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<td>Other Non-Personnel Expenses</td>
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<tr>
<td>Total Non-Personnel Expenses</td>
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<tr>
<td>Total Operating Expenses</td>
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<td>Interest Expense</td>
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<tr>
<td>Total Expenses</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Table 4—USPS Workhours
Month, Fiscal Year

<table>
<thead>
<tr>
<th></th>
<th>Current Period</th>
<th>Year-to-Date</th>
</tr>
</thead>
<tbody>
<tr>
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<td>Actual</td>
<td>Plan</td>
</tr>
<tr>
<td>Workhours:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>City Delivery</td>
<td></td>
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<tr>
<td>Mail Processing</td>
<td></td>
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<tr>
<td>Customer Services and Retail</td>
<td></td>
<td></td>
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<tr>
<td>Rural Delivery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other, including Plant and Vehicle Maintenance, Operational Support, Postmasters, and Administration</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Workhours</td>
<td></td>
<td></td>
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<tr>
<td>Overtime Ratio per 100 Workhours</td>
<td></td>
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</table>

(2) [Reserved]  (c) National Consolidated Trial Balances and the Revenue and Expense Summary (monthly): 489
§ 3050.30 Information needed to estimate the cost of the universal service obligation. [Reserved]

§ 3050.35 Financial reports.
(a) The reports in paragraphs (b) through (d) of this section shall be provided annually at the time indicated.
(b) Annual Report of the Postmaster General (when released to the public);
(c) Congressional Budget Submission and supporting workpapers, including Summary Tables SE 1, 2, and 6 (within 7 days of the submission of the Federal Budget by the President to the Congress); and
(d) Integrated Financial Plan (within 7 days of approval by the Board of Governors).

§ 3050.40 Additional financial reporting.
(a) In general. The Postal Service shall file with the Commission:
(1) Within 40 days after the end of each fiscal quarter, a quarterly report containing the information required by the Securities and Exchange Commission to be included in quarterly reports under sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)) on Form 10-Q, as such form (or any successor form) may be revised from time to time;
(2) Within 60 days after the end of each fiscal year, an annual report containing the information required by the Securities and Exchange Commission to be included in annual reports under such sections on Form 10-K, as such form (or any successor form) may be revised from time to time; and
(3) Periodic reports within the time frame and containing the information prescribed in Form 8-K of the Securities and Exchange Commission, as such form (or any successor form) may be revised from time to time.
(b) Internal control report. For purposes of defining the reports required by paragraph (a)(2) of this section, the Postal Service shall comply with the rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262), beginning with the annual report for fiscal year 2010.
(c) Financial reporting. The reports required by paragraph (a)(2) of this section shall include, with respect to the Postal Service’s pension and post-retirement health obligations:
(1) The funded status of the Postal Service’s pension and post-retirement health obligations;
(2) Components of the net change in the fund balances and obligations and the nature and cause of any significant changes;
(3) Components of net periodic costs;
(4) Cost methods and assumptions underlying the relevant actuarial valuations;
(5) The effect of a 1 percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic post-retirement health cost and the accumulated obligation;
(6) Actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;
(7) The composition of plan assets reflected in the fund balances; and
(8) The assumed rate of return on fund balances and the actual rates of return for the years presented.
(d) Time of filing. Within 5 business days of receiving the data listed under paragraph (c) of this section from the Office of Personnel Management, the Postal Service shall provide two copies of that data to the Commission.
(e) Segment reporting.
(1) Beginning with reports for fiscal year 2010, for purposes of the reports required under paragraphs (a)(1) and (2) of this section, the Postal Service shall include segment reporting.
(2) The Postal Service shall determine the appropriate segment reporting under paragraph (e)(1) of this section after consultation with the Commission.
§ 3050.41 Treatment of additional financial reports.

(a) For purposes of the reports required by §3050.40(a)(2), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed in §3050.40(c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a stand-alone basis.

(b) Supporting matter. The Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under §3050.40.

§ 3050.42 Proceedings to improve the quality of financial data.

The Commission may, on its own motion or on request of an interested party, initiate proceedings to improve the quality, accuracy, or completeness of Postal Service data required under §3050.40 whenever it shall appear that the data have become significantly inaccurate or can be significantly improved; or those revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

§ 3050.43 Information on program performance.

(a) The Postal Service shall provide the items in paragraphs (b)(1) through (3) of this section at the same time that the President submits an annual budget to Congress:

(b)(1) The comprehensive statement required by 39 U.S.C. 2401(e);
(2) The performance plan required by 39 U.S.C. 2803; and

(c) Section 3050.10 does not apply to the reports referenced in this section.

§ 3050.60 Miscellaneous reports and documents.

(a) The reports in paragraphs (b) through (g) of this section shall be provided at the times indicated.

(b) A master list of publications and handbooks, including those related to internal information procedures, data collection forms, and corresponding training handbooks by July 1, 2009, and again when changed;

(c) The items listed in paragraph (b) of this section in hard copy form, and in electronic form, if available;

(d) Household Diary Study (when completed);

(e) Input data and calculations used to produce the annual Total Factor Productivity estimates (by March 1 of each year);

(f) Succinct narrative explanations of how the estimates in the most recent Annual Compliance Determination were calculated and the reasons that particular analytical principles were followed. The narrative explanations shall be comparable in detail to that which had been provided in Library Reference 1 in omnibus rate cases processed under the Postal Reorganization Act (by July 1 of each year); and

(g) An update of the history of changes in postal volumes, revenues, rates, and fees that appears in library references USPS–LR–L–73 through 76 in Docket No. R2006–1 (by July 1 of each year).

P ART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

Subpart A—Annual Reporting of Service Performance Achievements

Sec.
3055.1 Annual reporting of service performance achievements.
3055.2 Contents of the annual report of service performance achievements.
3055.3 Reporting exceptions.
3055.4 Internal measurement systems.
3055.5 Changes to measurement systems, service standards, service goals or reporting methodologies.
3055.6 Addition of new market dominant products or changes to existing market dominant products.
3055.7 Special study.
3055.20 First-Class Mail.
3055.21 Standard Mail.
3055.22 Periodicals.
3055.23 Package Services.
3055.24 Special Services.
3055.25 Non-postal products. [Reserved]

Subpart B—Periodic Reporting of Service Performance Achievements

3055.30 Periodic reporting of service performance achievements.
§ 3055.1  Annual reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 of this chapter, the Postal Service shall file a report as part of the section 3652 report addressing service performance achievements for the preceding fiscal year.

§ 3055.2  Contents of the annual report of service performance achievements.

(a) The items in paragraphs (b) through (k) of this section shall be included in the annual report of service performance achievements.

(b) The class or group-specific reporting requirements specified in §§ 3055.20 through 3055.25.

(c) The applicable service standard(s) for each product.

(d) The applicable service goal(s) for each product.

(e) A description of the measurement system for each product, including:

(1) A description of what is being measured;

(2) A description of the system used to obtain each measurement;

(3) A description of the methodology used to develop reported data from measured data;

(4) A description of any changes to the measurement system or data reporting methodology implemented within the reported fiscal year; and

(5) Where proxies are used, a description of and justification for the use of each proxy.

(f) A description of the statistical validity and reliability of the results for each measured product.

(g) A description of how the sampled data represents the national geographic mail characteristics or behavior of the product.

(h) For each product that does not meet a service standard, an explanation of why the service standard is not met, and a plan describing the steps that have or will be taken to ensure that the product meets or exceeds the service standard in the future.

(i) The identification of each product, or component of a product, granted an exception from reporting pursuant to § 3055.3, and a certification that the rationale for originally granting the exception remains valid.

(j) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

(k) For each product, documentation showing how the reports required by subpart A of this part were derived from the reports required by subpart B of this part. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

§ 3055.3  Reporting exceptions.

(a) The Postal Service may petition the Commission to request that a product, or component of a product, be excluded from reporting, provided the Postal Service demonstrates that:

(1) The cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product, or component of a product;

(2) The product, or component of a product, defies meaningful measurement; or
(3) The product, or component of a product, is in the form of a negotiated service agreement with substantially all components of the agreement included in the measurement of other products.

(b) The Postal Service shall identify each product or component of a product granted an exception in each report required under subparts A or B of this part, and certify that the rationale for originally granting the exception remains valid.

§ 3055.4 Internal measurement systems.

Service performance measurements obtained from internal measurement systems or hybrid measurement systems (which are defined as systems that rely on both an internal and an external measurement component) shall not be used to comply with any reporting requirement under subparts A or B of this part without prior Commission approval.

§ 3055.5 Changes to measurement systems, service standards, service goals, or reporting methodologies.

The Postal Service shall file notice with the Commission describing all changes to measurement systems, service standards, service goals or reporting methodologies, including the use of proxies for reporting service performance, 30 days prior to planned implementation. The Commission may initiate a proceeding at any time to consider such changes if it appears that the changes might have a material impact on the accuracy, reliability, or utility of the reported measurement, or if the changes might have a material impact on the characteristics of the underlying product.

§ 3055.6 Addition of new market dominant products or changes to existing market dominant products.

Whenever the Postal Service proposes the addition of a new market dominant product or a change to an existing market dominant product, it also shall propose new or revised (as necessary) service performance measurement systems, service standards, service goals, data reporting elements, and data reporting methodologies.

§ 3055.7 Special study.

Included in the second section 3652 report due after this rule becomes final, and every 2 years thereafter, the Postal Service shall provide a report, by class of mail, on delivery performance to remote areas of the Alaska, Caribbean, and Honolulu districts.

§ 3055.20 First-Class Mail.

(a) Single-Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels. For each of the Single-Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, and 3/4/5-day service standards.

(b) Outbound Single-Piece First-Class Mail International and Inbound Single-Piece First-Class Mail International. For each of the Outbound Single-Piece First-Class Mail International and Inbound Single-Piece First-Class Mail International products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place).

§ 3055.21 Standard Mail.

For each product within the Standard Mail class, report the on-time service performance (as a percentage rounded to one decimal place).

§ 3055.22 Periodicals.

For each product within the Periodicals class, report the on-time service performance (as a percentage rounded to one decimal place).

§ 3055.23 Package Services.

For each product within the Package Services class, report the on-time service performance (as a percentage rounded to one decimal place).

§ 3055.24 Special Services.

For each product within the Special Services group, report the percentage of time (rounded to one decimal place) that each product meets or exceeds its service standard.
§ 3055.25 Nonpostal products. [Reserved]

Subpart B—Periodic Reporting of Service Performance Achievements

§ 3055.30 Periodic reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 of this chapter, the Postal Service shall file a Quarterly Report with the Commission addressing service performance achievements for the preceding fiscal quarter (within 40 days of the close of each fiscal quarter).

§ 3055.31 Contents of the Quarterly Report of service performance achievements.

(a) The items in paragraphs (b) through (e) of this section shall be included in the quarterly report of service performance achievements.

(b) The class or group-specific reporting items specified in §§3055.45 through 3055.70.

(c) The identification of each product, or component of a product, granted an exception from reporting pursuant to §3055.3, and a certification that the rationale for originally granting the exception remains valid.

(d) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

(e) A year-to-date aggregation of each data item provided in each Quarterly Report due for the reported fiscal year, where applicable, including volumes and other weighting factors provided in electronic format, with formulas shown and data links preserved to allow traceability to individual Quarterly Reports.

§ 3055.32 Measurement systems using a delivery factor.

For measurements that include a delivery factor, the duration of the delivery factor also shall be presented independent of the total measurement.

§ 3055.45 First-Class Mail.

(a) Single-Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels. For each of the Single-Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels products within the First-Class Mail class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, and 3/4/5-day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the overnight, 2-day, and 3/4/5-day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) Outbound Single-Piece First-Class Mail International and Inbound Single-Piece First-Class Mail International. For each of the Outbound Single-Piece First-Class Mail International and Inbound Single-Piece First-Class Mail International products within the First-Class Mail class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

§ 3055.50 Standard Mail.

(a) For each product within the Standard Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District,
Postal Regulatory Commission

Postal Administrative Area, and National levels.

(b) For each product within the Standard Mail class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

§ 3055.55 Periodicals.

(a) Within County Periodicals. For the Within County Periodicals product within the Periodicals class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

(b) Outside County Periodicals. For the Outside County Periodicals product within the Periodicals class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End-to-End entry mail, provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End-to-End entry mail, provided at the Postal Administrative Area and National levels.

§ 3055.60 Package Services.

(a) Single-Piece Parcel Post. For the Single-Piece Parcel Post product within the Package Services class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2-day through 4-day and 5-day through 20-day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the 2-day through 4-day and 5-day through 20-day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) Bound Printed Matter Flats, Bound Printed Matter Parcels, and Media Mail/Library Mail. For each of the Bound Printed Matter Flats, Bound Printed Matter Parcels, and Media Mail/Library Mail products within the Package Services class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels.

(c) Inbound Surface Parcel Post (at UPU rates). For the Inbound Surface Parcel Post (at UPU rates) product within the Package Services class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

§ 3055.65 Special Services.

(a) For each product within the Special Services group, report the percentage of time (rounded to one decimal
§ 3055.70 Nonpostal products. [Reserved]

Subpart C—Reporting of Customer Satisfaction

§ 3055.80 Reporting of customer satisfaction.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 of this chapter, the Postal Service shall file a report as part of the section 3652 report, unless a more frequent filing is specifically indicated, addressing customer satisfaction achievements for the preceding fiscal year. The report shall include, at a minimum, the specific reporting requirements presented in §§3055.91 through 3055.92.

§ 3055.91 Consumer access to postal services.

(a) The following information pertaining to post offices shall be reported, disaggregated by type of post office facility, and provided at the Postal Administrative Area and National levels:

(1) The number of post offices at the beginning of the reported fiscal year;

(2) The number of post offices at the end of the reported fiscal year;

(3) The number of post office closings in the reported fiscal year;

(4) The number of post office emergency suspensions in effect at the beginning of the reported fiscal year;

(5) The number of post office emergency suspensions in the reported fiscal year; and

(6) The number of post office emergency suspensions in effect at the end of the reported fiscal year.

(b) The following information pertaining to delivery points shall be reported, disaggregated by delivery point type, provided at the Postal Administrative Area and National levels:

(1) The number of residential delivery points at the beginning of the reported fiscal year;

(2) The number of residential delivery points at the end of the reported fiscal year;

(3) The number of business delivery points at the beginning of the reported fiscal year; and

(4) The number of business delivery points at the end of the reported fiscal year.

(c) The following information pertaining to collection boxes shall be reported, provided at the Postal Administrative Area and National levels:

(1) The number of collection boxes at the beginning of the reported fiscal year;
Postal Regulatory Commission

(2) The number of collection boxes at the end of the reported fiscal year;
(3) The number of collection boxes removed during the reported fiscal year; and
(4) The number of collection boxes added to new locations during the reported fiscal year.

(d) The average customer wait time in line for retail service shall be reported. Data shall be provided for the beginning of the reported fiscal year and for the close of each successive fiscal quarter at the Postal Administrative Area and National levels.

§ 3055.92 Customer Experience Measurement Surveys.

(a) The report shall include a copy of each type of Customer Experience Measurement instrument, or any similar instrument that may supersede the Customer Experience Measurement instrument used in the preceding fiscal year.

(b) The report shall include information obtained from each type of Customer Experience Measurement instrument, or any similar instrument that may supersede the Customer Experience Measurement instrument including:

(1) A description of the customer type targeted by the survey;
(2) The number of surveys initiated and the number of surveys received; and
(3) Where the question asked is subject to a multiple choice response, the number of responses received for each question, disaggregated by each of the possible responses.

PART 3060—ACCOUNTING PRACTICES AND TAX RULES FOR THE THEORETICAL COMPETITIVE PRODUCTS ENTERPRISE

§ 3060.10 Costing.

