

SUBCHAPTER D—ORGANIZATION AND ADMINISTRATION

PART 211—APPLICATION OF REGULATIONS

Sec.

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

211.2 Regulations of the Postal Service.

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

211.4 Interim personnel regulations.

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

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

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

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

§211.2 Regulations of the Postal Service.

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

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

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

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

in the FEDERAL REGISTER and the Code of Federal Regulations.

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

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

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

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

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

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

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

§211.4

39 CFR Ch. I (7–1–16 Edition)

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 non-compliance 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.

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

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

§ 221.1 The United States Postal Service.

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

§ 221.2 Board of Governors.

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

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

§ 221.3 Office of Inspector General.

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

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

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

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

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

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

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

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

(ii) The necessity for corrective action.

(iii) The progress of corrective action.

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

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

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

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

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

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

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

§ 221.4

39 CFR Ch. I (7–1–16 Edition)

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

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

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

§ 221.4 Corporate officers.

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

- (a) The postmaster general and chief executive officer.
- (b) The deputy postmaster general.
- (c) The chief operating officer and executive vice president.
- (d) The chief financial officer and executive vice president.
- (e) The senior vice presidents.
- (f) The general counsel and senior vice president.
- (g) The vice presidents.
- (h) The chief inspector.
- (i) The consumer advocate and vice president.
- (j) The judicial officer.
- (k) Such other officers as the Board may designate from time to time.

§ 221.5 Headquarters organization.

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

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

nate may also determine appeals within the authority delegated.

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

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

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

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

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

- (1) Program planning, direction, and review.
- (2) Establishment of policies, procedures, and standards.
- (3) Operational determinations not delegated to district officials.

§ 221.6 Field organization.

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

(b) *Area locations*.

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

United States Postal Service

§ 222.2

Area name	Location
Western	Denver CO.

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

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

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

- (i) Customer service districts (CSDs).
- (ii) Post offices (POs).
- (iii) Vehicle maintenance facilities (VMFs).
- (iv) Processing and distribution centers (P&DCs).
- (v) Processing and distribution facilities (P&DFs).
- (vi) Air mail centers (AMCs).
- (vii) Air mail facilities (AMFs).
- (viii) Bulk mail centers (BMCs).
- (ix) Bulk mail facilities (BMFs).
- (x) Remote encoding centers (RECs).

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

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

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

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

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

§ 221.7 Postal Service emblem.

The Postal Service emblem, which is identical with the seal, is registered as

a trademark and service mark by the U.S. Patent Office. Except for the emblem on official stationery, the emblem must bear one of the following notations: “Reg. U.S. Pat. Off.,” “Registered in U.S. Patent Office”, or the letter R enclosed within a circle.

PART 222—DELEGATIONS OF AUTHORITY

Sec.

222.1 Authority to administer postal affairs.

222.2 Authority to administer oaths or function as notaries public.

222.3 Other delegation.

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

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

§ 222.1 Authority to administer postal affairs.

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

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

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

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

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

§ 222.3

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

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

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

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

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

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

§ 222.3 Other delegation.

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

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

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

(d) *Agreement with law*. A delegation must agree with the law and regulations under which it is made and con-

39 CFR Ch. I (7-1-16 Edition)

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.

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

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

§ 223.1 Headquarters and areas.

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

§ 223.2 Channels of communication, headquarters with area offices.

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

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

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

Inspection Service Requirements
PART 230—OFFICE OF INSPECTOR GENERAL

Subpart A—General Policy and Authority

Sec.

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

- ment of Justice attorney represent the employee in any appearance?
- 230.22 May another employee be substituted for the employee requested to appear?.
- 230.23 May an Office of Inspector General employee testify as an expert or opinion witness?
- 230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?
- 230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?
- 230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?
- 230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

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

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

Subpart A—General Policy and Authority

§ 230.1 Establishment and authority.

- (a) There is established, pursuant to the Inspector General Act of 1978, as amended (5 U.S.C. App.3), and 39 U.S.C. 410, an independent Office of Inspector General.
- (b) The Inspector General reports directly to the nine presidentially appointed Governors and shall not be supervised by, nor report to, the Postmaster General and/or any designee appointed by the Postmaster General.
- (c) The Office of Inspector General includes an Inspector General, an Assistant Inspector General for Audit, and an Assistant Inspector General for Investigations. The Office of Inspector General maintains its own legal counsel independent of the Postal Service Law Department for matters that are within the jurisdiction of the Office.
- (d) The Office of Inspector General is responsible for detecting and preventing fraud, waste, and abuse in the programs and operations of the Postal Service, including, investigating all allegations of violations of postal laws or misconduct by postal employees, including mail theft, and for reviewing existing and proposed legislation and regulations relating to the programs and operations of the Postal Service.

§ 230.2

(e) The Inspector General has oversight responsibilities for all activities of the Postal Inspection Service. The Chief Postal Inspector must promptly report to the Inspector General significant activities and other information related to the Inspection Service as required by law.

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

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

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

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

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

[67 FR 16025, Apr. 4, 2002, as amended at 72 FR 39011, July 17, 2007]

§ 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;

39 CFR Ch. I (7–1–16 Edition)

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

§ 230.3 Cooperation with the Office of Inspector General.

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

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

§ 230.4 Arrest and investigative powers of criminal investigators.

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

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

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

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

(4) Carry firearms; and

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

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

United States Postal Service

§ 230.10

with a person of suitable age and discretion employed or residing therein. Service by mail is complete upon mailing.

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

§ 230.5 Release of information.

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

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

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

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

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

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

§ 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:

§ 230.11

39 CFR Ch. I (7-1-16 Edition)

(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.

United States Postal Service

§ 230.19

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 230.20

(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.

39 CFR Ch. I (7-1-16 Edition)

§ 230.20 What records will not be released?

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

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

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

(c) Original records;

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

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

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

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

United States Postal Service

§ 230.25

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

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

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

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

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

(a) All demands for the production of nonpublic documents or testimony of Office of Inspector General employees concerning matters relating to their official duties and subject to the conditions set forth in § 230.10(b) shall be made in writing and conform to the requirements outlined in paragraph (b) of this section.

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

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

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

(3) The reasons for the demand;

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

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

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

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

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

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

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

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

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

(2) At the discretion of the Office of Inspector General where appropriate,

§ 230.26

fees and costs may be estimated and collected before testimony is given.

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

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

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

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

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

PART 231—PROTECTION OF POST OFFICES

Sec.

231.1 Responsibility.

231.2 Security Control Officer.

§ 231.1 Responsibility.

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

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

(39 U.S.C. 401)

[36 FR 4762, Mar. 12, 1971]

§ 231.2 Security Control Officer.

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

39 CFR Ch. I (7–1–16 Edition)

and regulations issued by the Chief Postal Inspector.

(39 U.S.C. 401)

[36 FR 4762, Mar. 12, 1971]

PART 232—CONDUCT ON POSTAL PROPERTY

AUTHORITY: 18 U.S.C. 13, 3061, 3571; 21 U.S.C. 802, 844; 39 U.S.C. 401, 403(b)(3), 404(a)(7), 1201(2).

§ 232.1 Conduct on postal property.

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

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

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

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

(2) Vehicles and their contents brought into, while on, or being removed from restricted nonpublic areas are subject to inspection. A prominently displayed sign shall advise in advance that vehicles and their contents are subject to inspection when entering the restricted nonpublic area, while in the confines of the area, or

when leaving the area. Persons entering these areas who object and refuse to consent to the inspection of the vehicle, its contents, or both, may be denied entry; after entering the area without objection, consent shall be implied. A full search of a person and any vehicle driven or occupied by the person may accompany an arrest.

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

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

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

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

(f) *Gambling.* Participating in games for money or other personal property, the operation of gambling devices, the conduct of a lottery or pool, or the selling or purchasing of lottery tickets, is prohibited on postal premises. In ac-

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

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

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

(iii) The solicitation of Postal Service and other Federal military and civilian personnel for contributions by recognized agencies as authorized 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 non-profit civic leagues or organizations that operate for the promotion of social welfare but do not participate or intervene in any political campaign on behalf of any candidate or political party for any public office.

(ii) Absolutely no partisan or political literature may be available, displayed, or distributed. This includes photographs, cartoons, and other likenesses of elected officials and candidates for public office.

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

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

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

(vi) Contributions may not be solicited.

(vii) Access to the workroom floor is prohibited.

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

(5) Except as part of postal activities or activities associated with those permitted under paragraph (h)(4) of this section, no tables, chairs, freestanding signs or posters, structures, or fur-

niture 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

United States Postal Service

§ 232.1

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(c)(2) and shall be responsible for enforcing the regulations in

this section in a manner that will protect Postal Service property and persons thereon.

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

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

[37 FR 24346, Nov. 16, 1972]

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.

PART 233—INSPECTION SERVICE AUTHORITY

- Sec.
233.1 Arrest and investigative powers of Postal Inspectors.
233.2 Circulars and rewards.
233.3 Mail covers.
233.4 Withdrawal of mail privileges.
233.5 Requesting financial records from a financial institution.
233.6 Test purchases under 39 U.S.C. 3005(e).
233.7 Forfeiture authority and procedures.
233.8 Expedited forfeiture proceedings for property seizures based on violations involving the possession of personal use quantities of a controlled substance.
233.9 Regulations governing remission or mitigation of administrative, civil, and criminal forfeitures.
233.10 [Reserved]
233.11 Mail reasonably suspected of being dangerous to persons or property.
233.12 Civil penalties.

AUTHORITY: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Omnibus Budget Reconciliation Act of 1996, sec. 662 (Pub. L. 104–208).

EFFECTIVE DATE NOTE: At 81 FR 42533, June 30, 2016, the authority citation to part 233 was revised, effective Aug. 1, 2016. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005, 3012, 3017,

3018; 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Pub. L. 101–410, 104 Stat. 890; Pub. L. 104–208, 110 Stat. 3009–378; Pub. L. 106–168, 113 Stat. 1806; Pub. L. 114–74, 129 Stat. 584.

§ 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 all other persons.

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

(c) Administrative subpoenas may be served by delivering a copy to a person or by mailing a copy to his or her last known address. For the purposes of

this provision, delivery of a copy includes handing it to the party or leaving it at the party's office or residence with a person of suitable age and discretion employed or residing therein. Service by mail is complete upon mailing.

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

[36 FR 4762, Mar. 12, 1971, as amended at 38 FR 19124, July 18, 1973. Redesignated at 46 FR 34330, July 1, 1981; 52 FR 12901, Apr. 20, 1987; 56 FR 55823, Oct. 30, 1991; 60 FR 5581, Jan. 30, 1995; 67 FR 16024, Apr. 4, 2002; 72 FR 39011, July 17, 2007]

§ 233.2 Circulars and rewards.

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

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

- (i) Robbery or attempted robbery.
- (ii) Mailing or causing to be mailed bombs, explosives, poison, weapons of mass destruction, or controlled substances.
- (iii) Post office burglary.
- (iv) Stealing or unlawful possession of mail or money or property of the United States under the custody or control of the Postal Service, including property of the Postal Service.
- (v) Destroying, obstructing or retarding the passage of mail.
- (vi) Altering, counterfeiting, forging, unlawful uttering or passing of postal money orders; or the unlawful use, counterfeiting or forgery of postage stamps or other postage; or the use,

sale or possession with intent to use or sell, any forged or counterfeited postage stamp or other postage.

- (vii) Assault on postal employee.
- (viii) Murder or manslaughter of a postal employee.
- (ix) Mailing or receiving through the mail any visual depiction involving the use of a minor engaging in sexually explicit conduct, or the use of the mail to facilitate any crime relating to the sexual exploitation of children.

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

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

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

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

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

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

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

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

Controlled Substances, Illegal Drugs, or Cash Proceeds from Illegal Drugs, \$50,000.

§ 233.2

39 CFR Ch. I (7-1-16 Edition)

Mailing or causing to be mailed any controlled substances, illegal drugs, or proceeds from the sale of illegal drugs.

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

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

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

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

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

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

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

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

Related Offenses

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

General Provisions

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

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

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

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

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

(c) The Chief Postal Inspector or his delegate is authorized to pay a reward to any person who provides information leading to the detection of persons or firms who obtain, or seek to obtain, funds, property, or services from the Postal Service based upon false or fraudulent activities, statements or claims. The decision as to whether a reward shall be paid and the amount thereof shall be solely within the discretion of the Chief Postal Inspector or his delegate and the submission of information or a claim for a reward shall not establish a contractual right to receive any reward. The reward shall not exceed one-half of the amount collected by the Postal Service as a result

United States Postal Service

§ 233.3

of civil or criminal proceedings to recover losses or penalties as a result of false or fraudulent claims or statements submitted to the Postal Service. Postal employees assigned to the Postal Inspection Service or the Law Department are not eligible to receive a reward under this section for information obtained while so employed. The Chief Inspector may establish such procedures and forms as may be desirable to give effect to this section including procedures to protect the identity of persons claiming rewards under this section.

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

§ 233.3 Mail covers.

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

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

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

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

- (i) Protect national security,
- (ii) Locate a fugitive,
- (iii) Obtain evidence of commission or attempted commission of a crime,
- (iv) Obtain evidence of a violation or attempted violation of a postal statute, or
- (v) Assist in the identification of property, proceeds or assets forfeitable under law.

(2) For the purposes of § 233.3 *record* is a transcription, photograph, photocopy or any other facsimile of the image of

the outside cover, envelope, wrapper, or contents of any class of mail.

(3) *Sealed mail* is mail which 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; Express Mail; Express Mail International; Global Express Guaranteed items containing only documents; Priority Mail International flat-rate envelopes and small flat-rate boxes; International Priority Airmail, except M-bags; International Surface Air Lift, except M-bags; First-Class Mail International; Global Bulk Economy, except M-bags; certain Global Direct mail as specified by customer contract; and International Transit Mail.

(4) *Unsealed mail* is mail which 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; Package Services; incidental First-Class Mail attachments and enclosures; Global Express Guaranteed items containing non-documents; Priority Mail International, except flat-rate envelopes and small flat-rate boxes; International Direct Sacks—M-bags; certain Global Direct mail as specified by customer contract; and all items sent via “Free Matter for the Blind or Handicapped” under 39 U.S.C. 3403-06 and 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.

§ 233.3

39 CFR Ch. I (7–1–16 Edition)

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

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

(ii) Protect the national security.

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

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

(ii) Sabotage, or international terrorism; or

(iii) Clandestine intelligence activities, including commercial espionage.

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

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

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

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

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

(1) When a written request is received from a postal inspector that states reason to believe a mail cover will produce

evidence relating to the violation of a postal statute.

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

(i) Protect the national security,

(ii) Locate a fugitive,

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

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

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

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

(2) The mail must be:

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

(ii) Damaged or rifled, undelivered mail, or

(iii) An immediate threat to persons or property.

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

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

(i) Payment of proper postage, or

United States Postal Service

§ 233.3

(ii) Mailability.

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

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

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

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

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

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

Chief Postal Inspector in writing of such designation.

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

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

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

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

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

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

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

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

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

§ 233.4

overseas may be obtained from the Department of Defense.

[58 FR 36599, July 8, 1993, as amended at 61 FR 42557, Aug. 16, 1996; 74 FR 18297, Apr. 22, 2009]

§ 233.4 Withdrawal of mail privileges.

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

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

(b) *Fictitious name or address and not residents of the place of address orders*—

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

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

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

(B) Petition the Judicial Officer for the return of such mail. (ii) The notice must be in writing and served by per-

39 CFR Ch. I (7–1–16 Edition)

sonal service upon the addressee or by Certified Mail (Return Receipt Requested) and by First Class Mail.

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

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

§ 233.5 Requesting financial records from a financial institution.

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

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

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

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

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

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

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

(5) The notice requirements set forth in section 1108(4) of the Act, or the requirements pertaining to the delay of notice in section 1109 of the Act, are

satisfied, except in situations (*e.g.*, section 1113(g)) where no notice is required.

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

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

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

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

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

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

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

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

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

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

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

vestigate possible violations of postal laws.

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

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

(ii) The name, title, signature, office mailing address, and office telephone number of the person making the request;

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

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

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

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

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

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

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

§ 233.7

39 CFR Ch. I (7–1–16 Edition)

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

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

§ 233.7 Forfeiture authority and procedures.

(a) *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). The authority to conduct administrative forfeitures derives from the procedural provisions of the Customs laws (19 U.S.C. 1602–1618) where those provisions are incorporated by reference in the substantive forfeiture statutes.

(2) The regulations in this section will apply to all forfeiture actions commenced on or after May 31, 2012.

(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

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:

United States Postal Service

§ 233.7

(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

the Postal Inspection Service has investigative 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 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, evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise, or

§ 233.7

39 CFR Ch. I (7–1–16 Edition)

(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.

(i) *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.

(j) *Notice of administrative forfeiture—(1) Notice by publication*. (i) 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 address where the claim must be filed.

(2) *Personal written notice—(i) 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 pro-

ceeding 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 when 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. Upon making the determination that the seized property will 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 a specified period for release of the property, and further informing that person that failure to contact the property custodian within the specified period for release of the property will result in abandonment of the property pursuant to applicable regulations. The Postal Inspection Service shall notify the property custodian of the identity of the person to whom the property should be released. The property custodian shall have the right to require presentation of proper identification and/or to take other steps to verify the identity of the person who seeks the release of property, or both.

(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

United States Postal Service

§ 233.7

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.

(1) *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.

(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 sub-

section 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 a specified period for release of the property, and further informing that person that failure 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 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

§ 233.8

39 CFR Ch. I (7-1-16 Edition)

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

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.

(1) 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, ecgonine, and derivations of ecgonine or their salts have been removed;

(2) Cocaine, its salts, optical and geometric isomers, and salts of isomers;

(3) Ecgonine, its derivatives, their salts, isomers, and salts of isomers; or

(4) Any compound, mixture, or preparation that contains any quantity of any of the substances referred to in (ii)(B)(1) through (ii)(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) Where property is seized for adminis-

trative 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

§ 233.9

39 CFR Ch. I (7–1–16 Edition)

date of the first publication of the notice of seizure in ordered 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

(ii) If the Postal Inspection Service determines that those factors have not been established, the agency shall proceed with the administrative forfeiture.

(e) *Posting of substitute monetary amount in an administrative forfeiture proceeding.* (1) Where property is seized for administrative forfeiture involving controlled substances in personal use quantities, the owner may obtain release of the property by posting a substitute monetary amount with the Postal Inspection Service to be held subject to forfeiture proceedings in place of the seized property to be released. 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 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 traveler’s check, a money order, a cashier’s check, or an irrevocable letter of credit made payable to the Postal Inspection Service. A bond in the form of a cashier’s check will be considered as paid once the check has been accepted for payment by the financial institution that issued the check.

(2) If a substitute monetary amount is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute amount in lieu of the property.

(f) *Notice provisions.* At the time of seizure of property defined in paragraph (b)(6) of this section for violations involving the possession of personal use quantities of a controlled substance, the Postal Inspection Service must provide written notice to the possessor of the property specifying the procedures for filing of a petition for expedited release and for the posting of a substitute monetary bond as set forth in section 6079 of the Anti-Drug Abuse Act of 1988 and implementing regulations.

[77 FR 25600, May 1, 2012]

§ 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;

§ 233.9

39 CFR Ch. I (7-1-16 Edition)

(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 Racketeer 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 by the petitioner's attorney upon information and belief, supported by the cli-

ent'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.