(a) The assumed taxable income from competitive products for the Postal Service’s theoretical competitive products enterprise for a fiscal year shall be based on total revenues generated by competitive products during that year less the costs identified in paragraph (b) of this section calculated using the methodology most recently approved by the Commission.

(b) The net income for the Postal Service’s theoretical competitive products enterprise shall reflect the following costs:

(1) Attributable costs, including volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product’s incremental costs; and
(2) The appropriate share of institutional costs assigned to competitive products by the Commission pursuant to 39 U.S.C. 3633(a)(3).


SOURCE: 73 FR 79261, Dec. 24, 2008, unless otherwise noted.

§ 3060.1 Scope.

The rules in this part are applicable to the Postal Service’s theoretical competitive products enterprise developed pursuant to 39 U.S.C. 2011 and 3634 and to the Postal Service’s obligation to calculate annually an assumed Federal income tax on competitive products income and transfer annually any such assumed Federal income tax due from the Competitive Products Fund to the Postal Service Fund.

§ 3060.10 Costing.

(a) The assumed taxable income from competitive products for the Postal Service’s theoretical competitive products enterprise for a fiscal year shall be based on total revenues generated by competitive products during that year less the costs identified in paragraph (b) of this section calculated using the methodology most recently approved by the Commission.

(b) The net income for the Postal Service’s theoretical competitive products enterprise shall reflect the following costs:

(1) Attributable costs, including volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product’s incremental costs; and
(2) The appropriate share of institutional costs assigned to competitive products by the Commission pursuant to 39 U.S.C. 3633(a)(3).


SOURCE: 73 FR 79261, Dec. 24, 2008, unless otherwise noted.

§ 3060.1 Scope.

The rules in this part are applicable to the Postal Service’s theoretical competitive products enterprise developed pursuant to 39 U.S.C. 2011 and 3634 and to the Postal Service’s obligation to calculate annually an assumed Federal income tax on competitive products income and transfer annually any such assumed Federal income tax due from the Competitive Products Fund to the Postal Service Fund.

§ 3060.10 Costing.

(a) The assumed taxable income from competitive products for the Postal Service’s theoretical competitive products enterprise for a fiscal year shall be based on total revenues generated by competitive products during that year less the costs identified in paragraph (b) of this section calculated using the methodology most recently approved by the Commission.

(b) The net income for the Postal Service’s theoretical competitive products enterprise shall reflect the following costs:

(1) Attributable costs, including volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product’s incremental costs; and
(2) The appropriate share of institutional costs assigned to competitive products by the Commission pursuant to 39 U.S.C. 3633(a)(3).


SOURCE: 73 FR 79261, Dec. 24, 2008, unless otherwise noted.
§ 3060.11 Valuation of assets.

For the purposes of 39 U.S.C. 2011, the total assets of the Postal Service theoretical competitive products enterprise are the greater of:

(a) The percentage of total Postal Service revenues and receipts from competitive products times the total net assets of the Postal Service, or

(b) The net assets related to the provision of competitive products as determined pursuant to §3060.12.

§ 3060.12 Asset allocation.

Within 6 months of January 23, 2009, and for each fiscal year thereafter, the Postal Service will develop the net assets of the theoretical competitive products enterprise as follows:

(a) Identify all asset accounts within the Postal Service’s Chart of Accounts used solely for the provision of competitive products.

(b) Identify all asset accounts within the Postal Service’s Chart of Accounts used solely for the provision of market dominant products.

(c) The portion of asset accounts in the Postal Service’s Chart of Accounts that are not identified in either paragraph (a) or paragraph (b) of this section shall be assigned to the theoretical competitive products enterprise using a method of allocation based on appropriate revenue or cost drivers approved by the Commission.

(d) Within 6 months of the effective date of these rules, the Postal Service shall submit to the Commission for approval a proposed methodology detailing how each asset account identified in the Chart of Accounts shall be allocated to the theoretical competitive products enterprise and provide an explanation in support of each allocation.

(e) If the Postal Service desires to change the methodologies outlined above, it shall utilize the procedures provided in §3050.11 of this chapter.

§ 3060.13 Valuation of liabilities.

Within 6 months of January 23, 2009, and for each fiscal year thereafter, the Postal Service will develop the liabilities of the theoretical competitive products enterprise as follows:

(a) Identify all liability accounts within the Postal Service’s Chart of Accounts used solely for the provision of competitive products.

(b) Identify all liability accounts within the Postal Service’s Chart of Accounts used solely for the provision of market dominant products.

(c) The portion of liability accounts in the Postal Service’s Chart of Accounts that are not identified in either paragraph (a) or paragraph (b) of this section shall be assigned to the theoretical competitive products enterprise using a method of allocation based on appropriate revenue or cost drivers approved by the Commission.

(d) Within 6 months of the effective date of these rules, the Postal Service shall submit to the Commission for approval a proposed methodology detailing how each liability account identified in the Chart of Accounts shall be allocated to the theoretical competitive products enterprise and provide an explanation in support of each allocation.

(e) If the Postal Service desires to change the methodologies outlined above, it shall utilize the procedures provided in §3050.11 of this chapter.

§ 3060.14 Competitive products enterprise statement of allocated assets and liabilities.

The Postal Service will report the assets and liabilities of the theoretical competitive products enterprise as computed under §§3060.12 and 3060.13 in the format as prescribed under §3060.30 for each fiscal year starting with FY 2010.

§ 3060.20 Reports.

(a) Beginning with reports for FY 2009, the Postal Service shall file with the Commission each of the reports required by this part by no later than 90 days after the close of each fiscal year. For FY 2008, the Postal Service may file these reports by January 15, 2009, with the exception of the report required by §3060.24.

(b) Each report shall include workpapers that cite all numbers to primary sources and such other information needed to present complete and accurate financial information concerning the provision of competitive products.
Postal Regulatory Commission § 3060.22

(c) Each report shall utilize the same books of accounts and data collection systems used to produce the report required by part 3050 of this chapter.

(d) Each report shall include summary descriptions of computations used, assumptions made, and other relevant information in the form of notes to the financial statements.

(e) A one-time extension until January 15, 2009, shall be permitted for the submission of the reports due for fiscal year ending September 30, 2008.

(f) The accounting practices used by the Postal Service in the reports filed for FY 2008, as approved by the Commission, shall be used for all future reports until such time as they may be changed by the Commission. If the Postal Service desires to change such practices, it shall utilize the procedures provided in §3050.11 of this chapter.

§ 3060.21 Income report.

The Postal Service shall file an Income Report in the form and content of Table 1, below.

TABLE 1—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP–01

<table>
<thead>
<tr>
<th>[§ in 000s]</th>
<th>FY 20xx</th>
<th>FY 20xx–1</th>
<th>Change from SPLY</th>
<th>Percent change from SPLY</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revenue:</td>
<td>$x,xxx</td>
<td>$x,xxx</td>
<td>$xxx</td>
<td>xx.x</td>
</tr>
<tr>
<td>(1) Mail and Services Revenues</td>
<td>xxx</td>
<td>xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(2) Investment Income</td>
<td>x,xx</td>
<td>x,xxx</td>
<td>xxx</td>
<td>xx.x</td>
</tr>
<tr>
<td>(3) Total Competitive Products Revenue</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>Expenses:</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(4) Volume-Variable Costs</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(5) Product Specific Costs</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(6) Incremental Inframarginal Costs</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(7) Total Competitive Products Attributable Costs</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(8) Net Contribution Competitive Products Market Tests</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(9) Net Income Before Institutional Cost Contribution</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(10) Required Institutional Cost Contribution</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(11) Net Income (Loss) Before Tax</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(12) Assumed Federal Income Tax</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
<tr>
<td>(13) Net Income (Loss) After Tax</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>xx.xx</td>
<td></td>
</tr>
</tbody>
</table>

Line (1): Total revenues from Competitive Products volumes and Ancillary Services.
Line (2): Income provided from investment of surplus Competitive Products revenues.
Line (3): Sum total of revenues from Competitive Products volumes, services, and investments.
Line (4): Total Competitive Products volume-variable costs as shown in the Cost and Revenue Analysis (CRA) report.
Line (5): Total Competitive Products product-specific costs as shown in the CRA report.
Line (6): Inframarginal costs calculated as part of total Competitive Products incremental costs as shown in ACR Library Reference “Competitive Product Incremental and Group Specific Costs” (Currently NP10).
Line (7): Sum total of Competitive Products costs (sum of lines 4, 5, and 6).
Line (9): Difference between Competitive Products total revenues and attributable costs and Market Tests Contributions (line 3 less line 7 plus line 8).
Line (10): Minimum amount of Institutional cost contribution required under 39 CFR 3015.7 of this chapter.
Line (12): Total assumed Federal income tax as calculated under 39 CFR 3060.40.
Line (13): Line 11 less line 12.


§ 3060.22 Financial status report.

The Postal Service shall file a Financial Status Report in the form and content of Table 2, below.

TABLE 2—ANNUAL SUMMARY OF COMPETITIVE PRODUCTS FINANCIALS—PRC FORM CP–02

<table>
<thead>
<tr>
<th>[§ in 000s]</th>
<th>Beginning value</th>
<th>Change from prior year</th>
<th>Ending value</th>
</tr>
</thead>
</table>
TABLE 2—ANNUAL SUMMARY OF COMPETITIVE PRODUCTS FINANCIALS—PRC FORM CP–02—Continued

(2) Total Financial Obligations (List of Financial Obligations).
(3) Total Financial Investments (List of Financial Investments).

<table>
<thead>
<tr>
<th>Beginning value</th>
<th>Change from prior year</th>
<th>Ending value</th>
</tr>
</thead>
</table>

Line 1: Beginning Value: Sum total of Net Income (Loss) as of October 1 of Reportable Fiscal Year. Change from Prior Year: Amount of Net Income (Loss) of Reportable Fiscal Year. Ending Value: Sum of Beginning Value and the Change from Prior Year.

Line 2: Beginning Value: Sum total of Financial Obligations as of October 1 of Reportable Fiscal Year. Change from Prior Year: Amount of Net Financial Obligations of Reportable Fiscal Year. Ending Value: Sum of Beginning Value and the Change from Prior Year.

Line 3: Beginning Value: Sum total of Financial Investments as of October 1 of Reportable Fiscal Year. Change from Prior Year: Amount of Net Financial Investments of Reportable Fiscal Year. Ending Value: Sum of Beginning Value and the Change from Prior Year.

§ 3060.23 Identified property and equipment assets report.

The Postal Service shall file an Identified Property and Equipment Assets Report in the form and content of Table 3, below.

TABLE 3—COMPETITIVE PRODUCTS PROPERTY AND EQUIPMENT ASSETS—PRC FORM CP–03

<table>
<thead>
<tr>
<th>Finance No.</th>
<th>Finance location</th>
<th>Asset identifier</th>
<th>Asset description</th>
<th>Cost</th>
<th>Accumulated depreciation</th>
<th>Net book value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total</td>
<td></td>
<td></td>
<td></td>
<td>$x,xxx</td>
<td>$x,xxx</td>
<td>$x,xxx</td>
</tr>
</tbody>
</table>

§ 3060.24 Competitive products fund report.

Within 90 days of the close of each fiscal year the Postal Service will provide the most recent report of the activity of the Competitive Products Fund as provided to the Secretary of the Treasury under 39 U.S.C. 2011(i)(1).

§ 3060.30 Statement of allocated assets and liabilities for competitive products.

(a) The Postal Service shall file a Statement of Allocated Assets and Liabilities for Competitive Products in the form and content of Table 4, below.

TABLE 4—STATEMENT OF ALLOCATED ASSETS AND LIABILITIES FOR COMPETITIVE PRODUCTS—PRC FORM CP–04

<table>
<thead>
<tr>
<th></th>
<th>USPS annual report</th>
<th>FY20XX competitive products</th>
<th>FY 20XX–1 competitive products</th>
<th>Distributed on basis of:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total net assets</td>
<td>$x,xxx</td>
<td>$x,xxx</td>
<td>$x,xxx</td>
<td></td>
</tr>
<tr>
<td>Cash and Cash Equivalents</td>
<td>$x,xxx</td>
<td>$x,xxx</td>
<td>$x,xxx</td>
<td></td>
</tr>
<tr>
<td>Net Accounts Receivable</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td></td>
</tr>
<tr>
<td>Supplies, Advances and Prepayments</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td></td>
</tr>
<tr>
<td>Appropriations Receivable—Revenue Forgone</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td></td>
</tr>
<tr>
<td>Total Current Assets</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td></td>
</tr>
<tr>
<td>Property and Equipment</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Buildings</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td></td>
</tr>
<tr>
<td>Leasehold Improvements</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td></td>
</tr>
<tr>
<td>Equipment</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td></td>
</tr>
<tr>
<td>Land</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td></td>
</tr>
<tr>
<td>Accumulated Depreciation</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td></td>
</tr>
</tbody>
</table>
Postal Regulatory Commission § 3060.40

TABLE 4—STATEMENT OF ALLOCATED ASSETS AND LIABILITIES FOR COMPETITIVE PRODUCTS—PRC
FORM CP–04—Continued

[$ in millions]

<table>
<thead>
<tr>
<th>USPS annual report</th>
<th>FY20XX competitive products</th>
<th>FY 20XX–1 competitive products</th>
<th>Distributed on basis of</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construction in Progress</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Total Property and Equipment, Net</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Total Assets</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Total Assets Determined from 39 U.S.C. 2011(e)(5)</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
</tbody>
</table>

Total Liabilities

<table>
<thead>
<tr>
<th>Liabilities</th>
<th>USPS annual report</th>
<th>FY20XX competitive products</th>
<th>FY 20XX–1 competitive products</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current Liabilities: Compensation and Benefits</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Payables and Accrued Expenses</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Customer Deposit Accounts</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Deferred Revenue</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Outstanding Postal Money Orders</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Prepaid Box Rent and Other Deferred Revenue</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Debt</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Non-Current Liabilities: Workers’ Compensation</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Employees Accumulated Leave</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Deferred Appropriation and Other Revenue</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Long-Term Portion of Capital Lease Obligations</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Deferred Gains on Sales of Property</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Contingent Liabilities and Other</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
<tr>
<td>Total Liabilities</td>
<td>x,xxx</td>
<td>x,xxx</td>
<td>x,xxx</td>
</tr>
</tbody>
</table>

(b) The Statement of Allocated Assets and Liabilities for Competitive Products shall detail the analysis and selection of methods of allocation of total assets and liabilities to the competitive products.

§ 3060.31 Initial filing.

The due date for filing the initial Statement of Allocated Assets and Liabilities for Competitive Products is 90 days after the close of FY 2010.

§ 3060.40 Calculation of the assumed Federal income tax.

(a) The assumed Federal income tax on competitive products income shall be based on the Postal Service theoretical competitive products enterprise income statement for the relevant year and must be calculated in compliance with chapter 1 of the Internal Revenue Code by computing the tax liability on the taxable income from the competitive products of the Postal Service theoretical competitive products enterprise at the section 11 (regular) or section 55(b)(1)(B) (Alternative Minimum Tax) tax rates, as applicable.

(b) The end of the fiscal year for the annual calculation of the assumed Federal income tax on competitive products income shall be September 30.

(c) The calculation of the assumed Federal income tax due shall be submitted to the Commission no later than the January 15 following the close of the fiscal year referenced in paragraph (b) of this section, except that a one-time extension of 6 months, until July 15, 2009, shall be permitted for the calculation of the assumed Federal income tax due for fiscal year end September 30, 2008.

(d) No estimated Federal income taxes need to be calculated or paid.

(e) No state, local, or foreign income taxes need to be calculated or paid.
§ 3060.41 Supporting documentation.

(a) In support of its calculation of the assumed Federal income tax, the Postal Service shall file detailed schedules reporting the Postal Service theoretical competitive products enterprise assumed taxable income, effective tax rate, and tax due.

(b) Adjustments made to book income, if any, to arrive at the assumed taxable income for any year shall be submitted to the Commission no later than January 15 of the following year.