§ 233.9

39 CFR Ch. I (7-1-16 Edition)

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.

(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 for-

feited 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 of sale or appraised value of forfeited property, or a reconsideration of a denial of such a petition. Failure to provide information or documents and to submit to interviews, as requested, may result in a denial of the petition.

(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)(ii) 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 petitioner victims). 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

§ 233.9

39 CFR Ch. I (7–1–16 Edition)

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 forgone 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:

(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 (7) 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 specially incurred incident to the particular forfeiture, and costs incurred incident to the processing of petitions for remission or mitigation. The remaining balance shall be available for remission or mitigation. The Ruling Official shall direct the distribution of the remaining balance in the following order or 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;

§ 233.10

(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]

39 CFR Ch. I (7–1–16 Edition)

§ 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.

United States Postal Service

§ 233.12

(6) After screening, mail sealed against inspection that presents doubts about whether its contents are hazardous, that cannot be resolved without opening, must be reported to the Postal Inspection Service. Such mail must be disposed of under instructions promptly furnished by the Inspection Service.

(b) *Threatening pieces of mail.* Mail, sealed or unsealed, reasonably suspected of posing an immediate danger to life or limb or an immediate and substantial danger to property may, without a search warrant, be detained, opened, removed from postal custody, and processed or treated, but only to the extent necessary to determine and eliminate the danger and only if a complete written and sworn statement of the detention, opening, removal, or treatment, and the circumstances that prompted it, signed by the person purporting to act under this section, is promptly forwarded to the Chief Postal Inspector.

(c) *Reports.* Any person purporting to act under this section who does not report his or her action to the Chief Postal Inspector under the requirements of this section, or whose action is determined after investigation not to have been authorized, is subject to disciplinary action or criminal prosecution or both.

[61 FR 28060, June 4, 1996]

§ 233.12 Civil penalties.

False representation and lottery orders—

(a) *Issuance.* Pursuant to 39 U.S.C. 3005, the Judicial Officer of the Postal Service, acting upon a satisfactory evidentiary basis, may issue a mail return and/or a cease and desist order against anyone engaged in conducting a scheme or device for obtaining money or property through the mail by means of a false representation, including the mailing of matter which is non-mailable, or engaged in conducting a lottery, gift enterprise, or scheme for the distribution of money or of real or personal property, by lottery, chance, or drawing of any kind.

(b) *Enforcement.* Pursuant to 39 U.S.C. 3012, any person:

(1) Who, through the use of the mail, evades or attempts to evade the effect

of an order issued under 39 U.S.C. 3005(a)(1) or 3005(a)(2);

(2) Who fails to comply with an order issued under 39 U.S.C. 3005(a)(3); or

(3) Who (other than a publisher described by 39 U.S.C. 3007(b)) has actual knowledge of any such order, is in privity with any person described by paragraph (b) (1) or (2) of this section, and engages in conduct to assist any such person to evade, attempt to evade, or fail to comply with such order, as the case may be, through the use of the mail;

Shall be liable to the United States for a civil penalty in an amount not to exceed \$11,000 for each day that such person engages in conduct described by this paragraph (b). A separate penalty may be assessed under this paragraph (b) with respect to the conduct described by paragraphs (b) (1), (2), or (3) of this section.

[61 FR 56450, Nov. 1, 1996]

EFFECTIVE DATE NOTE: At 81 FR 42533, June 30, 2016, § 233.12 was revised, effective Aug. 1, 2016. For the convenience of the user, the revised text is set forth as follows:

§ 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: \$68,345 for each mailing less than 50,000 pieces, \$136,689 for each mailing of 50,000 to 100,000 pieces, and \$13,669 for each piece above 100,000 not to exceed \$2,733,780.

(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: \$34,172 for each mailing that is less than 50,000 pieces, \$68,345 for each mailing of 50,000 to 100,000 pieces, and an additional \$6,834 for every additional 10,000 pieces above 100,000 not to exceed \$1,366,890.

(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 \$13,669 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 \$2,733,780 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 non-mailable 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 \$13,669 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 \$295, but not more than \$117,858 for each violation.

PART 235—DEFENSE DEPARTMENT LIAISON

Sec.

235.1 Postal Service to the Armed Forces.

235.2 Civil preparedness.

§ 235.1 Postal Service to the Armed Forces.

(a) Publication 38, Postal Agreement with the Department of Defense, defines the Postal Service's responsibilities for providing postal service to the Armed Forces.

(b) The Chief Inspector is responsible for military liaison.

(c) Postal inspectors provide liaison between postmasters and military commanders, visit military installations as

required, and make any necessary recommendations.

(39 U.S.C. 401(2), 402, 403, 404, as enacted by Pub. L. 91-375, 84 Stat. 719)

[38 FR 26193, Sept. 9, 1973]

§ 235.2 Civil preparedness.

(a) *Mission.* The prime objective of postal emergency preparedness planning is to maintain or restore essential postal service in a national emergency, natural disaster, or disruptive domestic crisis.

(b) *Emergency Coordinator.* The Chief Inspector is designated Emergency Coordinator for the Postal Service. As Emergency Coordinator, he provides general direction and coordination of the following programs:

(1) National Civil Preparedness and Defense Mobilization;

(2) Natural Disaster Preparedness;

(3) Emergency Response to Disruptive Domestic Crisis.

(c) *Regional Emergency Coordinator.* The Chief Inspector may delegate authority to Regional Chief Postal Inspectors, or others, for the function of Regional Emergency Coordinator and the general direction and coordination of all such programs within the Postal Regions, as are conducted by him at the National level.

(d) *Postmaster General emergency line of succession.* (1) Deputy Postmaster General; (2) Senior Assistant Postmaster General, Administration; (3) Senior Assistant Postmaster General, Operations.

(e) *Headquarters and field lines of succession.* Each Headquarters organizational unit shall establish its own internal line of succession to provide for continuity under emergency conditions. Each Regional Postmaster General, Regional Chief Inspector, Postal Data Center Director, Inspector in Charge, and postmaster at first-class post offices shall prepare a succession list of officials who will act in his stead in the event he is incapacitated or absent in an emergency. Orders of succession shall be shown by position titles, except those of the Inspection Service may be shown by names.

(f) *Field responsibilities.* Postmasters and heads of other installations shall:

United States Postal Service

§ 241.3

(1) Carry out civil preparedness assignments, programs, etc., as directed by regional officials.

(2) Comply with, and cooperate in community civil preparedness plans (including exercise) for evacuation, take cover and other survival measures prescribed for local populations.

(3) Designate representatives for continuing liaison with local civil preparedness organizations where such activity will not interfere with normal duties.

(4) Endeavor to serve (at their own option) as members on the staff of the local civil preparedness director, provided such service will not interfere with their primary postal responsibility in an emergency.

(5) Authorize and encourage their employees to participate voluntarily in nonpostal pre-emergency training programs and exercises in cooperation with States and localities.

(39 U.S.C. 401(2), 402, 403, 404, as enacted by Pub. L. 91-375, 84 Stat. 719)

[38 FR 26193, Sept. 9, 1973]

Post Office Organization and Administration

PART 241—ESTABLISHMENT CLASSIFICATION, AND DISCONTINUANCE

Sec.

241.1 Post offices.

241.2 Stations and branches.

241.3 Discontinuance of USPS-operated retail facilities.

241.4 Relocating retail services; adding new retail service facilities.

AUTHORITY: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

§ 241.1 Post offices.

Post Offices are established and maintained at locations deemed necessary to ensure that regular and effective postal services are available to all customers within specified geographic boundaries. A Post Office may be operated or staffed by a postmaster or by another type of postal employee at the direction of the postmaster, including when the postmaster is not physically present. A Remotely Managed Post Office (RMPO) is a Post Office that offers

part-time window service hours, is staffed by a Postal Service employee under the direction of a postmaster, and reports to an Administrative Post Office. A Part-Time Post Office (PTPO) is a Post Office that offers part-time window service hours, is staffed by a Postal Service employee, and reports to a district office. Unless otherwise specified, all references to "Post Office" include RMPOs and PTPOs.

[77 FR 46950, Aug. 7, 2012]

§ 241.2 Stations and branches.

(a) *Description.* (1) Stations are established within the corporate limits or boundary, and branches are established outside the corporate limits or boundary of the city, town, or village in which the main post office is located. Stations and branches may be designated by number, letter or name. As a general rule, branches are named.

(2) Stations and branches transact registry and money order business, sell postage supplies, and accept matter for mailing. Delivery service, post office boxes, and other services may be provided when directed by the postmaster.

(3) Stations and branches, except nonpersonnel rural stations and branches, are designated as independent when registered and other mail is received or dispatched without passing through the main office.

(b) *Classification*—(1) *Classified.* Operated by postal employees in quarters provided by the Federal Government.

(2) *Contract.* Operated under contract by persons who are not Federal Government employees. Persons operating contract stations and branches are independent contractors and neither the contractors nor any person employed by them to assist in the conduct of contract stations or branches shall be employees of the Federal Government for any purpose whatsoever.

(39 U.S.C. 401)

[36 FR 4764, Mar. 12, 1971]

§ 241.3 Discontinuance of 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,

§ 241.3

39 CFR Ch. I (7–1–16 Edition)

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 for which initial feasibility studies have been initiated prior to July 14, 2011. 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.

(2) *Definitions.* As used in this section, the terms listed below are defined as follows:

(i) “*USPS-operated retail facility*” includes any Postal Service employee-operated Post Office, station, or branch, but does not include any station, branch, community Post Office, or other retail facility operated by a contractor.

(ii) “*Contractor-operated retail facility*” includes any station, branch, community Post Office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.

(iii) “*Closing*” means an action in which Post Office operations are per-

manently discontinued without providing a replacement facility in the community.

(iv) “*Consolidation*” means an action that converts a Postal Service-operated retail facility into a contractor-operated retail facility. The resulting contractor-operated retail facility reports to a Postal Service-operated retail facility.

(v) “*Discontinuance*” means either a closure or a consolidation.

(vi) A “*Remotely Managed Post Office*” (RMPO) is a Post Office that offers part-time window service hours, is staffed by a Postal Service employee at the direction of a postmaster, and reports to an Administrative Post Office. Unless otherwise specified, all references to “Post Office” include RMPOs. The classification of a Post Office as an RMPO is not a discontinuance action under this section.

(vii) A “*Part-Time Post Office*” (PTPO) is a Post Office that offers part-time window service hours, is staffed by a Postal Service employee, and reports to a district office. Unless otherwise 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.

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

(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:

§ 241.3

39 CFR Ch. I (7–1–16 Edition)

(A) Any claim that the continued operation of a building without handicapped modifications is inconsistent with the Architectural Barriers Act (42 U.S.C. 4151 *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 per-

sonnel 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-353, *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

§ 241.3

39 CFR Ch. I (7–1–16 Edition)

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.

(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.

[76 FR 41420, July 14, 2011; 76 FR 43898, July 22, 2011, as amended at 76 FR 66187, Oct. 26, 2011; 77 FR 46950, Aug. 7, 2012]

§ 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, fire, 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 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

§ 241.4

39 CFR Ch. I (7–1–16 Edition)

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) of this section and to give input on proposals for implementing those decisions (each a “proposal”), and to require the Postal Service to consider any appeals and input in arriving at final decisions to proceed with, modify, or cancel proposals.

(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

United States Postal Service

§ 241.4

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 during the 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 retail service facility for 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 then 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 did not identify at the public meeting, and this section applies with respect to that new site or area, then the Postal Service will undertake the steps in paragraphs (c)(2) through (4) of this section with regard to the new site or area.

(d) *Effect on other obligations and policies.* (1) Nothing in this section shall add to, reduce, or otherwise modify the Postal Service's legal obligations or policies for compliance with:

- (i) Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, Executive Order 12072, and Executive Order 13006;
- (ii) 39 U.S.C. 404(d) and 39 CFR 241.3; or
- (iii) 39 U.S.C. 409(f);

(2) These are independent policies or obligations of the Postal Service that are not dependent upon a relocation or addition of a retail service facility.

[80 FR 9193, Feb. 20, 2015]

PART 242—CHANGE OF SITE**§ 242.2 Change of site—fourth-class offices.**

Report by memorandum to chief, organization and management branch, when change in site is necessary. Complete Form 1021 when furnished. Retain one copy in files. If new location is one-fourth of a mile or more from existing location, furnish a statement signed by majority of customers approving change. When a change involves moving a post office from one county to another, notify the Deputy Postmaster General, of the circumstances (including a sketch showing present and proposed sites), and await approval of that Division.

(39 U.S.C. 401)

[36 FR 4765, Mar. 12, 1971]

PART 243—CONDUCT OF OFFICES**§ 243.2 Quarters.**

(a) *Employee bulletin boards.* Bulletin boards may be placed in workrooms and employees' lunchrooms for displaying notices as prescribed in this manual and Management Labor Organization Agreements.

(b) *Location of offices.* Postal units may not be located in, or directly connected to, a room in which intoxicating liquor is sold to be consumed on the premises.

(c) *Lost articles.* When articles are turned in to employees, the name and address of the finder shall be recorded so the article may be returned to him if not claimed by the loser. If the name of the finder cannot be obtained, and the article is not claimed within 30 days, it must be disposed of in the same manner as unidentified material found loose in the mail. Do not return postal money orders to the finder. Mail to Money Order Branch, Accounting Division, U.S. Postal Service, General Accounting Office Building, Washington, DC 20260, with a memorandum of explanation.

(d) *Public use of restrooms.* Restrooms off public corridors shall normally be kept open during regular hours of business for the benefit of the public. Where vandalism or loitering cannot be

controlled, postmasters may lock restrooms, furnishing those agencies served by the restrooms, keys for employee use. This shall not be construed to permit access by nonpostal personnel to restrooms in restricted postal areas.

(e) *Letter drops.* At all except fourth-class post offices, provide a regulation letterbox for depositing mail in front of or next to the post office. Show collection time schedules on letterboxes. At fourth-class offices, if a letterbox is not supplied, provide a slot in the outer post office door. When messengers or star route carriers have access to lobbies, door slot deposits must lead to a locked box.

(f) *Hour signs.* Display hours of window service prominently at all first-, second-, and third-class post offices, classified stations and branches, and annexes. Use Sign 41, Hours decal set, available in supply centers.

(g) *Service of process on postal premises.* Postmasters or other installation heads shall permit service on postal premises of civil and criminal process affecting employees in personal matters, when such service of process will not interfere with postal operations. Process servers should be directed to the postmaster's or installation head's office, where the employee will be called in and service made. Section 265.10 of this chapter contains rules regarding compliance with subpoena duces tecum, court orders, and summonses where official business or official records are involved.

(h) *Public service areas—prohibited items.* Photographs of an incumbent or former President or Postmaster General are not to be displayed in post office lobbies or in common use public service areas such as elevator lobbies and corridors in facilities owned by or leased to the Postal Service. Further, such photographs are not to be requisitioned or purchased by postal installations at Postal Service expense.

(39 U.S.C. 501)

[36 FR 4765, Mar. 12, 1971, as amended at 39 FR 38376, Oct. 31, 1974; 40 FR 8820, Mar. 3, 1975; 42 FR 33722, July 1, 1977; 44 FR 39854, July 6, 1979]

General Postal Administration

PART 254—POSTAL SERVICE STANDARDS FOR FACILITY ACCESSIBILITY PURSUANT TO THE ARCHITECTURAL BARRIERS ACT

Sec.

254.1 Adoption of U.S. Access Board Standards as Postal Service Standards of Facility Accessibility

254.2 Definition of primary function area and criteria used to determine whether an alteration has an effect on an area containing a primary function that is disproportionate to the overall alterations.

AUTHORITY: 39 U.S.C 101, 401, 403; 29 U.S.C. 792(b)(3) and 42 U.S.C. 12204.

SOURCE: 70 FR 28214, May 17, 2005, unless otherwise noted.

§254.1 Adoption of U.S. Access Board Standards as Postal Service Standards of Facility Accessibility.

(a) The United States Postal Service adopts as its Architectural Barriers Act (ABA) “Standards for Facility Accessibility,” the following sections of 36 CFR part 1191:

Appendix A to Part 1191, Table of Contents for apps. C, D, and E.

Appendix C to Part 1191, Architectural Barriers Act, Scoping (which contains ABA Chapter 1, Application and Administration, and ABA Chapter 2, Scoping requirements); pertinent parts of Appendix D to Part 1191, Technical (which includes Chapters 3 through 10).

Appendix E to Part 1191, List of Figures and Index.

(b) These sections listed in paragraph (a) of this section are adopted verbatim, with the exception of the Advisory Notes, which are expressly excluded.

§254.2 Definition of primary function area and criteria used to determine whether an alteration has an effect on an area containing a primary function that is disproportionate to the overall alterations.

(a) *Terminology.* The new accessibility guidelines require that certain terms be defined by the participating federal agencies. In the U.S. Access Board’s 36 CFR part 1191, Appendix C, ABA chapter 2, section F202.6.2 requires that “primary function areas” be defined

and Section F202.4 contains requirements for alterations affecting “primary function areas” stating, “* * *an alteration that affects or could affect the usability of or access to an area containing a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area, including the rest rooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities, unless such alterations are disproportionate to the overall alterations in terms of cost and scope as determined under criteria established by the Administrator of * * * the United States Postal Service.”

(b) *Primary function areas.* For purposes of this part, the primary function of the Postal Service is to provide mail service for its customers, that is to accept, distribute, transport and deliver the mail. Two essential facilities for fulfilling these functions are customer lobby areas where customers conduct their retail transactions, access mail depositories and post office boxes and work room areas where postal employees distribute the mail and perform other core postal operations. Therefore, for purposes of the accessibility guidelines applicable to the Postal Service under the Architectural Barriers Act, two primary function areas are identified: Customer Lobbies and Workroom Areas.

(c) *Disproportionality.* (1) According to Section F202.6.2, “alteration” of elements in a primary function area can trigger a requirement to make accessibility improvements along the path of travel to the area and improvements to rest rooms, telephones, and drinking fountains that serve the altered area if the alteration “affects or could affect the usability of or access to an area containing a primary function.” It is conceivable that almost any repair or alteration project in a “primary function area” could affect the usability of the area. Therefore a literal interpretation of this provision could require an expansion of the scope of virtually any alteration in a primary function area, regardless of the size and scope of the original project. According to Section F202.6.2, accessibility improvements must be made to the path of travel to

the altered area and to rest rooms, telephones, and drinking fountains that serve the altered area “unless such alterations are disproportionate to the overall alterations in terms of cost and scope”.

(2) For purposes of the accessibility guidelines applicable to the Postal Service under the Architectural Barriers Act, two criteria must be considered in making a determination whether accessibility improvements are disproportionate to the cost and scope of the original alteration: a magnitude threshold for the original alteration and a maximum “percentage threshold” for the accessibility alteration.

(d) *Magnitude threshold.* It is anticipated that, in most cases, a significant additional effort would be required to assess physical conditions along the path of travel and for rest rooms, telephones, and drinking fountains that serve the altered area, and to determine the scope, budget and appropriate design requirements for any corrective alterations. Unless the original alteration is of substantial magnitude, a disproportionate effort would be devoted to such investigation, design, and administration leaving few, if any funds to accomplish corrective work. Accordingly, a “magnitude threshold” is established such that no accessibility improvements to the path of travel, nor to any associated facilities, shall be required under F202.6.2 for alterations that have an estimated total cost less than 20 percent of the fair market value of the facility.