§ 3060.42 Commission review.

(a) Interested persons shall be provided an opportunity to comment on the filing of the calculation of the assumed Federal income tax and supporting documentation.

(b) The Commission will review the calculation of the assumed Federal income tax submitted pursuant to §3060.40, the supporting documentation submitted pursuant to §3060.41, and any comments. The Commission then will issue an order either approving the calculation of the assumed Federal income tax for that tax year or take such other action as the Commission deems appropriate, including, but not limited to, directing the Postal Service to file additional supporting materials.

(c) The Commission will issue such order no later than 6 months after the Postal Service’s filing pursuant to §3060.40.

(d) Notwithstanding paragraph (b) of this section, if the Commission determines within 3 years of its submission that the Postal Service’s calculation of an assumed Federal income tax is incomplete, inaccurate, or otherwise deficient, the Commission will notify the Postal Service in writing and provide it with an opportunity to cure or otherwise explain the deficiency. Upon receipt of the Postal Service’s responsive pleading, the Commission may order such action as it deems appropriate.

§ 3060.43 Annual transfer from competitive products fund to Postal Service fund.

(a) The Postal Service must on an annual basis transfer the assumed Federal income tax due on competitive products income from the Competitive Products Fund to the Postal Service Fund.

(b) If the assumed taxable income from competitive products for a given fiscal year is positive, the assumed Federal income tax due, calculated pursuant to §3060.40, shall be transferred to the Postal Service Fund no later than the January 15 following the close of the relevant fiscal year.

(c) A one-time extension of 6 months, until July 15, 2009, shall be permitted for the transfer of the assumed Federal income tax due for fiscal year ending September 30, 2008.

(d) If assumed taxable income from competitive products for a given fiscal year is negative, and:

1. A payment was made to the Postal Service Fund for the previous tax year, a transfer equaling the lesser of the amount paid into the Postal Service Fund for the past 2 tax years or the amount of the hypothetical tax on the loss shall be made from the Postal Service Fund to the Competitive Products Fund no later than the January 15 following the close of the relevant fiscal year; or

2. No payment has been made into the Postal Service Fund for the previous 2 tax years, the loss may be carried forward and offset against any calculated assumed Federal taxable income on competitive products income for 20 years.
FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

Table of CFR Titles and Chapters
Alphabetical List of Agencies Appearing in the CFR
List of CFR Sections Affected
# Table of CFR Titles and Chapters
*(Revised as of July 1, 2017)*

## Title 1—General Provisions

I. Administrative Committee of the Federal Register (Parts 1—49)
II. Office of the Federal Register (Parts 50—299)
III. Administrative Conference of the United States (Parts 300—399)
IV. Miscellaneous Agencies (Parts 400—500)

## Title 2—Grants and Agreements

**SUBTITLE A—Office of Management and Budget Guidance for Grants and Agreements**

I. Office of Management and Budget Governmentwide Guidance for Grants and Agreements (Parts 2—199)
II. Office of Management and Budget Guidance (Parts 200—299)

**SUBTITLE B—Federal Agency Regulations for Grants and Agreements**

III. Department of Health and Human Services (Parts 300—399)
IV. Department of Agriculture (Parts 400—499)
VI. Department of State (Parts 600—699)
VII. Agency for International Development (Parts 700—799)
VIII. Department of Veterans Affairs (Parts 800—899)
IX. Department of Energy (Parts 900—999)
X. Department of the Treasury (Parts 1000—1099)
XI. Department of Defense (Parts 1100—1199)
XII. Department of Transportation (Parts 1200—1299)
XIII. Department of Commerce (Parts 1300—1399)
XIV. Department of the Interior (Parts 1400—1499)
XV. Environmental Protection Agency (Parts 1500—1599)
XVIII. National Aeronautics and Space Administration (Parts 1800—1899)
XX. United States Nuclear Regulatory Commission (Parts 2000—2099)
XXII. Corporation for National and Community Service (Parts 2200—2299)
XXIII. Social Security Administration (Parts 2300—2399)
XXIV. Housing and Urban Development (Parts 2400—2499)
XXV. National Science Foundation (Parts 2500—2599)
XXVI. National Archives and Records Administration (Parts 2600—2699)
XXVII. Small Business Administration (Parts 2700—2799)
Title 2—Grants and Agreements—Continued

XXVIII Department of Justice (Parts 2800—2899)
XXIX Department of Labor (Parts 2900—2999)
XXX Department of Homeland Security (Parts 3000—3099)
XXXI Institute of Museum and Library Services (Parts 3100—3199)
XXXII National Endowment for the Arts (Parts 3200—3299)
XXXIII National Endowment for the Humanities (Parts 3300—3399)
XXXIV Department of Education (Parts 3400—3499)
XXXV Export-Import Bank of the United States (Parts 3500—3599)
XXXVI Office of National Drug Control Policy, Executive Office of the President (Parts 3600—3699)
XXXVII Peace Corps (Parts 3700—3799)
LIX Gulf Coast Ecosystem Restoration Council (Parts 5900—5999)

Title 3—The President

I Executive Office of the President (Parts 100—199)

Title 4—Accounts

I Government Accountability Office (Parts 1—199)

Title 5—Administrative Personnel

I Office of Personnel Management (Parts 1—1199)
II Merit Systems Protection Board (Parts 1200—1299)
III Office of Management and Budget (Parts 1300—1399)
IV Office of Personnel Management and Office of the Director of National Intelligence (Parts 1400—1499)
V The International Organizations Employees Loyalty Board (Parts 1500—1599)
VI Federal Retirement Thrift Investment Board (Parts 1600—1699)
VIII Office of Special Counsel (Parts 1800—1899)
IX Appalachian Regional Commission (Parts 1900—1999)
XI Armed Forces Retirement Home (Parts 2100—2199)
XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority and Federal Service Impasses Panel (Parts 2400—2499)
XVI Office of Government Ethics (Parts 2600—2699)
XXI Department of the Treasury (Parts 3100—3199)
XXII Federal Deposit Insurance Corporation (Parts 3200—3299)
XXIII Department of Energy (Parts 3300—3399)
XXIV Federal Energy Regulatory Commission (Parts 3400—3499)
XXV Department of the Interior (Parts 3500—3599)
XXVI Department of Defense (Parts 3600—3699)
XXVIII Department of Justice (Parts 3800—3899)
Title 5—Administrative Personnel—Continued

XXIX Federal Communications Commission (Parts 3900—3999)
XXX Farm Credit System Insurance Corporation (Parts 4000—4099)
XXXI Farm Credit Administration (Parts 4100—4199)
XXXIII Overseas Private Investment Corporation (Parts 4300—4399)
XXXIV Securities and Exchange Commission (Parts 4400—4499)
XXXV Office of Personnel Management (Parts 4500—4599)
XXXVI Department of Homeland Security (Parts 4600—4699)
XXXVII Federal Election Commission (Parts 4700—4799)
XL Interstate Commerce Commission (Parts 5000—5099)
XLI Commodity Futures Trading Commission (Parts 5100—5199)
XLII Department of Labor (Parts 5200—5299)
XLIII National Science Foundation (Parts 5300—5399)
XLV Department of Health and Human Services (Parts 5500—5599)
XLVI Postal Rate Commission (Parts 5600—5699)
XLVII Federal Trade Commission (Parts 5700—5799)
XLVIII Nuclear Regulatory Commission (Parts 5800—5899)
XLIX Federal Labor Relations Authority (Parts 5900—5999)
L Department of Transportation (Parts 6000—6099)
LI Export-Import Bank of the United States (Parts 6200—6299)
LII Department of Education (Parts 6300—6399)
LIV Environmental Protection Agency (Parts 6400—6499)
LV National Endowment for the Arts (Parts 6500—6599)
LVI National Endowment for the Humanities (Parts 6600—6699)
LVII General Services Administration (Parts 6700—6799)
LVIII Board of Governors of the Federal Reserve System (Parts 6800—6899)
LIX National Aeronautics and Space Administration (Parts 6900—6999)
LX United States Postal Service (Parts 7000—7099)
LXI National Labor Relations Board (Parts 7100—7199)
LXII Equal Employment Opportunity Commission (Parts 7200—7299)
LXIII Inter-American Foundation (Parts 7300—7399)
LXIV Merit Systems Protection Board (Parts 7400—7499)
LXV Department of Housing and Urban Development (Parts 7500—7599)
LXVI National Archives and Records Administration (Parts 7600—7699)
LXVII Institute of Museum and Library Services (Parts 7700—7799)
LXVIII Commission on Civil Rights (Parts 7800—7899)
LXIX Tennessee Valley Authority (Parts 7900—7999)
LXX Court Services and Offender Supervision Agency for the District of Columbia (Parts 8000—8099)
LXXI Consumer Product Safety Commission (Parts 8100—8199)
LXXII Department of Agriculture (Parts 8300—8399)
LXXIV Federal Mine Safety and Health Review Commission (Parts 8400—8499)
Title 5—Administrative Personnel—Continued

LXXVI  Federal Retirement Thrift Investment Board (Parts 8600—8699)

LXXVII  Office of Management and Budget (Parts 8700—8799)

LXXX  Federal Housing Finance Agency (Parts 9000—9099)

LXXXIII  Special Inspector General for Afghanistan Reconstruction (Parts 9300—9399)

LXXXIV  Bureau of Consumer Financial Protection (Parts 9400—9499)

LXXXVI  National Credit Union Administration (Parts 9600—9699)


XCVIII  Council of the Inspectors General on Integrity and Efficiency (Parts 9800—9899)

XCIX  Military Compensation and Retirement Modernization Commission (Parts 9900—9999)

C  National Council on Disability (Parts 10000—10049)

Title 6—Domestic Security

I  Department of Homeland Security, Office of the Secretary (Parts 1—199)

X  Privacy and Civil Liberties Oversight Board (Parts 1000—1099)

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE (PARTS 0—26)

SUBTITLE B—REGULATIONS OF THE DEPARTMENT OF AGRICULTURE

I  Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 27—209)

II  Food and Nutrition Service, Department of Agriculture (Parts 210—299)

III  Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300—399)

IV  Federal Crop Insurance Corporation, Department of Agriculture (Parts 400—499)

V  Agricultural Research Service, Department of Agriculture (Parts 500—599)

VI  Natural Resources Conservation Service, Department of Agriculture (Parts 600—699)

VII  Farm Service Agency, Department of Agriculture (Parts 700—799)

VIII  Grain Inspection, Packers and Stockyards Administration (Federal Grain Inspection Service), Department of Agriculture (Parts 800—899)

IX  Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900—999)

X  Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000—1199)
Chap.
XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200—1299)
XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400—1499)
XV Foreign Agricultural Service, Department of Agriculture (Parts 1500—1599)
XVI Rural Telephone Bank, Department of Agriculture (Parts 1600—1699)
XVII Rural Utilities Service, Department of Agriculture (Parts 1700—1799)
XVIII Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, Department of Agriculture (Parts 1800—2099)
XX Local Television Loan Guarantee Board (Parts 2200—2299)
XXV Office of Advocacy and Outreach, Department of Agriculture (Parts 2500—2599)
XXVI Office of Inspector General, Department of Agriculture (Parts 2600—2699)
XXVII Office of Information Resources Management, Department of Agriculture (Parts 2700—2799)
XXVIII Office of Operations, Department of Agriculture (Parts 2800—2899)
XXIX Office of Energy Policy and New Uses, Department of Agriculture (Parts 2900—2999)
XXX Office of the Chief Financial Officer, Department of Agriculture (Parts 3000—3099)
XXXI Office of Environmental Quality, Department of Agriculture (Parts 3100—3199)
XXXII Office of Procurement and Property Management, Department of Agriculture (Parts 3200—3299)
XXXIII Office of Transportation, Department of Agriculture (Parts 3300—3399)
XXXIV National Institute of Food and Agriculture (Parts 3400—3499)
XXXV Rural Housing Service, Department of Agriculture (Parts 3500—3599)
XXXVI National Agricultural Statistics Service, Department of Agriculture (Parts 3600—3699)
XXXVII Economic Research Service, Department of Agriculture (Parts 3700—3799)
XXXVIII World Agricultural Outlook Board, Department of Agriculture (Parts 3800—3899)
XLII Rural Business-Cooperative Service and Rural Utilities Service, Department of Agriculture (Parts 4200—4299)

Title 8—Aliens and Nationality
I Department of Homeland Security (Immigration and Naturalization) (Parts 1—499)
Chap.  Title 8—Aliens and Nationality—Continued

V  Executive Office for Immigration Review, Department of Justice  (Parts 1000—1399)

Title 9—Animals and Animal Products

I  Animal and Plant Health Inspection Service, Department of Agriculture  (Parts 1—199)

II  Grain Inspection, Packers and Stockyards Administration  (Packers and Stockyards Programs), Department of Agriculture  (Parts 200—299)

III  Food Safety and Inspection Service, Department of Agriculture  (Parts 300—599)

Title 10—Energy

I  Nuclear Regulatory Commission  (Parts 0—199)

II  Department of Energy  (Parts 200—699)

III  Department of Energy  (Parts 700—999)

X  Department of Energy  (General Provisions)  (Parts 1000—1099)

XIII  Nuclear Waste Technical Review Board  (Parts 1300—1399)

XVII  Defense Nuclear Facilities Safety Board  (Parts 1700—1799)

XVIII  Northeast Interstate Low-Level Radioactive Waste Commission  (Parts 1800—1899)

Title 11—Federal Elections

I  Federal Election Commission  (Parts 1—9099)

II  Election Assistance Commission  (Parts 9400—9499)

Title 12—Banks and Banking

I  Comptroller of the Currency, Department of the Treasury  (Parts 1—199)

II  Federal Reserve System  (Parts 200—299)

III  Federal Deposit Insurance Corporation  (Parts 300—399)

IV  Export-Import Bank of the United States  (Parts 400—499)

V  Office of Thrift Supervision, Department of the Treasury  (Parts 500—599)

VI  Farm Credit Administration  (Parts 600—699)

VII  National Credit Union Administration  (Parts 700—799)

VIII  Federal Financing Bank  (Parts 800—899)

IX  Federal Housing Finance Board  (Parts 900—999)

X  Bureau of Consumer Financial Protection  (Parts 1000—1099)

XI  Federal Financial Institutions Examination Council  (Parts 1100—1199)

XII  Federal Housing Finance Agency  (Parts 1200—1299)

XIII  Financial Stability Oversight Council  (Parts 1300—1399)

XIV  Farm Credit System Insurance Corporation  (Parts 1400—1499)
Title 12—Banks and Banking—Continued

XV Department of the Treasury (Parts 1500—1599)
XVI Office of Financial Research (Parts 1600—1699)
XVII Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development (Parts 1700—1799)
XVIII Community Development Financial Institutions Fund, Department of the Treasury (Parts 1800—1899)

Title 13—Business Credit and Assistance

I Small Business Administration (Parts 1—199)
III Economic Development Administration, Department of Commerce (Parts 300—399)
IV Emergency Steel Guarantee Loan Board (Parts 400—499)
V Emergency Oil and Gas Guaranteed Loan Board (Parts 500—599)

Title 14—Aeronautics and Space

I Federal Aviation Administration, Department of Transportation (Parts 1—199)
II Office of the Secretary, Department of Transportation (Aviation Proceedings) (Parts 200—399)
III Commercial Space Transportation, Federal Aviation Administration, Department of Transportation (Parts 400—1199)
V National Aeronautics and Space Administration (Parts 1200—1299)
VI Air Transportation System Stabilization (Parts 1300—1399)

Title 15—Commerce and Foreign Trade

SUBTITLE A—OFFICE OF THE SECRETARY OF COMMERCE (PARTS 0—29)
SUBTITLE B—REGULATIONS RELATING TO COMMERCE AND FOREIGN TRADE

I Bureau of the Census, Department of Commerce (Parts 30—199)
II National Institute of Standards and Technology, Department of Commerce (Parts 200—299)
III International Trade Administration, Department of Commerce (Parts 300—399)
IV Foreign-Trade Zones Board, Department of Commerce (Parts 400—499)
VII Bureau of Industry and Security, Department of Commerce (Parts 700—799)
VIII Bureau of Economic Analysis, Department of Commerce (Parts 800—899)
IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900—999)
XI Technology Administration, Department of Commerce (Parts 1100—1199)
XIII East-West Foreign Trade Board (Parts 1300—1399)
Title 15—Commerce and Foreign Trade—Continued

Chap.