(e) *Percentage threshold.* For alterations subject to F202.6.2 that meet or exceed the “magnitude threshold,” the maximum cost for accessibility improvements to the path of travel, including all costs for accessibility improvements to rest rooms, telephones, and drinking fountains that serve the altered area, shall not exceed 20 percent of the total cost of the original alteration. Costs for accessibility improvements in excess of the 20 percent threshold shall be deemed “disproportionate.”

PART 255—ACCESS OF PERSONS WITH DISABILITIES TO POSTAL SERVICE PROGRAMS, ACTIVITIES, FACILITIES, AND ELECTRONIC AND INFORMATION TECHNOLOGY

- Sec.
- 255.1 Purpose.
 - 255.2 Definitions.
 - 255.3 Nondiscrimination under any program or activity conducted by the Postal Service.
 - 255.4 Accessibility to electronic and information technology.
 - 255.5 Employment.
 - 255.6 Processing of complaints.
 - 255.7 Special arrangements for postal services.
 - 255.8 Access to postal facilities.
 - 255.9 Other postal regulations; authority of postal managers and employees.

AUTHORITY: 39 U.S.C. 101, 401, 403, 1001, 1003, 3403, 3404; 29 U.S.C. 791, 794, 794d.

SOURCE: 69 FR 44962, July 28, 2004, unless otherwise noted.

§ 255.1 Purpose.

(a) This part implements section 504 of the Rehabilitation Act of 1973, as amended. Section 504 prohibits discrimination on the basis of disability in programs or activities conducted by executive agencies or by the Postal Service. This part also implements section 508 of the Rehabilitation Act of 1973, as amended. Section 508 requires that executive agencies and the Postal Service ensure, absent an undue burden, that individuals with disabilities have access to electronic and information technology that is comparable to the access of individuals who are not disabled.

(b) The standards relating to electronic and information technology expressed in this part are intended to be consistent with the standards announced by the Architectural and Transportation Barriers Compliance Board on December 21, 2000. Those standards are codified at 36 CFR part 1194.

§ 255.2 Definitions.

- (a) *Agency* as used in this part means the Postal Service.
- (b) *Area/functional vice president* also includes his or her designee.

(c) *Electronic and information technology (EIT)* includes “information technology” and any equipment or interconnected system or subsystem of equipment that is used in the creation, conversion, or duplication of data or information. The term does not include any equipment that contains embedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(d) *Formal complaint* means a written statement that contains the complainant’s name, address, and telephone number, sets forth the nature of the complainant’s disability, and describes the agency’s alleged discriminatory action in sufficient detail to inform the agency of the nature of the alleged violation of section 504 or of section 508. It shall be signed by the complainant or by someone authorized to do so on the complainant’s behalf.

(e) *Individual with a disability*. For purposes of this part, “individual with a disability” means any person who—

- (1) Has a physical or mental impairment that substantially limits one or more of such person’s major life activities;
- (2) Has a record of such an impairment; or
- (3) Is regarded as having such an impairment.

(f) *Information technology* means any equipment, or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.

(g) *Postal manager*. As used in this part, “postal manager” means the manager or official responsible for a service, facility, program, or activity.

(h) *Qualified individual with a disability*. For purposes of this part, “qualified individual with a disability” means—

- (1) With respect to any Postal Service program or activity, except for employment, under which a person is required to perform services or to

achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in its nature; or

(2) With respect to any other program or activity, except for employment, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; or

(3) With respect to employment, an individual with a disability who can perform the essential functions of the job in question with or without reasonable accommodation.

(i) *Section 501* means section 501 of the Rehabilitation Act of 1973, as amended. Section 501 is codified at 29 U.S.C. 791.

(j) *Section 504* means section 504 of the Rehabilitation Act of 1973, as amended. Section 504 is codified at 29 U.S.C. 794.

(k) *Section 508* means section 508 of the Rehabilitation Act of 1973, as amended. Section 508 is codified at 29 U.S.C. 794d.

(l) *Undue burden* means significant difficulty or expense.

(m) *Vice President and Consumer Advocate* also includes his or her designee.

§ 255.3 Nondiscrimination under any program or activity conducted by the Postal Service.

In accordance with section 504 of the Rehabilitation Act, no qualified individual with a disability shall, solely by reason of his or her disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity conducted by the Postal Service.

§ 255.4 Accessibility to electronic and information technology.

(a) In accordance with section 508 of the Rehabilitation Act, the Postal Service shall ensure, absent an undue burden, that the electronic and information technology the agency procures allows—

§ 255.5

(1) Individuals with disabilities who are Postal Service employees or applicants to have access to and use of information and data that is comparable to the access to and use of information and data by Postal Service employees or applicants who are not individuals with disabilities; and

(2) Individuals with disabilities who are members of the public seeking information or services from the Postal Service to have access to and use of information and data that is comparable to the access to and use of information and data by members of the public who are not individuals with disabilities.

(b) When procurement of electronic and information technology that meets the standards published by the Architectural and Transportation Barriers Compliance Board would pose an undue burden, the Postal Service shall provide individuals with disabilities covered by paragraph (a) of this section with the information and data by an alternative means of access that allows the individuals to use the information and data.

§ 255.5 Employment.

No qualified individual with a disability shall, on the basis of disability, be subjected to discrimination in employment with the Postal Service. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1973, as established by the Equal Employment Opportunity Commission in 29 CFR part 1614 shall apply to employment within the Postal Service.

§ 255.6 Processing of complaints.

(a) *Section 504 complaints, employment.* The Postal Service shall process complaints of employees and applicants alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791. In accordance with 29 CFR part 1614, the Postal Service has established procedures for processing complaints of alleged employment discrimination, based upon disability, in the agency's handbook,

39 CFR Ch. I (7-1-16 Edition)

Equal Employment Opportunity Complaint Processing.

(b) *Section 504 complaints, members of the public.* The procedures of this part shall apply to section 504 complaints alleging disability discrimination in any program or activity of the Postal Service and brought by members of the public.

(c) *Section 508 complaints, members of the public, employees, and applicants.* The procedures of this part shall apply to section 508 complaints alleging failure to provide access to electronic and information technology and brought by members of the public or by employees or applicants. Section 508 complaints shall be processed to provide the remedies required by section 508 of the Rehabilitation Act.

(d) *Complaint Procedures.* Any individual with a disability who believes that he or she has been subjected to discrimination prohibited by this part or by the alleged failure of the agency to provide access to electronic and information technology may file a complaint by following the procedures described herein. A complainant shall first exhaust informal administrative procedures before filing a formal complaint.

(1) *Informal complaints relating to Postal Service programs or activities and to EIT.* (i) A complainant initiates the informal process by informing the responsible postal manager orally or in writing of the alleged discrimination or inaccessibility of Postal Service programs, activities, or EIT. Postal managers or employees who receive informal complaints that they lack the authority to resolve must promptly refer any such informal complaint to the appropriate postal manager, and at the same time must notify the complainant of the name, address, and telephone number of the person handling the complaint.

(ii) *Resolution of the informal complaint and time limits.* Within 15 days of receipt of the informal complaint, the responsible postal manager must send the complainant a written acknowledgement of the informal complaint. The written acknowledgment will include the date the complaint was filed and a description of the issue(s). If the matter cannot be resolved within 30

United States Postal Service

§ 255.7

days of its receipt, the complainant must be sent a written interim report which explains the status of the informal complaint and the proposed resolution of the matter. On or before the 60th day from the agency's receipt of the informal complaint, the appropriate area/functional vice president within the Postal Service shall send a written decision to the complainant detailing the final disposition of the informal complaint and the reasons for that disposition. The decision shall contain the notice that the complainant may challenge an informal decision which denies relief either by proceeding in any other appropriate forum or by filing a formal complaint with the Vice President and Consumer Advocate. The notice will give the address of the Vice President and Consumer Advocate. The notice shall also state that if the complainant chooses to file a formal complaint, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(iii) *Automatic review.* The responsible postal manager's proposed disposition of the informal complaint shall be submitted to the appropriate district/program manager for review. The district/program manager shall forward the proposed disposition to the area/functional vice president for review and issuance of the written decision. This automatic review process shall be completed such that the written decision of the area/functional vice president shall be sent to the complainant no later than the 60th day from the agency's receipt of the informal complaint.

(2) *Formal complaints.* If an informal complaint filed under paragraph (d)(1) of this section denies relief, the complainant may seek relief in any other appropriate forum, including the right to file a formal complaint with the Vice President and Consumer Advocate in accordance with the following procedures. If the complainant files a formal complaint with the Vice President and Consumer Advocate, the complainant shall exhaust the formal complaint procedures before filing suit in any other forum.

(i) *Where to file.* Formal complaints relating to programs or activities conducted by the Postal Service or to ac-

cess 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

§ 255.8

39 CFR Ch. I (7–1–16 Edition)

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.

United States Postal Service

§ 259.1

§ 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.

§ 259.2

(iv) Housing Vacancy Surveys will not be conducted during the month of December of any year.

(v) Postmasters will notify the Office of Delivery and Collection, Washington, DC 20260, of the number of each type survey form completed for FHLBB. FHLBB will then remit payment directly to Headquarters, USPS.

(vi) USPS will not release or publish any survey results except in response to a court order, subpoena, or as required by the Freedom of Information Act.

(e) *Unauthorized projects prohibited.* Do not conduct special surveys or otherwise participate in any cooperative projects without the authorization in paragraph (c) of this section.

(39 U.S.C. 401, 411)

[36 FR 4773, Mar. 12, 1971, as amended at 40 FR 26511, June 24, 1975; 41 FR 56196, Dec. 27, 1976; 42 FR 58170, Nov. 8, 1977; 42 FR 63170, Dec. 15, 1977]

§ 259.2 Red Cross.