XIV Minority Business Development Agency (Parts 1400—1499)

Subtitle C—Regulations Relating to Foreign Trade Agreements

XX Office of the United States Trade Representative (Parts 2000—2099)

Subtitle D—Regulations Relating to Telecommunications and Information

XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300—2399)

Title 16—Commercial Practices

I Federal Trade Commission (Parts 0—999)

II Consumer Product Safety Commission (Parts 1000—1799)

Title 17—Commodity and Securities Exchanges

I Commodity Futures Trading Commission (Parts 1—199)

II Securities and Exchange Commission (Parts 200—399)

IV Department of the Treasury (Parts 400—499)

Title 18—Conservation of Power and Water Resources

I Federal Energy Regulatory Commission, Department of Energy (Parts 1—399)

III Delaware River Basin Commission (Parts 400—499)

VI Water Resources Council (Parts 700—799)

VIII Susquehanna River Basin Commission (Parts 800—899)

XIII Tennessee Valley Authority (Parts 1300—1399)

Title 19—Customs Duties

I U.S. Customs and Border Protection, Department of Homeland Security; Department of the Treasury (Parts 0—199)

II United States International Trade Commission (Parts 200—299)

III International Trade Administration, Department of Commerce (Parts 300—399)

IV U.S. Immigration and Customs Enforcement, Department of Homeland Security (Parts 400—599)

Title 20—Employees' Benefits

I Office of Workers' Compensation Programs, Department of Labor (Parts 1—199)

II Railroad Retirement Board (Parts 200—399)

III Social Security Administration (Parts 400—499)

IV Employees' Compensation Appeals Board, Department of Labor (Parts 500—599)
Title 20—Employees' Benefits—Continued

V Employment and Training Administration, Department of Labor (Parts 600—699)
VI Office of Workers’ Compensation Programs, Department of Labor (Parts 700—799)
VII Benefits Review Board, Department of Labor (Parts 800—899)
VIII Joint Board for the Enrollment of Actuaries (Parts 900—999)
IX Office of the Assistant Secretary for Veterans’ Employment and Training Service, Department of Labor (Parts 1000—1099)

Title 21—Food and Drugs

I Food and Drug Administration, Department of Health and Human Services (Parts 1—1299)
II Drug Enforcement Administration, Department of Justice (Parts 1300—1399)
III Office of National Drug Control Policy (Parts 1400—1499)

Title 22—Foreign Relations

I Department of State (Parts 1—199)
II Agency for International Development (Parts 200—299)
III Peace Corps (Parts 300—399)
IV International Joint Commission, United States and Canada (Parts 400—499)
V Broadcasting Board of Governors (Parts 500—599)
VI Overseas Private Investment Corporation (Parts 700—799)
IX Foreign Service Grievance Board (Parts 900—999)
X Inter-American Foundation (Parts 1000—1099)
XI International Boundary and Water Commission, United States and Mexico, United States Section (Parts 1100—1199)
XII United States International Development Cooperation Agency (Parts 1200—1299)
XIII Millennium Challenge Corporation (Parts 1300—1399)
XIV Foreign Service Labor Relations Board; Federal Labor Relations Authority; General Counsel of the Federal Labor Relations Authority; and the Foreign Service Impasse Disputes Panel (Parts 1400—1499)
XV African Development Foundation (Parts 1500—1599)
XVI Japan-United States Friendship Commission (Parts 1600—1699)
XVII United States Institute of Peace (Parts 1700—1799)

Title 23—Highways

I Federal Highway Administration, Department of Transportation (Parts 1—999)
II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200—1299)
Title 23—Highways—Continued

III National Highway Traffic Safety Administration, Department of Transportation (Parts 1300—1399)

Title 24—Housing and Urban Development

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (PARTS 0—99)

SUBTITLE B—REGULATIONS RELATING TO HOUSING AND URBAN DEVELOPMENT

I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100—199)

II Office of Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200—299)

III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300—399)

IV Office of Housing and Office of Multifamily Housing Assistance Restructuring, Department of Housing and Urban Development (Parts 400—499)

V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500—599)

VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600—699) [Reserved]

VII Office of the Secretary, Department of Housing and Urban Development (Housing Assistance Programs and Public and Indian Housing Programs) (Parts 700—799)

VIII Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Section 8 Housing Assistance Programs, Section 202 Direct Loan Program, Section 202 Supportive Housing for the Elderly Program and Section 811 Supportive Housing for Persons With Disabilities Program) (Parts 800—899)

IX Office of Assistant Secretary for Public and Indian Housing, Department of Housing and Urban Development (Parts 900—1699)

X Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Interstate Land Sales Registration Program) (Parts 1700—1799)

XI Office of Inspector General, Department of Housing and Urban Development (Parts 2000—2099)

XV Emergency Mortgage Insurance and Loan Programs, Department of Housing and Urban Development (Parts 2700—2799) [Reserved]

XX Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 3200—3899)

XXIV Board of Directors of the HOPE for Homeowners Program (Parts 4000—4099) [Reserved]

XXV Neighborhood Reinvestment Corporation (Parts 4100—4199)
Title 25—Indians

I Bureau of Indian Affairs, Department of the Interior (Parts 1—299)
II Indian Arts and Crafts Board, Department of the Interior (Parts 300—399)
III National Indian Gaming Commission, Department of the Interior (Parts 500—599)
IV Office of Navajo and Hopi Indian Relocation (Parts 700—799)
V Bureau of Indian Affairs, Department of the Interior, and Indian Health Service, Department of Health and Human Services (Part 900)
VI Office of the Assistant Secretary-Indian Affairs, Department of the Interior (Parts 1000—1199)
VII Office of the Special Trustee for American Indians, Department of the Interior (Parts 1200—1299)

Title 26—Internal Revenue

I Internal Revenue Service, Department of the Treasury (Parts 1—End)

Title 27—Alcohol, Tobacco Products and Firearms

I Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury (Parts 1—399)
II Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department of Justice (Parts 400—699)

Title 28—Judicial Administration

I Department of Justice (Parts 0—299)
III Federal Prison Industries, Inc., Department of Justice (Parts 300—399)
V Bureau of Prisons, Department of Justice (Parts 500—599)
VI Offices of Independent Counsel, Department of Justice (Parts 600—699)
VII Office of Independent Counsel (Parts 700—799)
VIII Court Services and Offender Supervision Agency for the District of Columbia (Parts 800—899)
IX National Crime Prevention and Privacy Compact Council (Parts 900—999)
XI Department of Justice and Department of State (Parts 1100—1199)

Title 29—Labor

SUBTITLE A—OFFICE OF THE SECRETARY OF LABOR (PARTS 0—99)
SUBTITLE B—REGULATIONS RELATING TO LABOR
I National Labor Relations Board (Parts 100—199)
Title 29—Labor—Continued

II Office of Labor-Management Standards, Department of Labor (Parts 200—299)
III National Railroad Adjustment Board (Parts 300—399)
IV Office of Labor-Management Standards, Department of Labor (Parts 400—499)
V Wage and Hour Division, Department of Labor (Parts 500—899)
IX Construction Industry Collective Bargaining Commission (Parts 900—999)
X National Mediation Board (Parts 1200—1299)
XII Federal Mediation and Conciliation Service (Parts 1400—1499)
XIV Equal Employment Opportunity Commission (Parts 1600—1699)
XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900—1999)
XX Occupational Safety and Health Review Commission (Parts 2200—2499)
XXV Employee Benefits Security Administration, Department of Labor (Parts 2500—2599)
XXVII Federal Mine Safety and Health Review Commission (Parts 2700—2799)
XL Pension Benefit Guaranty Corporation (Parts 4000—4999)

Title 30—Mineral Resources

I Mine Safety and Health Administration, Department of Labor (Parts 1—199)
II Bureau of Safety and Environmental Enforcement, Department of the Interior (Parts 200—299)
IV Geological Survey, Department of the Interior (Parts 400—499)
V Bureau of Ocean Energy Management, Department of the Interior (Parts 500—599)
VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700—999)
XII Office of Natural Resources Revenue, Department of the Interior (Parts 1200—1299)

Title 31—Money and Finance: Treasury

Subtitle A—Office of the Secretary of the Treasury (Parts 0—50)
Subtitle B—Regulations Relating to Money and Finance
I Monetary Offices, Department of the Treasury (Parts 51—199)
II Fiscal Service, Department of the Treasury (Parts 200—399)
IV Secret Service, Department of the Treasury (Parts 400—499)
V Office of Foreign Assets Control, Department of the Treasury (Parts 500—599)
VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600—699)
VII Federal Law Enforcement Training Center, Department of the Treasury (Parts 700—799)
Title 31—Money and Finance: Treasury—Continued

VIII Office of International Investment, Department of the Treasury (Parts 800—899)
IX Federal Claims Collection Standards (Department of the Treasury—Department of Justice) (Parts 900—999)
X Financial Crimes Enforcement Network, Department of the Treasury (Parts 1000—1099)

Title 32—National Defense

SUBTITLE A—DEPARTMENT OF DEFENSE
I Office of the Secretary of Defense (Parts 1—399)
V Department of the Army (Parts 400—699)
VI Department of the Navy (Parts 700—799)
VII Department of the Air Force (Parts 800—1099)

SUBTITLE B—OTHER REGULATIONS RELATING TO NATIONAL DEFENSE
XII Defense Logistics Agency (Parts 1200—1299)
XVI Selective Service System (Parts 1600—1699)
XVII Office of the Director of National Intelligence (Parts 1700—1799)
XVIII National Counterintelligence Center (Parts 1800—1899)
XIX Central Intelligence Agency (Parts 1900—1999)
XX Information Security Oversight Office, National Archives and Records Administration (Parts 2000—2099)
XXI National Security Council (Parts 2100—2199)
XXIV Office of Science and Technology Policy (Parts 2400—2499)
XXVII Office for Micronesian Status Negotiations (Parts 2700—2799)
XXVIII Office of the Vice President of the United States (Parts 2800—2899)

Title 33—Navigation and Navigable Waters

I Coast Guard, Department of Homeland Security (Parts 1—199)
II Corps of Engineers, Department of the Army (Parts 200—399)
IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400—499)

Title 34—Education

SUBTITLE A—OFFICE OF THE SECRETARY, DEPARTMENT OF EDUCATION (PARTS 1—99)

SUBTITLE B—REGULATIONS OF THE OFFICES OF THE DEPARTMENT OF EDUCATION
I Office for Civil Rights, Department of Education (Parts 100—199)
II Office of Elementary and Secondary Education, Department of Education (Parts 200—299)
III Office of Special Education and Rehabilitative Services, Department of Education (Parts 300—399)
Title 34—Education—Continued

IV Office of Career, Technical and Adult Education, Department of Education (Parts 400—499)
V Office of Bilingual Education and Minority Languages Affairs, Department of Education (Parts 500—599) [Reserved]
VI Office of Postsecondary Education, Department of Education (Parts 600—699)
VII Office of Educational Research and Improvement, Department of Education (Parts 700—799) [Reserved]

SUBTITLE C—REGULATIONS RELATING TO EDUCATION

XI [Reserved]
XII National Council on Disability (Parts 1200—1299)

Title 35 [Reserved]

Title 36—Parks, Forests, and Public Property

I National Park Service, Department of the Interior (Parts 1—199)
II Forest Service, Department of Agriculture (Parts 200—299)
III Corps of Engineers, Department of the Army (Parts 300—399)
IV American Battle Monuments Commission (Parts 400—499)
V Smithsonian Institution (Parts 500—599)
VI [Reserved]
VII Library of Congress (Parts 700—799)
VIII Advisory Council on Historic Preservation (Parts 800—899)
IX Pennsylvania Avenue Development Corporation (Parts 900—999)
X Presidio Trust (Parts 1000—1099)
XI Architectural and Transportation Barriers Compliance Board (Parts 1100—1199)
XII National Archives and Records Administration (Parts 1200—1299)
XV Oklahoma City National Memorial Trust (Parts 1500—1599)
XVI Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (Parts 1600—1699)

Title 37—Patents, Trademarks, and Copyrights

I United States Patent and Trademark Office, Department of Commerce (Parts 1—199)
II U.S. Copyright Office, Library of Congress (Parts 200—299)
III Copyright Royalty Board, Library of Congress (Parts 300—399)
IV Assistant Secretary for Technology Policy, Department of Commerce (Parts 400—599)

Title 38—Pensions, Bonuses, and Veterans' Relief

I Department of Veterans Affairs (Parts 0—199)
II Armed Forces Retirement Home (Parts 200—299)
Title 39—Postal Service

I United States Postal Service (Parts 1—999)

III Postal Regulatory Commission (Parts 3000—3099)

Title 40—Protection of Environment

I Environmental Protection Agency (Parts 1—1099)

IV Environmental Protection Agency and Department of Justice (Parts 1400—1499)

V Council on Environmental Quality (Parts 1500—1599)

VI Chemical Safety and Hazard Investigation Board (Parts 1600—1699)

VII Environmental Protection Agency and Department of Defense; Uniform National Discharge Standards for Vessels of the Armed Forces (Parts 1700—1799)

VIII Gulf Coast Ecosystem Restoration Council (Parts 1800—1899)

Title 41—Public Contracts and Property Management

SUBTITLE A—FEDERAL PROCUREMENT REGULATIONS SYSTEM

SUBTITLE B—OTHER PROVISIONS RELATING TO PUBLIC CONTRACTS

50 Public Contracts, Department of Labor (Parts 50–1—50–999)

51 Committee for Purchase From People Who Are Blind or Severely Disabled (Parts 51–1—51–99)

60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60–1—60–999)

61 Office of the Assistant Secretary for Veterans’ Employment and Training Service, Department of Labor (Parts 61–1—61–999)

62—100 [Reserved]

SUBTITLE C—FEDERAL PROPERTY MANAGEMENT REGULATIONS SYSTEM

101 Federal Property Management Regulations (Parts 101–1—101–99)

102 Federal Management Regulation (Parts 102–1—102–299)

103—104 [Reserved]

105 General Services Administration (Parts 105–1—105–999)

109 Department of Energy Property Management Regulations (Parts 109–1—109–99)

114 Department of the Interior (Parts 114–1—114–99)

115 Environmental Protection Agency (Parts 115–1—115–99)

128 Department of Justice (Parts 128–1—128–99)

129—200 [Reserved]

SUBTITLE D—OTHER PROVISIONS RELATING TO PROPERTY MANAGEMENT [RESERVED]

SUBTITLE E—FEDERAL INFORMATION RESOURCES MANAGEMENT REGULATIONS SYSTEM [RESERVED]

SUBTITLE F—FEDERAL TRAVEL REGULATION SYSTEM

300 General (Parts 300–1—300–99)

301 Temporary Duty (TDY) Travel Allowances (Parts 301–1—301–99)
Title 41—Public Contracts and Property Management—Continued

302 Relocation Allowances (Parts 302–1—302–99)
303 Payment of Expenses Connected with the Death of Certain Employees (Part 303–1—303–99)
304 Payment of Travel Expenses from a Non-Federal Source (Parts 304–1—304–99)