(a) *General.* The Postal Service and the Red Cross cooperate to maintain communication between the individual and the community during times of disaster. This applies only to natural disasters such as those caused by floods, tornados, hurricanes, earthquakes, fires, explosions, etc., and not to those caused by enemy action.

(b) *Role of Postal Service.* The Postal Service and the Red Cross will share information on the whereabouts of persons displaced by disasters, and otherwise cooperate with each other, as follows:

(1) The Red Cross will use Form 3575, Change of Address Order, as a standard item in Red Cross disaster relief. It will urge disaster victims displaced from their homes to obtain and complete the forms, it will distribute the forms to disaster victims who need them, and it will collect from the victims and turn over to the Postal Service any completed forms received.

(2) The Postal Service will provide the Red Cross the blank forms needed.

(3) During each disaster and subsequent disaster relief efforts, the Postal Service will establish a separate file of change of address forms completed by disaster victims, and will make available to the Red Cross information in

39 CFR Ch. I (7-1-16 Edition)

the file. This information will be used by the Red Cross only to locate individuals and families, to answer inquiries from relatives and friends concerning the whereabouts and welfare of the disaster victims, or to make contact with disaster victims who have applied for assistance from the Red Cross but who cannot be located because of a change of address.

(4) The Postal Service and the Red Cross will encourage appropriate local postal officials and Red Cross chapters to maintain contact with each other and to participate in local and community planning for disasters.

(5) When appropriate, the Postal Service and the Red Cross will meet and exchange information at the national headquarters level concerning the effectiveness of their joint efforts for disaster relief.

(6) Regional Postmasters General and Postal Inspectors in Charge are responsible for seeing that post offices implement these cooperative arrangements in disaster situations.

(7) The instructions in § 259.2 serve as a broad framework within which field officials of both agencies may coordinate their facilities and resources. However, postal officials shall cooperate with Red Cross officials to the maximum feasible degree during times of natural disasters.

(39 U.S.C. 401, 411)

[36 FR 4773, Mar. 12, 1971, as amended at 40 FR 26511, June 24, 1975]

Records and Information

PART 261—RECORDS AND INFORMATION MANAGEMENT

Sec.

261.1 Purpose and scope.

261.2 Authority.

261.3 Policy.

261.4 Responsibility.

AUTHORITY: 39 U.S.C. 401.

§ 261.1 Purpose and scope.

Under 39 U.S.C. 410, as enacted by the Postal Reorganization Act, the U.S. Postal Service is not subject to the provisions of the Federal Records Act of 1950, or any of its supporting regulations which provide for the conduct of

United States Postal Service

§ 261.4

records management in Federal agencies. The objective of parts 261 through 268 of this chapter are to provide the basis for an organization-wide records and information management program affecting all Postal Service organizational components having the custody of any form of information and records.

[80 FR 45065, July 29, 2015]

§ 261.2 Authority.

(a) As provided in 39 U.S.C. 401(5), the Postal Service has the power to acquire property it deems necessary or convenient in the transaction of its business and to hold, maintain, sell, lease or otherwise dispose of such property.

(b) Under § 262.2 of this chapter, the Postal Service Privacy and Records Office, located under the Associate General Counsel and Chief Ethics and Compliance Officer, is responsible for the retention, security, and privacy of Postal Service records and is empowered to authorize the disclosure of such records and to order their disposal by destruction or transfer. Included is the authority to issue records management policy and to delegate or take appropriate action if that policy is not adhered to or if questions of interpretation of procedure arise.

[80 FR 45065, July 29, 2015]

§ 261.3 Policy.

It is the policy of the Postal Service:

(a) To, as appropriate, create, preserve, protect and disclose records which contain adequate and proper documentation of the organization, functions, policies, decisions, operations, procedures, activities and transactions of the Postal Service,

(b) To reduce to an absolute minimum the records holdings of the Postal Service by strict adherence to established records retention schedules.

[40 FR 45721, Oct. 2, 1975, as amended at 44 FR 51223, Aug. 31, 1979]

§ 261.4 Responsibility.

(a) The 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.

(3) Monitoring and reporting on FOIA implementation and performance for the Postal Service.

(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, and 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]

PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

Sec.

- 262.1 Purpose and scope.
- 262.2 Officials.
- 262.3 Information.
- 262.4 Records.
- 262.5 Systems (Privacy).
- 262.6 Retention and disposal.
- 262.7 Non-records.

AUTHORITY: 5 U.S.C. 552, 552a; 39 U.S.C. 401.

SOURCE: 49 FR 30693, Aug. 1, 1984, unless otherwise noted.

§ 262.1 Purpose and scope.

This part contains the official definition of those basic records and information management terms that are frequently used throughout Postal Service regulations and directives.

§ 262.2 Officials.

(a) *Chief Privacy Officer.* The Chief Privacy Officer (CPO) is responsible for the issuance of policy on the protection of privacy and the release of Postal Service records. The CPO has the power to authorize the disclosure of

such records. Additionally, the CPO is responsible for establishing procedures and guidelines to ensure that record management practices are in compliance with the Privacy Act and FOIA. The CPO directs the activities of the Privacy and Records Office and may also delegate or take appropriate action if policies are not adhered to or if questions of interpretation or procedures arise.

(b) *Deputy Chief FOIA Officer.* The Deputy Chief FOIA Officer, under the Privacy and Records Office, administers the Postal Service release of information program and has the power to authorize the disclosure of records. The Deputy Chief FOIA Officer oversees FOIA Requester Service Centers (RSCs).

(c) *Records Custodian.* The Records Custodian is the postmaster or other head of a facility such as an area vice president, district manager, or head of a postal installation or department who maintains Postal Service records. Vice presidents are the custodians of records maintained at Headquarters. Senior medical personnel are the custodians of restricted medical records maintained within postal facilities.

(d) *Information System Executive.* 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.

[80 FR 45066, July 29, 2015]

§ 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

United States Postal Service

§ 262.5

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 cor-

porate body of the Postal Service. Corporate records are distinguished from operational records, which have value only in their day-to-day use, and from precedential files, which have value only as examples.

(c) *Active record.* A record that contains information used for conducting current business.

(d) *Inactive record.* A record that contains information which is not used for conducting current business, but for which the retention period has not yet expired.

(e) *Vital records.* Certain records which must be available in the event of a national emergency in order to ensure the continuity of Postal Service operations and the preservation of the rights and interests of the Postal Service, its employees, contractors and customers. There are two types of vital records: Emergency Operating Records and Rights and Interests Records.

(1) *Emergency operating records.* Certain vital records necessary to support essential functions of the Postal Service during and immediately following a national emergency.

(2) *Rights and interest records.* Certain vital records maintained to ensure the preservation of the rights and interests of the Postal Service, its employees, contractors and customers.

[49 FR 30693, Aug. 1, 1984, as amended at 51 FR 26385, July 23, 1986; 60 FR 57344, Nov. 15, 1995; 63 FR 6481, Feb. 9, 1998; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 262.5 Systems (Privacy).

(a) *Privacy Act system of records.* A Postal Service system containing information about individuals, including mailing lists, from which information is retrieved by the name of an individual or by some identifying number or symbol assigned to the individual, such as a Social Security Account Number.

(b) *Individual (record subject).* A living person. Does not include sole proprietorships, partnerships or corporations. A business firm identified by the name of one or more persons is not an individual.

(c) *Computer matching program.* A "matching program," as defined in the Privacy Act, 5 U.S.C. 552a(a)(8), is subject to the matching provisions of the

§ 262.6

39 CFR Ch. I (7–1–16 Edition)

Act, published guidance of the Office of Management and Budget, and these regulations. The term “matching program” includes any computerized comparison of:

(1) A Postal Service automated system of records with an automated system of records of another Federal agency, or with non-Federal records, for the purpose of:

(i) Establishing or verifying the eligibility of, or continuing compliance with statutory and regulatory requirements by, applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs, or

(ii) Recouping payments or delinquent debts under such Federal benefit programs;

(2) A Postal Service automated personnel or payroll system of records with another automated personnel or payroll system of records of the Postal Service or other Federal Agency or with non-Federal records.

(d) *Other computer matching activities.*

(1) The following kinds of computer matches are specifically excluded from the term “matching program”:

(i) Statistical matches whose purpose is solely to produce aggregate data stripped of personal identifiers.

(ii) Statistical matches whose purpose is in support of any research or statistical project.

(iii) Law enforcement investigative matches whose purpose is to gather evidence against a named person or persons in an existing investigation.

(iv) Tax administration matches.

(v) Routine administrative matches using Federal personnel records, provided that the purpose is not to take any adverse action against an individual.

(vi) Internal matches using only records from Postal Service systems of records, provided that the purpose is not to take any adverse action against any individual.

(vii) Matches performed for security clearance background checks or for foreign counterintelligence.

(2) Although these and other matching activities that fall outside the definition of “matching program” are not subject to the matching provisions of

the Privacy Act or OMB guidance, other provisions of the Act and of these regulations may be applicable. No matching program or other matching activity may be conducted without the prior approval of the Records Office.

[49 FR 30693, Aug. 1, 1984, as amended at 59 FR 37160, July 21, 1994; 60 FR 57344, Nov. 15, 1995; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 262.6 Retention and disposal.

(a) *Records control schedule.* A directive describing records series that are maintained by components of the Postal Service; it provides maintenance, retention, transfer, and disposal instructions for each series listed, and serves as the authority for Postal officials to implement such instructions.

(b) *Disposal (records).* The permanent removal of records or information from Postal Service custody; included are:

(1) Transfer to the National Archives.

(2) Donation to the Smithsonian Institution, local museums or historical societies.