Title 42—Public Health

I Public Health Service, Department of Health and Human Services (Parts 1—199)
IV Centers for Medicare & Medicaid Services, Department of Health and Human Services (Parts 400—599)
V Office of Inspector General-Health Care, Department of Health and Human Services (Parts 1000—1999)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 1—199)
SUBTITLE B—Regulations Relating to Public Lands
I Bureau of Reclamation, Department of the Interior (Parts 400—999)
II Bureau of Land Management, Department of the Interior (Parts 1000—9999)
III Utah Reclamation Mitigation and Conservation Commission (Parts 10000—10099)

Title 44—Emergency Management and Assistance

I Federal Emergency Management Agency, Department of Homeland Security (Parts 0—399)
IV Department of Commerce and Department of Transportation (Parts 400—499)

Title 45—Public Welfare

SUBTITLE A—Department of Health and Human Services (Parts 1—199)
SUBTITLE B—Regulations Relating to Public Welfare
II Office of Family Assistance (Assistance Programs), Administration for Children and Families, Department of Health and Human Services (Parts 200—299)
III Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Parts 300—399)
IV Office of Refugee Resettlement, Administration for Children and Families, Department of Health and Human Services (Parts 400—499)
V Foreign Claims Settlement Commission of the United States, Department of Justice (Parts 500—599)
Title 45—Public Welfare—Continued

VI National Science Foundation (Parts 600—699)
VII Commission on Civil Rights (Parts 700—799)
VIII Office of Personnel Management (Parts 800—899)
IX Denali Commission (Parts 900—999)
X Office of Community Services, Administration for Children and Families, Department of Health and Human Services (Parts 1000—1099)
XI National Foundation on the Arts and the Humanities (Parts 1100—1199)
XII Corporation for National and Community Service (Parts 1200—1299)
XIII Administration for Children and Families, Department of Health and Human Services (Parts 1300—1399)
XVI Legal Services Corporation (Parts 1600—1699)
XVII National Commission on Libraries and Information Science (Parts 1700—1799)
XVIII Harry S. Truman Scholarship Foundation (Parts 1800—1899)
XXI Commission on Fine Arts (Parts 2100—2199)
XXIII Arctic Research Commission (Part 2301)
XXIV James Madison Memorial Fellowship Foundation (Parts 2400—2499)
XXV Corporation for National and Community Service (Parts 2500—2599)

Title 46—Shipping

I Coast Guard, Department of Homeland Security (Parts 1—199)
II Maritime Administration, Department of Transportation (Parts 200—399)
III Coast Guard (Great Lakes Pilotage), Department of Homeland Security (Parts 400—499)
IV Federal Maritime Commission (Parts 500—599)

Title 47—Telecommunication

I Federal Communications Commission (Parts 0—199)
II Office of Science and Technology Policy and National Security Council (Parts 200—299)
III National Telecommunications and Information Administration, Department of Commerce (Parts 300—399)
IV National Telecommunications and Information Administration, Department of Commerce, and National Highway Traffic Safety Administration, Department of Transportation (Parts 400—499)

Title 48—Federal Acquisition Regulations System

1 Federal Acquisition Regulation (Parts 1—99)
Title 48—Federal Acquisition Regulations System—Continued

2 Defense Acquisition Regulations System, Department of Defense (Parts 200—299)
3 Health and Human Services (Parts 300—399)
4 Department of Agriculture (Parts 400—499)
5 General Services Administration (Parts 500—599)
6 Department of State (Parts 600—699)
7 Agency for International Development (Parts 700—799)
8 Department of Veterans Affairs (Parts 800—899)
9 Department of Energy (Parts 900—999)
10 Department of the Treasury (Parts 1000—1099)
12 Department of Transportation (Parts 1200—1299)
13 Department of Commerce (Parts 1300—1399)
14 Department of the Interior (Parts 1400—1499)
15 Environmental Protection Agency (Parts 1500—1599)
16 Office of Personnel Management, Federal Employees Health Benefits Acquisition Regulation (Parts 1600—1699)
17 Office of Personnel Management (Parts 1700—1799)
18 National Aeronautics and Space Administration (Parts 1800—1899)
19 Broadcasting Board of Governors (Parts 1900—1999)
20 Nuclear Regulatory Commission (Parts 2000—2099)
21 Office of Personnel Management, Federal Employees Group Life Insurance Federal Acquisition Regulation (Parts 2100—2199)
23 Social Security Administration (Parts 2300—2399)
24 Department of Housing and Urban Development (Parts 2400—2499)
25 National Science Foundation (Parts 2500—2599)
28 Department of Justice (Parts 2800—2899)
29 Department of Labor (Parts 2900—2999)
30 Department of Homeland Security, Homeland Security Acquisition Regulation (HSAR) (Parts 3000—3099)
34 Department of Education Acquisition Regulation (Parts 3400—3499)
51 Department of the Army Acquisition Regulations (Parts 5100—5199)
52 Department of the Navy Acquisition Regulations (Parts 5200—5299)
53 Department of the Air Force Federal Acquisition Regulation Supplement (Parts 5300—5399) [Reserved]
54 Defense Logistics Agency, Department of Defense (Parts 5400—5499)
57 African Development Foundation (Parts 5700—5799)
61 Civilian Board of Contract Appeals, General Services Administration (Parts 6100—6199)
63 Department of Transportation Board of Contract Appeals (Parts 6300—6399)
Title 48—Federal Acquisition Regulations System—Continued

99 Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget (Parts 9900—9999)

Title 49—Transportation

SUBTITLE A—OFFICE OF THE SECRETARY OF TRANSPORTATION (PARTS 1—99)

SUBTITLE B—OTHER REGULATIONS RELATING TO TRANSPORTATION

I Pipeline and Hazardous Materials Safety Administration, Department of Transportation (Parts 100—199)

II Federal Railroad Administration, Department of Transportation (Parts 200—299)

III Federal Motor Carrier Safety Administration, Department of Transportation (Parts 300—399)

IV Coast Guard, Department of Homeland Security (Parts 400—499)

V National Highway Traffic Safety Administration, Department of Transportation (Parts 500—599)

VI Federal Transit Administration, Department of Transportation (Parts 600—699)

VII National Railroad Passenger Corporation (AMTRAK) (Parts 700—799)

VIII National Transportation Safety Board (Parts 800—999)

X Surface Transportation Board (Parts 1000—1399)

XI Research and Innovative Technology Administration, Department of Transportation (Parts 1400—1499) [Reserved]

XII Transportation Security Administration, Department of Homeland Security (Parts 1500—1699)

Title 50—Wildlife and Fisheries

I United States Fish and Wildlife Service, Department of the Interior (Parts 1—199)

II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200—299)

III International Fishing and Related Activities (Parts 300—399)

IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400—499)

V Marine Mammal Commission (Parts 500—599)

VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600—699)
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Committee of the Federal Register</td>
<td>1, I</td>
</tr>
<tr>
<td>Administrative Conference of the United States</td>
<td>1, III</td>
</tr>
<tr>
<td>Advisory Council on Historic Preservation</td>
<td>36, VIII</td>
</tr>
<tr>
<td>Advocacy and Outreach, Office of</td>
<td>7, XXV</td>
</tr>
<tr>
<td>Afghanistan Reconstruction, Special Inspector General for</td>
<td>5, LXXXIII</td>
</tr>
<tr>
<td>African Development Foundation</td>
<td>22, XV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 57</td>
</tr>
<tr>
<td>Agency for International Development</td>
<td>2, VII; 22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 7</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>2, IV; 5, LXXIII</td>
</tr>
<tr>
<td>Advocacy and Outreach, Office of</td>
<td>7, XXV</td>
</tr>
<tr>
<td>Agricultural Marketing Service</td>
<td>7, I, IX, X, XI</td>
</tr>
<tr>
<td>Agricultural Research Service</td>
<td>7, V</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of</td>
<td>7, XXX</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>7, XIV</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXVII</td>
</tr>
<tr>
<td>Energy Policy and New Uses, Office of</td>
<td>2, IX; 7, XXIX</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>7, VII, XVIII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 4</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Forest Service</td>
<td>36, II</td>
</tr>
<tr>
<td>Grain Inspection, Packers and Stockyards Administration</td>
<td>7, VIII, 9, II</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Inspector General, Office of</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLI</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>National Institute of Food and Agriculture</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>Natural Resources Conservation Service</td>
<td>7, VI</td>
</tr>
<tr>
<td>Operations, Office of</td>
<td>7, XXVIII</td>
</tr>
<tr>
<td>Procurement and Property Management, Office of</td>
<td>7, XXXII</td>
</tr>
<tr>
<td>Rural Business-Cooperative Service</td>
<td>7, XVIII, XLII</td>
</tr>
<tr>
<td>Rural Development Administration</td>
<td>7, XLI</td>
</tr>
<tr>
<td>Rural Housing Service</td>
<td>7, XVIII, XXXV</td>
</tr>
<tr>
<td>Rural Telephone Bank</td>
<td>7, XVI</td>
</tr>
<tr>
<td>Rural Utilities Service</td>
<td>7, XVII, XVIII, XLII</td>
</tr>
<tr>
<td>Secretary of Agriculture, Office of</td>
<td>7, Subtitle A</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation Supplement</td>
<td>48, 53</td>
</tr>
<tr>
<td>Air Transportation Stabilization Board</td>
<td>14, VI</td>
</tr>
<tr>
<td>Alcohol and Tobacco Tax and Trade Bureau</td>
<td>27, I</td>
</tr>
<tr>
<td>Alcohol, Tobacco, Firearms, and Explosives, Bureau of AMTRAK</td>
<td>27, II</td>
</tr>
<tr>
<td>American Battle Monuments Commission</td>
<td>36, IV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>-----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Animal and Plant Health Inspection Service</td>
<td>7, III; 9, I</td>
</tr>
<tr>
<td>Appalachian Regional Commission</td>
<td>5, IX</td>
</tr>
<tr>
<td>Architectural and Transportation Barriers Compliance Board</td>
<td>36, XI</td>
</tr>
<tr>
<td>Arctic Research Commission</td>
<td>45, XXIII</td>
</tr>
<tr>
<td>Armed Forces Retirement Home</td>
<td>5, XI</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of People Who Are</td>
<td>34, V</td>
</tr>
<tr>
<td>Broadcasting Board of Governors</td>
<td>22, V</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 19</td>
</tr>
<tr>
<td>Career, Technical and Adult Education, Office of Censuses</td>
<td>34, IV</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Centers for Medicare &amp; Medicaid Services</td>
<td>42, IV</td>
</tr>
<tr>
<td>Central Intelligence Agency</td>
<td>32, XIX</td>
</tr>
<tr>
<td>Chemical Safety and Hazardous Investigation Board</td>
<td>40, VI</td>
</tr>
<tr>
<td>Chief Financial Officer, Office of Children and Families, Administration for</td>
<td>45, II, III, IV, X, XIII</td>
</tr>
<tr>
<td>Civil Rights, Commission on Civil Rights, Office for</td>
<td>5, LXXVIII; 45, VII</td>
</tr>
<tr>
<td>Civil Rights, Office for Council of the Inspectors General</td>
<td>34, I</td>
</tr>
<tr>
<td>Career, Technical and Adult Education, Office of</td>
<td>5, XCVIII</td>
</tr>
<tr>
<td>Court Services and Offender Supervision Agency for the District of Columbia</td>
<td>5, LXX</td>
</tr>
<tr>
<td>Coast Guard</td>
<td>33, I; 46, I; 49, IV</td>
</tr>
<tr>
<td>Coast Guard (Great Lakes Pilotage)</td>
<td>46, III</td>
</tr>
<tr>
<td>Commerce Department</td>
<td>2, XIII; 44, IV; 50, VI</td>
</tr>
<tr>
<td>Census Bureau</td>
<td>15, I</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
<tr>
<td>Industry and Security, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV</td>
</tr>
<tr>
<td>National Weather Service</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>National Telecommunications and Information Administration</td>
<td>15, XXIII; 47, III, IV</td>
</tr>
<tr>
<td>Patent and Trademark Office, United States</td>
<td>37, I</td>
</tr>
<tr>
<td>Productivity, Technology and Innovation, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Secretary of Commerce, Office of Technology Administration</td>
<td>15, Subtitle A</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for Commerce, Office of</td>
<td>15, XI</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>37, IV</td>
</tr>
<tr>
<td>Commodity Credit Corporation</td>
<td>14, III</td>
</tr>
<tr>
<td>Commodity Futures Trading Commission</td>
<td>17, I</td>
</tr>
<tr>
<td>Community Planning and Development, Office of Assistant Secretary for</td>
<td>24, V, VI</td>
</tr>
<tr>
<td>Community Services, Office of</td>
<td>45, X</td>
</tr>
<tr>
<td>Commissioner of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Construction Industry Collective Bargaining Commission</td>
<td>29, IX</td>
</tr>
<tr>
<td>Consumer Financial Protection Bureau</td>
<td>5, LXXIV; 12, X</td>
</tr>
<tr>
<td>Consumer Product Safety Commission</td>
<td>5, LXXI; 16, II</td>
</tr>
<tr>
<td>Copyright Royalty Board</td>
<td>37, III</td>
</tr>
<tr>
<td>Corporation for National and Community Service</td>
<td>2, XXII; 45, XII, XXV</td>
</tr>
<tr>
<td>Cost Accounting Standards Board</td>
<td>48, 99</td>
</tr>
<tr>
<td>Council on Environmental Quality</td>
<td>40, V</td>
</tr>
<tr>
<td>Court Services and Offender Supervision Agency for the District of Columbia</td>
<td>5, LXX; 28, VIII</td>
</tr>
<tr>
<td>Customs and Border Protection</td>
<td>19, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>Defense Department</td>
<td>2, XI; 5, XXVI; 32, Subtitle A; 48, VII</td>
</tr>
<tr>
<td>Advanced Research Projects Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Air Force Department</td>
<td>32, VII</td>
</tr>
<tr>
<td>Army Department</td>
<td>32, V; 33, II; 36, III; 48, 51</td>
</tr>
<tr>
<td>Defense Acquisition Regulations System</td>
<td>48, 2</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, I, XII; 48, 54</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Navy Department</td>
<td>32, VI; 48, 52</td>
</tr>
<tr>
<td>Secretary of Defense, Office of</td>
<td>2, XI; 32, I</td>
</tr>
<tr>
<td>Defense Contract Audit Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>Defense Logistics Agency</td>
<td>32, XII; 48, 54</td>
</tr>
<tr>
<td>Defense Nuclear Facilities Safety Board</td>
<td>10, XVII</td>
</tr>
<tr>
<td>Delaware River Basin Commission</td>
<td>18, III</td>
</tr>
<tr>
<td>Denali Commission</td>
<td>45, IX</td>
</tr>
<tr>
<td>District of Columbia, Court Services and Offender Supervision Agency</td>
<td>5, LXX; 28, VIII</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>East-West Foreign Trade Board</td>
<td>15, XIII</td>
</tr>
<tr>
<td>Economic Analysis, Bureau of</td>
<td>15, VIII</td>
</tr>
<tr>
<td>Economic Development Administration</td>
<td>13, III</td>
</tr>
<tr>
<td>Economic Research Service</td>
<td>7, XXXIX</td>
</tr>
<tr>
<td>Education, Department of</td>
<td>2, XXXIV; 5, LIII</td>
</tr>
<tr>
<td>Bilingual Education and Minority Languages Affairs, Office of</td>
<td>34, V</td>
</tr>
<tr>
<td>Career, Technical and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Civil Rights, Office for</td>
<td>34, I</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 34</td>
</tr>
<tr>
<td>Postsecondary Education, Office of</td>
<td>34, VI</td>
</tr>
<tr>
<td>Secretary of Education, Office of</td>
<td>34, Subtitle A</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of</td>
<td>34, III</td>
</tr>
<tr>
<td>Career, Technical, and Adult Education, Office of</td>
<td>34, IV</td>
</tr>
<tr>
<td>Educational Research and Improvement, Office of</td>
<td>34, VII</td>
</tr>
<tr>
<td>Election Assistance Commission</td>
<td>2, I, VIII; 11, II</td>
</tr>
<tr>
<td>Elementary and Secondary Education, Office of</td>
<td>34, II</td>
</tr>
<tr>
<td>Emergency Oil and Gas Guaranteed Loan Board</td>
<td>13, V</td>
</tr>
<tr>
<td>Emergency Steel Guarantee Loan Board</td>
<td>13, IV</td>
</tr>
<tr>
<td>Employee Benefits Security Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Employees’ Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Energy, Department of</td>
<td>2, IX; 5, XXXIII; 10, II, III, X</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 9</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXXIV; 18, I</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 109</td>
</tr>
<tr>
<td>Energy, Office of</td>
<td>7, XXXIX</td>
</tr>
<tr>
<td>Engineers, Corps of</td>
<td>33, II; 36, III</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Environmental Protection Agency</td>
<td>2, XV; 5, LIV; 40, I, IV, VII</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 15</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 115</td>
</tr>
<tr>
<td>Environmental Quality, Office of</td>
<td>7, XXXI</td>
</tr>
<tr>
<td>Equal Employment Opportunity Commission</td>
<td>5, LXII; 29, XIV</td>
</tr>
<tr>
<td>Equal Opportunity, Office of Assistant Secretary for</td>
<td>24, I</td>
</tr>
<tr>
<td>Executive Office of the President</td>
<td>3, I</td>
</tr>
<tr>
<td>Environmental Quality, Council on</td>
<td>40, V</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>2, Subtitle A; 5, III, LXXVII; 14, VI; 48, 99</td>
</tr>
<tr>
<td>Agency</td>
<td>CFR Title, Subtitle or Chapter</td>
</tr>
<tr>
<td>--------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>2, XXXVI; 21, III</td>
</tr>
<tr>
<td>National Security Council</td>
<td>32, XXI: 47, 2</td>
</tr>
<tr>
<td>Presidential Documents</td>
<td>3</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of Trade Representative, Office of the United States</td>
<td>32, XXIV; 47, II</td>
</tr>
<tr>
<td>Export-Import Bank of the United States</td>
<td>15, XX</td>
</tr>
<tr>
<td>Family Assistance, Office of</td>
<td>2, XXXV: 5, LII; 12, IV</td>
</tr>
<tr>
<td>Farm Credit Administration</td>
<td>45, II</td>
</tr>
<tr>
<td>Farm Credit System Insurance Corporation</td>
<td>5, XXXI; 12, VI</td>
</tr>
<tr>
<td>Farm Service Agency</td>
<td>5, XXX; 12, XIV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>14, I</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, III</td>
</tr>
<tr>
<td>Commercial Space Transportation</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Communications Commission</td>
<td>5, XXIX; 47, I</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 99</td>
</tr>
<tr>
<td>Federal Crop Insurance Corporation</td>
<td>7, IV</td>
</tr>
<tr>
<td>Federal Deposit Insurance Corporation</td>
<td>5, XXII; 12, XII</td>
</tr>
<tr>
<td>Federal Election Commission</td>
<td>44, I</td>
</tr>
<tr>
<td>Federal Employees Group Life Insurance Federal Acquisition Regulation</td>
<td>48, 21</td>
</tr>
<tr>
<td>Federal Employees Health Benefits Acquisition Regulation</td>
<td>48, 16</td>
</tr>
<tr>
<td>Federal Energy Regulatory Commission</td>
<td>5, XXXIV: 18, I</td>
</tr>
<tr>
<td>Financial Institutions Examination Council</td>
<td>12, XI</td>
</tr>
<tr>
<td>Federal Financing Bank</td>
<td>12, VIII</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II</td>
</tr>
<tr>
<td>Federal Home Loan Mortgage Corporation</td>
<td>1, IV</td>
</tr>
<tr>
<td>Federal Housing Enterprise Oversight Office</td>
<td>12, XVII</td>
</tr>
<tr>
<td>Federal Housing Finance Agency</td>
<td>5, LXX; 12, XII</td>
</tr>
<tr>
<td>Federal Housing Finance Board</td>
<td>12, IX</td>
</tr>
<tr>
<td>Federal Labor Relations Authority</td>
<td>5, XIV, XLIX; 22, XIV</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Federal Management Regulation</td>
<td>41, 102</td>
</tr>
<tr>
<td>Federal Maritime Commission</td>
<td>46, IV</td>
</tr>
<tr>
<td>Federal Mediation and Conciliation Service</td>
<td>29, XII</td>
</tr>
<tr>
<td>Federal Mine Safety and Health Review Commission</td>
<td>5, LXXIV; 29, XXVII</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Federal Procurement Policy Office</td>
<td>48, 99</td>
</tr>
<tr>
<td>Federal Property Management Regulations</td>
<td>41, 101</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Register, Administrative Committee of</td>
<td>1, I</td>
</tr>
<tr>
<td>Federal Reserve System</td>
<td>12, II</td>
</tr>
<tr>
<td>Board of Governors</td>
<td>5, LVIII</td>
</tr>
<tr>
<td>Federal Retirement Thrift Investment Board</td>
<td>5, VI, LXXVI</td>
</tr>
<tr>
<td>Federal Service Impasses Panel</td>
<td>5, XIV</td>
</tr>
<tr>
<td>Federal Trade Commission</td>
<td>5, XLVII; 16, I</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Federal Travel Regulation System</td>
<td>41, Subtitle F</td>
</tr>
<tr>
<td>Financial Crimes Enforcement Network</td>
<td>31, X</td>
</tr>
<tr>
<td>Financial Research Office</td>
<td>12, XVI</td>
</tr>
<tr>
<td>Financial Stability Oversight Council</td>
<td>12, XIII</td>
</tr>
<tr>
<td>Fine Arts, Commission on</td>
<td>45, XXI</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Food and Drug Administration</td>
<td>21, I</td>
</tr>
<tr>
<td>Food and Nutrition Service</td>
<td>7, II</td>
</tr>
<tr>
<td>Food Safety and Inspection Service</td>
<td>9, III</td>
</tr>
<tr>
<td>Foreign Agricultural Service</td>
<td>7, XV</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>31, V</td>
</tr>
<tr>
<td>Foreign Service Grievance Board</td>
<td>22, IX</td>
</tr>
<tr>
<td>Foreign Service Impasses Disputes Panel</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign Service Labor Relations Board</td>
<td>22, XIV</td>
</tr>
<tr>
<td>Foreign-Trade Zones Board</td>
<td>15, IV</td>
</tr>
</tbody>
</table>
Agency | CFR Title, Subtitle or Chapter
--- | ---
Forest Service | 36, II
General Services Administration | 5, LVII; 41, 105
Contract Appeals, Board of | 48, 61
Federal Acquisition Regulation | 48, 5
Federal Management Regulation | 41, 102
Federal Property Management Regulations | 41, 101
Federal Travel Regulation System | 41, Subtitle F
General | 41, 300
Payment From a Non-Federal Source for Travel Expenses | 41, 304
Payment of Expenses Connected With the Death of Certain Employees | 41, 303
Relocation Allowances | 41, 302
Temporary Duty (TDY) Travel Allowances | 41, 301
Geological Survey | 30, IV
Government Accountability Office | 4, I
Government Ethics, Office of | 5, XVI
Government National Mortgage Association | 24, III
Grain Inspection, Packers and Stockyards Administration | 7, VIII; 9, II
Gulf Coast Ecosystem Restoration Council | 2, LIX; 49, VIII
Harry S. Truman Scholarship Foundation | 45, XVIII
Health and Human Services, Department of | 2, III; 5, XLV; 45, Subtitle A
Centers for Medicare & Medicaid Services 42, IV
Child Support Enforcement, Office of | 45, III
Children and Families, Administration for | 45, II, III, IV, X, XIII
Community Services, Office of | 45, X
Family Assistance, Office of | 45, II
Federal Acquisition Regulation | 48, 3
Food and Drug Administration | 21, I
Indian Health Service | 25, V
Inspector General (Health Care), Office of | 42, V
Public Health Service | 42, I
Refugee Resettlement, Office of | 45, IV
Homeland Security, Department of | 2, XXX; 5, XXXVI; 6, I; 8, I
Coast Guard | 33, I; 46, I; 49, IV
Coast Guard (Great Lakes Pilotage) | 46, III
Customs and Border Protection | 19, I
Federal Emergency Management Agency | 44, I
Human Resources Management and Labor Relations Systems | 5, XCIV
Immigration and Customs Enforcement Bureau | 19, IV
Transportation Security Administration | 49, XII
HOPE for Homeowners Program, Board of Directors of | 24, XXIV
Housing and Urban Development, Department of | 24, XXIV; 5, XLV; 24, Subtitle B
Community Planning and Development, Office of Assistant Secretary for | 24, V, VI
Equal Opportunity, Office of Assistant Secretary for | 24, I
Federal Acquisition Regulation | 48, 24
Federal Housing Enterprise Oversight, Office of | 12, XVII
Government National Mortgage Association | 24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for | 24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance | 24, IV
Restructuring, Office of | 24, XII
Inspector General, Office of | 24, IX
Public and Indian Housing, Office of Assistant Secretary for | 24, Subtitle A, VII
Secretary, Office of | 24, II, VIII, X, XX
Housing—Federal Housing Commissioner, Office of Assistant Secretary for | 24, II, VIII, X, XX
Housing, Office of, and Multifamily Housing Assistance | 24, IV
Restructuring, Office of | 24, XII
Immigration and Customs Enforcement Bureau | 19, IV
Immigration Review, Executive Office for | 8, V
Independent Counsel, Office of | 28, VII
Independent Counsel, Offices of | 28, VI