(3) Sale as waste material.

(4) Discarding.

(5) Physical destruction.

(c) *Retention period.* The authorized length of time that a records series must be kept before its disposal, usually stated in terms of months or years, but sometimes expressed as contingent upon the occurrence of an event; usually the retention period refers to the period of time between the creation of a series and its authorized disposal date; however, in some cases it refers to the length of time between the cutoff point and the disposal date.

§ 262.7 Non-records.

(a) *Non-record material.* Includes blank forms and surplus publications, handbooks, circulars, bulletins, announcements, and other directives as well as any material not directly associated with the transaction of Postal Service business.

(b) *Personal papers.* Those materials created or received during an individual’s period of employment with the Postal Service which are of a purely private or nonofficial character, or which were neither created nor received in connection with Postal Service business.

PART 263—RECORDS RETENTION AND DISPOSITION

Sec.

- 263.1 Purpose and scope.
- 263.2 Policy.
- 263.3 Responsibility.
- 263.4 Records disposal.
- 263.5 Inquiries.

AUTHORITY: 39 U.S.C. 401.

SOURCE: 40 FR 45722, Oct. 2, 1975, unless otherwise noted.

§ 263.1 Purpose and scope.

This part contains the policy and general regulations pertaining to the retention and disposition of records and information throughout all organizational levels and components.

§ 263.2 Policy.

It is the policy of the U.S. Postal Service to establish and maintain schedules specifying the retention periods required for all official and duplicate record copies. Furthermore, it is the policy that all duplicate record copies and non-record material will be disposed of as soon as they have served their purpose.

§ 263.3 Responsibility.

(a) *Records Office.* Records Office has the responsibility for providing for the establishment of retention schedules and has the authority to approve them. Furthermore, that office has the authority to dispose of Postal Service records by transfer or destruction.

(b) *Custodians.* Custodians are responsible for the retention and prompt disposal of records in their custody and for delegating in writing, persons to perform these duties.

[40 FR 45722, Oct. 2, 1975, as amended at 60 FR 57344, Nov. 15, 1995; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 263.4 Records disposal.

All disposals of records containing sensitive information, i.e. transfers to records storage centers, destruction, transfers external to the USPS, and maintenance of accounting records regarding such disposal, must be accom-

plished in accordance with procedures issued by the Records Office.

[40 FR 45722, Oct. 2, 1975, as amended at 60 FR 57344, Nov. 15, 1995. Redesignated and amended at 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 263.5 Inquiries.

Inquiries regarding records maintenance and disposition should be directed to the Manager, Records Office, United States Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260, or, by telephone, (202) 268-2608.

[64 FR 41290, July 30, 1999, as amended at 68 FR 56558, Oct. 1, 2003]

PART 264—VITAL RECORDS

Sec.

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

AUTHORITY: 39 U.S.C. 401.

SOURCE: 44 FR 51224, Aug. 31, 1979, unless otherwise noted.

§ 264.1 Purpose and scope.

Certain records are critical to the continuity of Postal Service operations or to the preservation of the rights and interests of the Postal Service, its employees, contractors or customers. To ensure that these records are available when needed, specific controls are required which affect all organizational components having the custody of records defined as being "vital."

§ 264.2 Policy.

It is the policy of the U.S. Postal Service to ensure the availability of all records considered critical to the continuity of its operations and the preservation of the rights and interests of the Postal Service, its employees, contractors, and customers. Vital records shall be routinely maintained at predesignated off-site locations to ensure their availability when needed by management and operating personnel.

§ 264.3 Responsibility.

(a) *Manager, Records Office.* The Manager, Records Office, is responsible for categorizing records as vital, and in

§ 264.4

conjunction with the Chief Postal Inspector/Emergency Coordinator shall establish and maintain the vital records program, and ensure compliance with supportive procedures.

(b) Chief Postal Inspector. As the Postal Service's Emergency Coordinator, the Chief Postal Inspector shall establish and maintain a program to ensure that vital records are available at predesignated off-site locations for use during a national emergency.

(c) *Custodians*. Custodians are responsible for following vital records program procedures including the forwarding of vital records to predesignated off-site locations.

[44 FR 51224, Aug. 31, 1979, as amended at 60 FR 57344, Nov. 15, 1995; 64 FR 41290, July 30, 1999; 68 FR 56558, Oct. 1, 2003]

§ 264.4 Vital Records Program.

Complete procedures concerning the identification, categorization, processing, protection, and transfer of vital records are provided by the office of Corporate Accounting or the USPS Emergency Coordinator, as appropriate.

[44 FR 51224, Aug. 31, 1979, as amended at 60 FR 57344, Nov. 15, 1995; 64 FR 41290, July 30, 1999]

PART 265—RELEASE OF INFORMATION

Sec.

- 265.1 Purpose and scope.
- 265.2 Policy.
- 265.3 Responsibility.
- 265.4 Inquiries.
- 265.5 Public reading rooms.
- 265.6 Availability of records.
- 265.7 Procedure for submitting a FOIA request.
- 265.8 Business information; procedures for predisclosure notification to submitters.
- 265.9 Schedule of fees.
- 265.10 Annual report.
- 265.11 Compliance with subpoena 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 Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

APPENDIX A TO PART 265—FEES FOR COMPUTER SERVICES

39 CFR Ch. I (7–1–16 Edition)

AUTHORITY: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

§ 265.1 Purpose and scope.

(a) This part contains the regulations of the Postal Service relating to the availability to the public of Postal Service records. Included in this part are the regulations which implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, insofar as it applies to the Postal Service. These rules should be read in conjunction with the text of the FOIA and the Fee Schedule and Guidelines published by the Office of Management and Budget. Additionally, Postal Service Handbook AS-353, *Guide to Privacy, the Freedom of Information, and Records Management*, contains information for the public about submitting FOIA requests and the specific procedures used by the Postal Service when responding to FOIA requests. This resource is available at <http://www.usps.com>.

(b) Official records of the Postal Service made available pursuant to the requirements of the Act shall be furnished to members of the public as prescribed by this part.

[80 FR 45066, July 29, 2015]

§ 265.2 Policy.

(a) It is the policy of the Postal Service to make its official records available to the public to the maximum extent consistent with the public interest. This policy requires a practice of full disclosure subject only to the specific exemptions required or authorized by law.

(b) The exemptions from mandatory disclosure provided by section 552(b) of title 5, and section 410(c) of title 39, U.S.C., for various types of records, reflect the fact that under some circumstances the public interest may be better served by leaving the disclosure of particular records to the discretion of the Postal Service than by requiring their disclosure. As to those records the disclosure of which is not prohibited by statute, Executive Order, or regulation, the discretion vested in the Postal Service is exercised after giving consideration to the following: The effect of non-disclosure on the public's right to know about a particular matter; the effect of disclosure on the right

United States Postal Service

§ 265.6

of privacy of any affected individuals; the effect of disclosure on the public interest in the economical, efficient, and orderly operation of the nation's mail system; and any other factors that may be relevant under the circumstances.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44270, July 1, 1980]

§ 265.3 Responsibility.

(a) *Records custodian.* Official records are in the custody of the Postmaster or other head of a facility or department at which they are maintained, as defined at § 261.4(c) of this chapter. These custodians are responsible for responding in the first instance to requests from members of the public for Postal Service records.

(b) *Deputy Chief FOIA Officer.* The Deputy Chief FOIA Officer, under the Privacy and Records Office is responsible for the overall administration of this part, including the issuance of detailed instructions to custodians.

(c) *General Counsel.* The General Counsel decides timely appeals authorized by this part.

[80 FR 45066, July 29, 2015]

§ 265.4 Inquiries.

Inquiries regarding the availability of Postal Service records must be directed to the appropriate Freedom of Information Act (FOIA) Requester Service Center (RSC). A description of FOIA RSCs is available at <http://www.usps.com>. If the appropriate FOIA RSC is not known, inquiries should be directed to the FOIA Requester Service Center, Privacy and Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260, telephone (202) 268-2608.

[80 FR 45066, July 29, 2015]

§ 265.5 Public reading rooms.

The Library of the Postal Service Headquarters, 475 L'Enfant Plaza SW, Washington, DC 20260-1641, serves as public reading room for the materials which are listed in paragraphs (a)(2), (3), (4) and (5) of § 265.6 as available for public inspection and copying. Such of this material as has been created by the Postal Service on or after November 1, 1996, and has not been published

and offered for sale, also will be available in electronic format at the Postal Service's world wide web site at <http://www.usps.com/foia>.

[63 FR 6481, Feb. 9, 1998, as amended at 68 FR 56559, Oct. 1, 2003]

§ 265.6 Availability of records.

(a) *Records available to the public on request—(1) General.* Postal Service records are available for inspection or copying at the request of any person, in accordance with the provisions of this part, except as otherwise provided by law or regulations, including but not limited to paragraphs (b) through (g) of this section. Certain categories of records of particular interest are available on a continuing basis as provided in paragraphs (a)(2), (3), and (4) of this section and are listed in a public index as provided in paragraphs (a)(4) and (5) of this section. Access to other records may be requested on an individual basis in accordance with the procedures provided in § 265.7. Official records which are maintained on an electronic storage medium will normally be made available, in accordance with this part, as an exact duplicate of the requested original in a form readable by the human eye, such as a computer print-out. On request, records will be provided in a different form or format if they are maintained in the requested form or format or if they can be readily reproduced in the requested form or format.

(2) *Opinions.* All final opinions and orders made in the adjudication of cases by the Judicial Officer and Administrative Law Judges, all final determinations pursuant to section 404(b) of title 39, United States Code, to close or consolidate a post office, or to disapprove a proposed closing or consolidation, all advisory opinions concerning the private express statutes issued pursuant to 39 CFR 310.6, and all bid protest decisions are on file and available for inspection and copying at the Headquarters Library and, if created on or after November 1, 1996, also at the Postal Service's world wide web site identified at § 265.5.