529
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, II</td>
</tr>
<tr>
<td>Indian Health Service</td>
<td>25, V</td>
</tr>
<tr>
<td>Industry and Security, Bureau of</td>
<td>15, VII</td>
</tr>
<tr>
<td>Information Resources Management, Office of</td>
<td>7, XXVII</td>
</tr>
<tr>
<td>Information Security Oversight Office, National Archives and Records Administration</td>
<td>32, XX</td>
</tr>
<tr>
<td>Inspector General</td>
<td></td>
</tr>
<tr>
<td>Agriculture Department</td>
<td>7, XXVI</td>
</tr>
<tr>
<td>Health and Human Services Department</td>
<td>42, V</td>
</tr>
<tr>
<td>Housing and Urban Development Department</td>
<td>24, XII, XV</td>
</tr>
<tr>
<td>Institute of Peace, United States</td>
<td>22, XVII</td>
</tr>
<tr>
<td>Inter-American Foundation</td>
<td>5, LXIII; 22, X</td>
</tr>
<tr>
<td>Interior Department</td>
<td>2, XIV</td>
</tr>
<tr>
<td>American Indians, Office of the Special Trustee</td>
<td>25, VII</td>
</tr>
<tr>
<td>Endangered Species Committee</td>
<td>50, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, I</td>
</tr>
<tr>
<td>Federal Property Management Regulations System</td>
<td>41, I</td>
</tr>
<tr>
<td>Fish and Wildlife Service, United States</td>
<td>50, I, IV</td>
</tr>
<tr>
<td>Geological Survey</td>
<td>30, IV</td>
</tr>
<tr>
<td>Indian Affairs, Bureau of</td>
<td>25, I, V</td>
</tr>
<tr>
<td>Indian Affairs, Office of the Assistant Secretary</td>
<td>25, VI</td>
</tr>
<tr>
<td>Indian Arts and Crafts Board</td>
<td>25, VI</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>Natural Resource Revenue, Office of</td>
<td>30, XII</td>
</tr>
<tr>
<td>Ocean Energy Management, Bureau of</td>
<td>30, V</td>
</tr>
<tr>
<td>Reclamation, Bureau of</td>
<td>43, I</td>
</tr>
<tr>
<td>Safety and Enforcement Bureau, Bureau of</td>
<td>30, II</td>
</tr>
<tr>
<td>Secretary of the Interior, Office of</td>
<td>2, XIV; 43, Subtitle A</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>International Boundary and Water Commission, United States and Mexico, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>International Development, United States Agency for</td>
<td>22, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, V</td>
</tr>
<tr>
<td>International Development Cooperation Agency, United States</td>
<td>22, XII</td>
</tr>
<tr>
<td>International Joint Commission, United States and Canada</td>
<td>22, IV</td>
</tr>
<tr>
<td>International Organizations Employees Loyalty Board</td>
<td>5, V</td>
</tr>
<tr>
<td>International Trade Administration</td>
<td>15, III; 19, III</td>
</tr>
<tr>
<td>International Trade Commission, United States</td>
<td>19, II</td>
</tr>
<tr>
<td>Interstate Commerce Commission</td>
<td>5, XL</td>
</tr>
<tr>
<td>Investment Security, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>James Madison Memorial Fellowship Foundation</td>
<td>45, XXIV</td>
</tr>
<tr>
<td>Japan–United States Friendship Commission</td>
<td>22, XVI</td>
</tr>
<tr>
<td>Joint Board for the Enrollment of Actuaries</td>
<td>20, VIII</td>
</tr>
<tr>
<td>Justice Department</td>
<td>2, XXVIII; 5, XXVIII;</td>
</tr>
<tr>
<td>Alcohol, Tobacco, Firearms, and Explosives, Bureau of</td>
<td>27, II</td>
</tr>
<tr>
<td>Drug Enforcement Administration</td>
<td>21, II</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>46, 28</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Prison Industries, Inc.</td>
<td>28, III</td>
</tr>
<tr>
<td>Foreign Claims Settlement Commission of the United States</td>
<td>45, V</td>
</tr>
<tr>
<td>Immigration Review, Executive Office for</td>
<td>8, V</td>
</tr>
<tr>
<td>Independent Counsel, Offices of</td>
<td>28, VI</td>
</tr>
<tr>
<td>Prisons, Bureau of</td>
<td>28, V</td>
</tr>
<tr>
<td>Property Management Regulations</td>
<td>41, 129</td>
</tr>
<tr>
<td>Labor Department</td>
<td>2, XXXIX; 5, XLII</td>
</tr>
<tr>
<td>Employee Benefits Security Administration</td>
<td>29, XXV</td>
</tr>
<tr>
<td>Employees’ Compensation Appeals Board</td>
<td>20, IV</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>20, V</td>
</tr>
<tr>
<td>Employment Standards Administration</td>
<td>20, VI</td>
</tr>
</tbody>
</table>

530
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 29</td>
</tr>
<tr>
<td>Federal Contract Compliance Programs, Office of</td>
<td>41, 60</td>
</tr>
<tr>
<td>Federal Procurement Regulations System</td>
<td>41, 50</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>29, XVII</td>
</tr>
<tr>
<td>Public Contracts</td>
<td>41, 50</td>
</tr>
<tr>
<td>Secretary of Labor, Office of</td>
<td>29, Subtitle A</td>
</tr>
<tr>
<td>Veterans' Employment and Training Service, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Workers' Compensation Programs, Office of</td>
<td>20, I, VII</td>
</tr>
<tr>
<td>Labor-Management Standards, Office of</td>
<td>29, II, IV</td>
</tr>
<tr>
<td>Land Management, Bureau of</td>
<td>43, II</td>
</tr>
<tr>
<td>Legal Services Corporation</td>
<td>45, XVI</td>
</tr>
<tr>
<td>Library of Congress</td>
<td>36, VII</td>
</tr>
<tr>
<td>Copyright Royalty Board</td>
<td>37, III</td>
</tr>
<tr>
<td>U.S. Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Local Television Loan Guarantee Board</td>
<td>7, XXI</td>
</tr>
<tr>
<td>Management and Budget, Office of</td>
<td>5, III, LXXVII; 14, VI; 48, 99</td>
</tr>
<tr>
<td>Marine Mammal Commission</td>
<td>50, V</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>Merit Systems Protection Board</td>
<td>5, II, LXIV</td>
</tr>
<tr>
<td>Micronesian Status Negotiations, Office for</td>
<td>32, XXVII</td>
</tr>
<tr>
<td>Military Compensation and Retirement Modernization Commission</td>
<td>5, XCIX</td>
</tr>
<tr>
<td>Millennium Challenge Corporation</td>
<td>22, XIII</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>30, I</td>
</tr>
<tr>
<td>Minority Business Development Agency</td>
<td>15, XIV</td>
</tr>
<tr>
<td>Miscellaneous Agencies</td>
<td>1, IV</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Morris K. Udall Scholarship and Excellence in National Policy Foundation</td>
<td>36, XVI</td>
</tr>
<tr>
<td>National Aeronautics and Space Administration</td>
<td>2, XXXI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 18</td>
</tr>
<tr>
<td>National Agricultural Library</td>
<td>7, XLII</td>
</tr>
<tr>
<td>National Agricultural Statistics Service</td>
<td>7, XXXVI</td>
</tr>
<tr>
<td>National and Community Service, Corporation for</td>
<td>2, XXII; 45, XII, XXV</td>
</tr>
<tr>
<td>National Archives and Records Administration</td>
<td>2, XXVI; 5, LXVI; 36, XII</td>
</tr>
<tr>
<td>Information Security Oversight Office</td>
<td>32, XX</td>
</tr>
<tr>
<td>National Capital Planning Commission</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission for Employment Policy</td>
<td>1, IV</td>
</tr>
<tr>
<td>National Commission on Libraries and Information Science</td>
<td>45, XVII</td>
</tr>
<tr>
<td>National Council on Disability</td>
<td>5, C; 31, XII</td>
</tr>
<tr>
<td>National Counterintelligence Center</td>
<td>32, XVIII</td>
</tr>
<tr>
<td>National Credit Union Administration</td>
<td>5, LXXV; 12, VII</td>
</tr>
<tr>
<td>National Crime Prevention and Privacy Compact Council</td>
<td>28, IX</td>
</tr>
<tr>
<td>National Drug Control Policy, Office of</td>
<td>2, XXXVI; 21, III</td>
</tr>
<tr>
<td>National Endowment for the Arts</td>
<td>2, XXXII</td>
</tr>
<tr>
<td>National Endowment for the Humanities</td>
<td>2, XXXIII</td>
</tr>
<tr>
<td>National Foundation on the Arts and the Humanities</td>
<td>45, XI</td>
</tr>
<tr>
<td>National Geospatial-Intelligence Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II, III; 47, VI; 49, V</td>
</tr>
<tr>
<td>National Imagery and Mapping Agency</td>
<td>32, I</td>
</tr>
<tr>
<td>National Indian Gaming Commission</td>
<td>25, III</td>
</tr>
<tr>
<td>National Institute of Food and Agriculture</td>
<td>7, XXXIV</td>
</tr>
<tr>
<td>National Institute of Standards and Technology</td>
<td>15, II</td>
</tr>
<tr>
<td>National Intelligence, Office of Director of</td>
<td>5, IV; 32, XVII</td>
</tr>
<tr>
<td>National Labor Relations Board</td>
<td>5, LXI; 29, I</td>
</tr>
<tr>
<td>National Marine Fisheries Service</td>
<td>50, II, IV</td>
</tr>
<tr>
<td>National Mediation Board</td>
<td>29, X</td>
</tr>
<tr>
<td>National Oceanic and Atmospheric Administration</td>
<td>15, IX; 50, II, III, IV, VI</td>
</tr>
<tr>
<td>National Park Service</td>
<td>36, I</td>
</tr>
<tr>
<td>National Railroad Adjustment Board</td>
<td>29, III</td>
</tr>
</tbody>
</table>
National Railroad Passenger Corporation (AMTRAK) 49, VII
National Science Foundation 2, XXV; 5, XLIII; 45, VI
Federal Acquisition Regulation 48, 25
National Security Council 32, XXI
National Security Council and Office of Science and Technology Policy 47, II
National Telecommunications and Information Administration 15, XXIII; 47, III, IV
National Transportation Safety Board 49, VIII
Natural Resources Conservation Service 7, VI
Natural Resource Revenue, Office of 30, XII
Navajo and Hopi Indian Relocation, Office of 25, IV
Navy Department 32, VI
Federal Acquisition Regulation 48, 52
Neighborhood Reinvestment Corporation 24, XXV
Northeast Interstate Low-Level Radioactive Waste Commission 10, XVIII
Nuclear Regulatory Commission 2, XX; 5, XLVIII; 10, I
Federal Acquisition Regulation 48, 20
Occupational Safety and Health Administration 29, XVII
Ocean Energy Management, Bureau of 29, XX
Oklahoma City National Memorial Trust 36, XV
Operations Office 7, XXVIII
Overseas Private Investment Corporation 5, XXXIII; 22, VII
Federal Acquisition Regulation 48, 17
Patent and Trademark Office, United States 37, I
Payment from a Non-Federal Source for Travel Expenses 41, 394
Payment of Expenses Connected With the Death of Certain Employees 41, 393
Peace Corps 2, XXXVII; 22, III
Pennsylvania Avenue Development Corporation 36, IX
Pension Benefit Guaranty Corporation 29, XL
Personnel Management, Office of 5, I, XXXV; 5, IV; 45, VIII
Human Resources Management and Labor Relations Systems, Department of Homeland Security 5, XCVII
Federal Acquisition Regulation 48, 17
Federal Employees Group Life Insurance Federal Acquisition Regulation 48, 21
Federal Employees Health Benefits Acquisition Regulation 48, 16
Pipeline and Hazardous Materials Safety Administration 49, I
Postal Regulatory Commission 5, XLVI; 39, III
Postal Service, United States 5, LX; 39, I
Postsecondary Education, Office of 34, VI
Presidio Trust 36, X
Prisons, Bureau of 28, V
Privacy and Civil Liberties Oversight Board 6, X
Procurement and Property Management, Office of 7, XXXII
Productivity, Technology and Innovation, Assistant Secretary 37, IV
Secretary of Labor 41, 50
Public and Indian Housing, Office of Assistant Secretary for 24, IX
Public Health Service 42, I
Railroad Retirement Board 20, II
Reclamation, Bureau of 43, I
Refugee Resettlement, Office of 45, IV
Relocation Allowances 41, 392
Research and Innovative Technology Administration 49, XI
Rural Business-Cooperative Service 7, XVIII, XLII
Rural Development Administration 7, XLIII
Rural Housing Service 7, XVIII, XXXV
Rural Telephone Bank 7, XVI
Rural Utilities Service 7, XVII, XVIII, XLII
Safety and Environmental Enforcement, Bureau of 30, II
Saint Lawrence Seaway Development Corporation 33, IV
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Science and Technology Policy, Office of</td>
<td>32, XXIV</td>
</tr>
<tr>
<td>Science and Technology Policy, Office of, and National Security Council</td>
<td></td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Securities and Exchange Commission</td>
<td>5, XXXIV; 17, II</td>
</tr>
<tr>
<td>Selective Service System</td>
<td>32, XVI</td>
</tr>
<tr>
<td>Small Business Administration</td>
<td>2, XXVII; 13, I</td>
</tr>
<tr>
<td>Smithsonian Institution</td>
<td>36, V</td>
</tr>
<tr>
<td>Social Security Administration</td>
<td>2, XXIII; 20, III; 48, 23</td>
</tr>
<tr>
<td>Soldiers’ and Airmen’s Home, United States</td>
<td>5, XI</td>
</tr>
<tr>
<td>Special Counsel, Office of</td>
<td>5, VIII</td>
</tr>
<tr>
<td>Special Education and Rehabilitative Services, Office of State</td>
<td>34, III</td>
</tr>
<tr>
<td>Department</td>
<td></td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 6</td>
</tr>
<tr>
<td>Surface Mining Reclamation and Enforcement, Office of</td>
<td>30, VII</td>
</tr>
<tr>
<td>Surface Transportation Board</td>
<td>49, X</td>
</tr>
<tr>
<td>Susquehanna River Basin Commission</td>
<td>18, VIII</td>
</tr>
<tr>
<td>Technology Administration</td>
<td>15, XI</td>
</tr>
<tr>
<td>Technology Policy, Assistant Secretary for</td>
<td>37, IV</td>
</tr>
<tr>
<td>Tennessee Valley Authority</td>
<td>5, LXIX; 18, XIII</td>
</tr>
<tr>
<td>Thrift Supervision Office, Department of the Treasury</td>
<td>12, V</td>
</tr>
<tr>
<td>Trade Representative, United States, Office of</td>
<td>15, XX</td>
</tr>
<tr>
<td>Transportation, Department of Commercial Space Transportation</td>
<td>2, XII; 5, L</td>
</tr>
<tr>
<td>Contract Appeals, Board of</td>
<td>48, 63</td>
</tr>
<tr>
<td>Emergency Management and Assistance</td>
<td>44, IV</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 12</td>
</tr>
<tr>
<td>Federal Aviation Administration</td>
<td>14, I</td>
</tr>
<tr>
<td>Federal Highway Administration</td>
<td>23, I, II</td>
</tr>
<tr>
<td>Federal Motor Carrier Safety Administration</td>
<td>49, III</td>
</tr>
<tr>
<td>Federal Railroad Administration</td>
<td>49, II</td>
</tr>
<tr>
<td>Federal Transit Administration</td>
<td>49, VI</td>
</tr>
<tr>
<td>Maritime Administration</td>
<td>46, II</td>
</tr>
<tr>
<td>National Highway Traffic Safety Administration</td>
<td>23, II; III; 47, IV; 49, V</td>
</tr>
<tr>
<td>Pipeline and Hazardous Materials Safety Administration</td>
<td>49, I</td>
</tr>
<tr>
<td>Saint Lawrence Seaway Development Corporation</td>
<td>33, IV</td>
</tr>
<tr>
<td>Secretary of Transportation, Office of Transportation Statistics Bureau</td>
<td>14, II; 49, Subtitle A</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Transportation, Office of</td>
<td>7, XXXIII</td>
</tr>
<tr>
<td>Transportation Security Administration</td>
<td>49, XII</td>
</tr>
<tr>
<td>Transportation Statistics Bureau</td>
<td>49, XI</td>
</tr>
<tr>
<td>Travel Allowances, Temporary Duty (TDY)</td>
<td>41, 301</td>
</tr>
<tr>
<td>Treasury Department</td>
<td>2, X, X, XXI; 12, XV; 17, IV; 31, IX</td>
</tr>
<tr>
<td>Alcohol and Tobacco Tax and Trade Bureau</td>
<td>27, I</td>
</tr>
<tr>
<td>Community Development Financial Institutions Fund</td>
<td>12, XVIII</td>
</tr>
<tr>
<td>Comptroller of the Currency</td>
<td>12, I</td>
</tr>
<tr>
<td>Customs and Border Protection</td>
<td>19, I</td>
</tr>
<tr>
<td>Engraving and Printing, Bureau of</td>
<td>31, VI</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 10</td>
</tr>
<tr>
<td>Federal Claims Collection Standards</td>
<td>31, IX</td>
</tr>
<tr>
<td>Federal Law Enforcement Training Center</td>
<td>31, VII</td>
</tr>
<tr>
<td>Financial Crimes Enforcement Network</td>
<td>31, X</td>
</tr>
<tr>
<td>Fiscal Service</td>
<td>31, II</td>
</tr>
<tr>
<td>Foreign Assets Control, Office of</td>
<td>31, V</td>
</tr>
<tr>
<td>Internal Revenue Service</td>
<td>26, I</td>
</tr>
<tr>
<td>Investment Security, Office of</td>
<td>31, VIII</td>
</tr>
<tr>
<td>Monetary Offices</td>
<td>31, I</td>
</tr>
<tr>
<td>Secret Service</td>
<td>31, IV</td>
</tr>
<tr>
<td>Secretary of the Treasury, Office of</td>
<td>31, Subtitle A</td>
</tr>
<tr>
<td>Thrift Supervision, Office of</td>
<td>12, V</td>
</tr>
<tr>
<td>Truman, Harry S. Scholarship Foundation</td>
<td>45, XVIII</td>
</tr>
<tr>
<td>United States and Canada, International Joint Commission</td>
<td>22, IV</td>
</tr>
<tr>
<td>United States and Mexico, International Boundary and Water Commission, United States Section</td>
<td>22, XI</td>
</tr>
<tr>
<td>U.S. Copyright Office</td>
<td>37, II</td>
</tr>
<tr>
<td>Utah Reclamation Mitigation and Conservation Commission</td>
<td>43, III</td>
</tr>
</tbody>
</table>

533
<table>
<thead>
<tr>
<th>Agency</th>
<th>CFR Title, Subtitle or Chapter</th>
</tr>
</thead>
<tbody>
<tr>
<td>Veterans Affairs Department</td>
<td>2. VIII; 38, I</td>
</tr>
<tr>
<td>Federal Acquisition Regulation</td>
<td>48, 8</td>
</tr>
<tr>
<td>Veterans' Employment and Training Service, Office of the Assistant Secretary for</td>
<td>41, 61; 20, IX</td>
</tr>
<tr>
<td>Vice President of the United States, Office of</td>
<td>32, XXVIII</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>29, V</td>
</tr>
<tr>
<td>Water Resources Council</td>
<td>18, VI</td>
</tr>
<tr>
<td>Workers' Compensation Programs, Office of</td>
<td>20, I, VII</td>
</tr>
<tr>
<td>World Agricultural Outlook Board</td>
<td>7, XXXVIII</td>
</tr>
</tbody>
</table>
### List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations (CFR) that were made by documents published in the Federal Register since January 1, 2012 are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters, parts and subparts as well as sections for revisions.


#### 2012

<table>
<thead>
<tr>
<th>39 CFR</th>
<th>77 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter I</td>
<td></td>
</tr>
<tr>
<td>4.1 Revised</td>
<td>17333</td>
</tr>
<tr>
<td>4.2 Revised</td>
<td>17383</td>
</tr>
<tr>
<td>6.6 Introductory text revised</td>
<td>17334</td>
</tr>
<tr>
<td>6.7 Added</td>
<td>17334</td>
</tr>
<tr>
<td>7.1 (b) amended</td>
<td>17334</td>
</tr>
<tr>
<td>20 Authority citation revised</td>
<td>28489</td>
</tr>
<tr>
<td>20 IMM amended; incorporation by reference</td>
<td>12724, 28489, 33640</td>
</tr>
<tr>
<td>IMM amended; incorporation by reference</td>
<td>50933, 64727, 68069, 72961</td>
</tr>
<tr>
<td>20.1 (a) revised; (b) table amended</td>
<td>64725</td>
</tr>
<tr>
<td>20.2 Revised</td>
<td>64725</td>
</tr>
<tr>
<td>111 DMM amended; incorporation by reference</td>
<td>15606, 18708, 25082, 27125, 28269</td>
</tr>
<tr>
<td>DMM amended; incorporation by reference; eff. 1-28-13</td>
<td>26185</td>
</tr>
<tr>
<td>DMM correctly amended; incorporation by reference; eff. 1-28-13</td>
<td>33315</td>
</tr>
<tr>
<td>DMM amended; incorporation by reference</td>
<td>40527, 56593, 58774, 62447, 65231, 66149, 70869, 75365</td>
</tr>
<tr>
<td>111.3 (f) table amended</td>
<td>45246</td>
</tr>
<tr>
<td>111.4 Amended</td>
<td>45247</td>
</tr>
<tr>
<td>121.1 Revised</td>
<td>31196</td>
</tr>
<tr>
<td>121.2 Revised</td>
<td>31196</td>
</tr>
<tr>
<td>121.3 Revised</td>
<td>31197</td>
</tr>
<tr>
<td>121.4 Revised</td>
<td>31198</td>
</tr>
<tr>
<td>121 Appendix A revised</td>
<td>31198</td>
</tr>
<tr>
<td>230.6 Added</td>
<td>6676</td>
</tr>
</tbody>
</table>

#### 39 CFR—Continued

<table>
<thead>
<tr>
<th>39 CFR</th>
<th>77 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter I—Continued</td>
<td></td>
</tr>
<tr>
<td>233 Authority citation revised</td>
<td>25596</td>
</tr>
<tr>
<td>233.7 Revised</td>
<td>25596</td>
</tr>
<tr>
<td>233.8 Revised</td>
<td>25600</td>
</tr>
<tr>
<td>233.9 Revised</td>
<td>25602</td>
</tr>
<tr>
<td>233.10 Removed</td>
<td>25609</td>
</tr>
<tr>
<td>241.1 Revised</td>
<td>46950</td>
</tr>
<tr>
<td>241.3 (a) revised</td>
<td>46950</td>
</tr>
<tr>
<td>501.11 (b)(3) added</td>
<td>23396</td>
</tr>
<tr>
<td>501.14 Revised</td>
<td>23618</td>
</tr>
<tr>
<td>501.15 (i) revised</td>
<td>56554</td>
</tr>
<tr>
<td>966 Authority citation revised</td>
<td>65104</td>
</tr>
<tr>
<td>966.2 Revised</td>
<td>65104</td>
</tr>
<tr>
<td>966.3 Revised</td>
<td>65104</td>
</tr>
<tr>
<td>966.4 Revised</td>
<td>65105</td>
</tr>
<tr>
<td>966.6 Revised</td>
<td>65105</td>
</tr>
<tr>
<td>966.7 Revised</td>
<td>65106</td>
</tr>
<tr>
<td>966.8 Revised</td>
<td>65106</td>
</tr>
<tr>
<td>966.9 Revised</td>
<td>65106</td>
</tr>
<tr>
<td>966.11 Revised</td>
<td>65106</td>
</tr>
<tr>
<td>966.12 Revised</td>
<td>65106</td>
</tr>
<tr>
<td>966.13 Revised</td>
<td>65107</td>
</tr>
<tr>
<td>3001.5 (m) revised</td>
<td>6679</td>
</tr>
<tr>
<td>3001.7 (b) introductory text revised</td>
<td>6679</td>
</tr>
<tr>
<td>3001.9 (a) revised</td>
<td>6679</td>
</tr>
<tr>
<td>3001.110—3001.117 (Subpart H) Removed</td>
<td>6679</td>
</tr>
<tr>
<td>3020.1—3020.14 (Subpart A) Appendix A revised</td>
<td>13198, 75378</td>
</tr>
</tbody>
</table>

535
### 39 CFR (7–1–17 Edition)

#### 39 CFR—Continued

<table>
<thead>
<tr>
<th>Page</th>
<th>Chapter III—Continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>3025</td>
<td>Added .....................6679</td>
</tr>
</tbody>
</table>

#### 2013

<table>
<thead>
<tr>
<th>78 FR</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter I</td>
<td></td>
</tr>
</tbody>
</table>
20 IMM amended; incorporation by reference .......................69758
111 DMM amended; incorporation by reference .....................12236, 31316

DMM amended; incorporation by reference; eff. 7–28–13 ........38205
DMM amended; incorporation by reference .........................32490
DMM amended; incorporation by reference; interim ............32490
DMM amended; incorporation by reference; eff. 7–28–14 ........35289

501.2 (g) revised ..................................44338
501.6 (c)(1), (2), (3) and (e) revised .........................44338
501.7 (a) revised ..................................44338
501.8 (a) revised ..................................44338
501.10 Revised .....................................44339
501.12 (d) revised ..................................44339
501.20 Added; eff. date 1–1–16 ..........................8407

Chapter III |
3001.5 (a), (h), (j), (m), (o) and (q) revised; (p) removed ..........36436
3001.7 (a) and (b) revised ..................................36436
3001.9 (a), (c)(2) and (e) revised ............................36437
3001.10 (a)(4), (5) and (e) revised .............................36437
3001.12 (a)(1) removed; (a)(2) and (3) redesigned as (a)(1) and (2) .................36437
3001.15 Revised .....................................36437
3001.17 (a)(2) revised .....................................36437
3001.18 (b) and (c) revised ................................36437
3001.19 Revised .....................................36437
3001.20a (c) revised ....................................36438
3001.20b Introductory text and (a) revised ........................36438
3001.21 (a) revised ....................................36438
3001.23 (a)(7), (8), (9) and (10) revised ........................36438
3001.25 (a) revised ....................................36438
3001.27 (b) revised ....................................36438
3001.30 (d), (e)(2) and (h) revised ............................36339
3001.31 (j) and (k)(3)i(i) revised ............................36339
3001.31a (c) revised ..................................36339
3001.32 (f) revised ..................................36339
3001.34 (a) and (b)(3) revised ................................36339
3001.36 Revised .....................................36340
3001.39 (c) revised ..................................36340

<table>
<thead>
<tr>
<th>77 FR</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter III—Continued</td>
<td></td>
</tr>
</tbody>
</table>
3001.40 Authority citation removed ..................................36440
3001.41 Authority citation removed ..................................36440
3001.43 (a)(1), (c)(10), (e)(4)(i), (g)(1)(ii) and (2)(ii) revised ........36440
3001.72 Revised ..................................36440
3001.75 Removed ....................................36440
3002 Revised .....................................27065
3010 Revised .....................................32704
3010.11 (b)(2), (d) and (k) correctly revised ....................67952
3010.23 (d) correctly amended ..................................67952
3010.28 Heading correctly revised ................................67952
3010.42 (f) correctly revised ..................................67952
3020 Appendix A to Subpart A revised ..................................51074
3025.3 Heading corrected ...................................42875

#### 2014

<table>
<thead>
<tr>
<th>78 FR</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter I</td>
<td></td>
</tr>
</tbody>
</table>
20 IMM amended; incorporation by reference .......................3327, 42459
111 DMM correctly amended; incorporation by reference ........5287
DMM amended; incorporation by reference .........................42460, 75059
DMM amended; incorporation by reference; interim ...............54188
DMM amended; incorporation by reference .........................32490

121.1 (a) and (b) revised ..................................4080
121.2 (a)(1) revised ....................................4080
121.3 (b)(2) and (3) revised ................................32393
121 Appendix A amended ....................................4080, 12393, 44701

Appendix A corrected ...................................14401
492 Added ...........................................46183
501.15 (i) revised .....................................10994
501.16 (f) revised .....................................10995
601.108 (c) revised ....................................65343
601.113 Revised .....................................65343
775.6 (e)(8) revised; interim ................................3103
(e)(8) revised ........................................33097
961 Revised ........................................22026

Chapter III |
3001.3 Revised; eff. 7–10–14 ................................33406
3001.5 (h) revised; eff. 7–10–14 ..........................33406

536
### List of CFR Sections Affected

<table>
<thead>
<tr>
<th>39 CFR—Continued</th>
<th>79 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter III—Continued</td>
<td>79 FR Page</td>
</tr>
<tr>
<td>(v) added</td>
<td>54562</td>
</tr>
<tr>
<td>3001.7 (b) correctly revised</td>
<td>23916</td>
</tr>
<tr>
<td>3001.15 Revised; eff.</td>
<td>33406</td>
</tr>
<tr>
<td>3001.17 (c)(4) amended; (c)(5) redesignated as (c)(6); new (c)(5) added; eff.</td>
<td>33406</td>
</tr>
<tr>
<td>3001.20 (d) and (e) revised; eff. 7-10-14</td>
<td>33407</td>
</tr>
<tr>
<td>3001.20a Introductory text revised; eff. 7-10-14</td>
<td>33407</td>
</tr>
<tr>
<td>3001.31 (e) and (k)(4) revised; eff. 7-10-14</td>
<td>33407</td>
</tr>
<tr>
<td>3001.71—3001.93 (Subpart D) Revised; eff. 7-10-14</td>
<td>33407</td>
</tr>
<tr>
<td>3001.1 Revised; eff. 7-14-15</td>
<td>33832</td>
</tr>
<tr>
<td>3001.2 Amended; eff. 7-14-15</td>
<td>33832</td>
</tr>
<tr>
<td>3001.8 Redesignated as 3010.15; eff. 7-14-15</td>
<td>33832</td>
</tr>
<tr>
<td>3001.9 Redesignated from 3010.8; eff. 7-14-14</td>
<td>33832</td>
</tr>
<tr>
<td>3001.10 (a) revised; eff. 7-14-14</td>
<td>33832</td>
</tr>
<tr>
<td>3010.11 Heading, (a) introductory text, (b)(2), (d) and (k) revised; eff. 7-14-14</td>
<td>33832</td>
</tr>
<tr>
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<td>3010.20 (b) and (d) revised; (e) added; eff. 7-14-14</td>
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</tr>
<tr>
<td>3010.22 Heading, (a) and (b) revised; eff. 7-14-14</td>
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</tr>
<tr>
<td>3010.23 Revised; eff. 7-14-14</td>
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</tr>
<tr>
<td>3010.24 Revised; eff. 7-14-14</td>
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</tr>
<tr>
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<td>3010.29 Redesignated from 3010.28; eff. 7-14-14</td>
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<td>3010.30 Added; eff. 7-14-14</td>
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<table>
<thead>
<tr>
<th>39 CFR—Continued</th>
<th>79 FR Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chapter III—Continued</td>
<td>79 FR Page</td>
</tr>
<tr>
<td>3020.1—3020.14 (Subpart A) Appendix A revised</td>
<td>33142, 78715</td>
</tr>
<tr>
<td>3032 Added</td>
<td>62294</td>
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<tr>
<td>3035 Added</td>
<td>54663</td>
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<td>3050.14 Revised</td>
<td>23390</td>
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### 2015

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<th>Chapter I</th>
<th>80 FR Page</th>
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<td>5684, 5689, 65141, 72901</td>
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<td>26447</td>
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<td>5692, 13768, 25532, 48704, 65150</td>
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<tr>
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<td>241.4 Revised</td>
<td>9193</td>
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<td>265.4 Revised</td>
<td>45066</td>
</tr>
<tr>
<td>265.7 Heading, (a)(1) and (2) revised</td>
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<td>501.1 (g) revised</td>
<td>42392</td>
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</tr>
<tr>
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<td>955.15 (a) amended; eff. 7-2-15</td>
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<td>31305</td>
</tr>
<tr>
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<td>955.36 Revised; eff. 7-2-15</td>
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### 39 CFR—Continued

<table>
<thead>
<tr>
<th>80 FR Page</th>
<th>81 FR Page</th>
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<tbody>
<tr>
<td><strong>Chapter I—Continued</strong></td>
<td><strong>Chapter I—Continued</strong></td>
</tr>
<tr>
<td>957 Revised ............................................... 55767</td>
<td>954.8 (a) revised; eff. 7-21-16 .................. 40193</td>
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<td>961.4 (a) and (b) introductory text amended .................................. 54722</td>
<td>955.1 (b)(2) amended .......................... 7208</td>
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<td>961.6 (a) revised ....................... 54722</td>
<td>(b)(1) revised; eff. 7-21-16 .................. 40193</td>
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<td>966.4 (c) revised; (d) introductory text amended .................. 54723</td>
<td>958 Authority citation revised .......... 40193</td>
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<td>966.6 (a) revised ....................... 54723</td>
<td>958.2 (g) revised; eff. 7-21-16 .................. 40193</td>
</tr>
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<td>958.19 (b) revised; eff. 7-21-16 .................. 40193</td>
<td>958.20 Revised; eff. 7-21-16 .................. 40194</td>
</tr>
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<td>961.4 Revised; eff. 7-21-16 .................. 40193</td>
<td>959 Authority citation revised .......... 40194</td>
</tr>
<tr>
<td>966 Revised; eff. 7-21-16 .................. 40194</td>
<td>959.3 Revised; eff. 7-21-16 .................. 40194</td>
</tr>
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<td>959.9 Revised; eff. 7-21-16 .................. 40194</td>
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<td>966.22 (a) introductory text and (b) revised; eff. 7-21-16 .................. 40194</td>
<td></td>
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<td>962.1 (i) revised; eff. 7-21-16 .................. 40194</td>
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<td>962.22 (a) introductory text and (b) revised; eff. 7-21-16 .................. 40194</td>
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<tr>
<td>965.5 Revised; eff. 7-21-16 .................. 40195</td>
<td>965.7 (a) and (b) revised; eff. 7-21-16 .................. 40195</td>
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<td>969 Authority citation revised .......... 40194</td>
<td>969.3 Revised; eff. 7-21-16 .................. 40194</td>
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<td>964 Authority citation revised .......... 40194</td>
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<td>3000.5 Redesignated from 3000.735-101; eff. 8-1-16 .................. 42540</td>
<td>964.3 (a) amended; (e) added; eff. 7-21-16 .................. 40194</td>
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<tr>
<td>3000.10 Redesignated from 3000.735-102; eff. 8-1-16 .................. 42540</td>
<td>964.7 (a) revised; eff. 7-21-16 .................. 40195</td>
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<td>3000.15 Redesignated from 3000.735-103; eff. 8-1-16 .................. 42540</td>
<td>965.5 Revised; eff. 7-21-16 .................. 40195</td>
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<td>3000.10; eff. 8-1-16 .................. 42540</td>
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<tr>
<td>3000.50—3000.55 (Subpart B) Revised; eff. 8-1-16 .................. 42540</td>
<td>3000.735-101 Redesignated as 3000.5; eff. 8-1-16 .................. 42540</td>
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<td>3000.735-102 Redesignated as 3000.10; eff. 8-1-16 .................. 42540</td>
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<td>3000.735-102 Redesignated as 3000.10; eff. 8-1-16 .................. 42540</td>
<td>3000.735-103 Redesignated as 3000.15; eff. 8-1-16 .................. 42540</td>
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<td>3000.735-104 Redesignated as 3000.20; eff. 8-1-16 .................. 42540</td>
<td>3001.5 (o) removed; eff. 8-1-16 .................. 42541</td>
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<td>3001.7 Removed; eff. 8-1-16 .................. 42541</td>
</tr>
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<td>3008 Added; eff. 8-1-16 .................. 42541</td>
<td>3015.7 (a) and (b) revised .................. 88123</td>
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<td>3020.1—3020.5 (Subpart A) Revised; eff. 7-15-16 .................. 38954</td>
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*2016*
List of CFR Sections Affected

<table>
<thead>
<tr>
<th>CFR Part</th>
<th>Title</th>
<th>Amended/Revised</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>39 CFR</td>
<td>Chapter III—Continued</td>
<td>3020.30 Revised; eff. 7-15-16</td>
<td>38957</td>
</tr>
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<td>3020.50—3020.56 (Subpart C) Heading revised; eff. 7-15-16</td>
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<td>3020.50 Revised; eff. 7-15-16</td>
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<td>3020.70—3020.76 (Subpart D) Heading revised; eff. 7-15-16</td>
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<td>3060.10 (b)(1) revised</td>
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<td>3060.21 Table I revised</td>
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</table>

2017

(Regulations published from January 1, 2017, through July 1, 2017)

<table>
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<th>CFR Part</th>
<th>Title</th>
<th>Amended/Revised</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>39 CFR</td>
<td>Chapter I</td>
<td>20 Price changes</td>
<td>1206</td>
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<td>29005</td>
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<td>12181, 12182</td>
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<td>233.12 (a), (b), (c)(4), (d), (e) and (f) amended; interim</td>
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<td>243.2 (g) revised</td>
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<td></td>
<td>265.4 (a) correctly amended</td>
<td>15139</td>
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<td>501.16 (i) revised; eff. 8-1-17</td>
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<td>3004.2 Revised</td>
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<td>3004.3 Added</td>
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<td>12508</td>
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<td>3004.44 (b) and (c)(1) revised</td>
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<td>3004.45 Revised</td>
<td>12508</td>
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<td>3004.52 (e) revised; (f) added</td>
<td>12508</td>
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<td>3020.1—3020.5 (Subpart A) Appendix B revised</td>
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<td>Appendices A and B revised</td>
<td>18701</td>
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