(3) *Administrative manuals and instructions to staff.* The manuals, instructions, and other publications of the Postal Service that affect members of

§ 265.6

39 CFR Ch. I (7–1–16 Edition)

the public are available through the Headquarters Library and at many post offices and other postal facilities. Those which are available to the public but are not listed for sale may be inspected in the Headquarters Library, at any postal facility which maintains a copy, or, if created on or after November 1, 1996, through the world wide web site identified at § 265.5. Copies of publications which are not listed as for sale or as available free of charge may be obtained by paying a fee in accordance with § 265.9.

(4) *Previously released records.* Records processed and disclosed after March 31, 1997, in response to a Freedom of Information Act request, which the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records, are available for inspection and copying at the Headquarters Library. Any such records created by the Postal Service on or after November 1, 1996, also will be available at the Postal Service's world wide web site identified at § 265.5. Records described in this paragraph that were not created by, or on behalf of, the Postal Service generally will not be available at the world wide web site. Records will be available in the form in which they were originally disclosed, except to the extent that they contain information that is not appropriate for public disclosure and may be withheld pursuant to this section. Any deleted material will be marked and the applicable exemption(s) indicated in accordance with § 265.7(d)(3). A general index of the records described in this paragraph is available for inspection and copying at the Headquarters Library. [Beginning on or before December 31, 1999, the index also will be available at the Postal Service's world wide web site.]

(5) *Public index.* (i) A public index is maintained in the Headquarters Library and at the world wide web site of all final opinions and orders made by the Postal Service in the adjudication of cases, Postal Service policy statements which may be relied on as precedents in the disposition of cases, administrative staff manuals and instructions that affect the public, and other materials which the Postal Service elects to index and make available to

the public on request in the manner set forth in paragraph (a) of this section.

(ii) The index contains references to matters issued after July 4, 1967, and may reference matters issued prior to that date.

(iii) Any person may arrange for the inspection of any matter in the public index in accordance with the procedures of § 265.7.

(iv) Copies of the public index and of matters listed in the public index may be purchased through the Headquarters Library with payment of fees as listed in the index or as provided in § 265.9.

(v) Materials listed in the public index that were created on or after November 1, 1996, will also be available in electronic format at the Postal Service's world wide web site at <http://www.usps.gov>.

(6) *Listings of employees' names.* Upon written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

(b) *Records not subject to mandatory public disclosure.* Certain classes of records are exempt from mandatory disclosure under exemptions contained in the Freedom of Information Act and in section 410(c) of title 39, U.S.C. The Postal Service will exercise its discretion, in accordance with the policy stated in § 265.2, as implemented by instructions issued by the Records Office with the approval of the General Counsel in determining whether the public interest is served by the inspection or copying of records that are:

(1) Related solely to the internal personnel rules and practices of the Postal Service.

(2) Trade secrets, or privileged or confidential commercial or financial information, obtained from any person.

(3) Information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed. This class includes, but is not limited to:

(i) Information pertaining to methods of handling valuable registered mail.

(ii) Records of money orders, except as provided in R900 of the *Domestic Mail Manual (DMM)*.

United States Postal Service

§ 265.6

(iii) Technical information concerning postage meters and prototypes submitted for Postal Service approval prior to leasing to mailers.

(iv) Reports of market surveys conducted by or under contract in behalf of the Postal Service.

(v) Records indicating rural carrier lines of travel.

(vi) Records compiled within the Postal Service which would be of potential benefit to persons or firms in economic competition with the Postal Service.

(vii) Information which, if publicly disclosed, could materially increase procurement costs.

(viii) Information which, if publicly disclosed, could compromise testing or examination materials.

(4) Interagency or internal memoranda or letters that would not be available by law to a private party in litigation with the Postal Service.

(5) Reports and memoranda of consultants or independent contractors, except to the extent they would be required to be disclosed if prepared within the Postal Service.

(6) Files personal in nature, including medical and personnel files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Information prepared for use in connection with proceedings under chapter 36 of title 39, U.S.C., relating to rate, classification, and service changes.

(8) Information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, U.S.C., or minutes of, or notes kept during, negotiating sessions conducted under such chapter.

(9) Other matter specifically exempted from disclosure by statute.

(c) *Records or information compiled for law enforcement purposes.* (1) Investigatory files compiled for law enforcement purposes, whether or not considered closed, are exempt by statute from mandatory disclosure except to the extent otherwise available by law to a party other than the Postal Service, 39 U.S.C. 410(c)(6). As a matter of policy, however, the Postal Service will normally make records or information

compiled for law enforcement purposes available upon request unless the production of these records:

(i) Could reasonably be expected to interfere with enforcement proceedings;

(ii) Would deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(iv) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis, and, in the case of a record or information compiled by a criminal law enforcement authority (such as the Postal Inspection Service) in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, information furnished by a confidential source;

(v) Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law; or

(vi) Could reasonably be expected to endanger the life or physical safety of any individual.

(2) Whenever a request is made which involves access to records described in § 265.6(c)(1)(i), and

(i) The investigation or proceeding involves a possible violation of criminal law; and

(ii) There is reason to believe that,

(A) The subject of the investigation or proceeding is not aware of its pendency, and

(B) Disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, the Postal Service may, during only such time as that circumstance continues, treat the records as not subject to the requirements of the Freedom of Information Act.

(3) Whenever informant records maintained by a criminal law enforcement agency (such as the Postal Inspection Service) under an informant's

§ 265.6

39 CFR Ch. I (7–1–16 Edition)

name or personal identifier are requested by a third party according to the informant's name or personal identifier, the records may be treated as not subject to the requirements of the Freedom of Information Act unless the informant's status as an informant has been officially confirmed.

(4) Authority to disclose records or information compiled for law enforcement purposes to persons outside the Postal Service must be obtained from the Chief Postal Inspector, U.S. Postal Service, Washington, DC 20260–2100, or designee.

(d) *Disclosure of names and addresses of customers.* Upon request, the names and addresses of specifically identified Postal Service customers will be made available only as follows:

(1) *Change of address.* The new address of any specific customer who has filed a permanent or temporary change of address order (by submitting PS Form 3575, a hand-written order, or an electronically communicated order) will be furnished to any person, except that the new address of a specific customer who has indicated on the order that the address change is for an individual or an entire family will be furnished only in those circumstances stated at paragraph (d)(5) of this section. Disclosure will be limited to the address of the specifically identified individual about whom the information is requested (not other family members or individuals whose names may also appear on the change of address order). The Postal Service reserves the right not to disclose the address of an individual for the protection of the individual's personal safety. Other information on PS Form 3575 or copies of the form will not be furnished except in those circumstances stated at paragraphs (d)(5)(i), (d)(5)(iii), or (d)(5)(iv) of this section.

(2) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit (but not including postage meter licenses), and the name of any person applying for a permit in behalf of a holder will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9. For the name and address of a postage meter license holder, see

paragraph (d)(3) of this section. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

(3) *Name and address of postage evidencing user.* The name and address of an authorized user of a postage meter or PC Postage product (postage evidencing systems) printing a specified indicium will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9, provided the user is using the postage meter or PC Postage product for business purposes. The request for this information must be sent to the manager of Postage Technology Management, Postal Service Headquarters. The request must include the original or a photocopy of the envelope or wrapper on which the postage meter or PC postage indicium in question is printed, and a copy or description of the contents to support that the sender is a business or firm and not an individual. (Lists of authorized users of postage meters or PC Postage products may not be disclosed to members of the public.)

(4) *Post Office boxholder information.* Information from PS Form 1093, *Application for Post Office Box or Caller Service*, will be provided as follows:

(i) Except as provided in paragraph (d)(4)(iii) of this section, the boxholder applicant name and address from PS Form 1093 will be provided only in those circumstances stated in paragraphs (d)(5)(i) through (d)(5)(iii) of this section.

(ii) Except as provided in paragraph (d)(4)(iii) of this section, the names of persons listed as receiving mail, other than the boxholder applicant, will be furnished from PS Form 1093 only in those circumstances stated in paragraphs (d)(5)(i) and (d)(5)(iii) of this section.

(iii) When a copy of a protective order has been filed with the postmaster, information from PS Form 1093 will not be disclosed except pursuant to the order of a court of competent jurisdiction.

(5) *Exceptions.* Except as otherwise provided in these regulations, names or addresses of Postal Service customers will be furnished only as follows:

United States Postal Service

§ 265.6

(i) To a federal, state or local government agency upon prior written certification that the information is required for the performance of its duties. The Postal Service requires government agencies to use the format appearing at the end of this section when requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, the postmaster will return the request to the agency, specifying the deficiency in the space marked 'OTHER'. A copy of PS Form 1093 may be provided.

(ii) To a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*, upon receipt of written information that specifically includes all of the following: (A) A certification that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation; (B) a citation to the statute or regulation that empowers the requester to serve process, if the requester is other than the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*; (C) the names of all known parties to the litigation; (D) the court in which the case has been or will be commenced; (E) the docket or other identifying number, if one has been issued; and (F) the capacity in which the boxholder is to be served, *e.g.*, defendant or witness. By submitting such information, the requester certifies that it is true. The address of an individual who files with the postmaster a copy of a protective court order will not be disclosed except as provided under paragraphs (d)(5)(i), (d)(5)(iii), or (d)(5)(iv) of this section. A copy of Form 1093 will not be provided.

The Postal Service suggests use of the standard format appearing at the end of this section when requesting information under this paragraph. When using the standard format on the submitter's own letterhead, the standard format must be used in its entirety. The warning statement and certification specifically must be included immediately before the signature block. If the request lacks any of the

required information or a proper signature, the postmaster will return it to the requester specifying the deficiency.

NOTE: The term *pro se* means that a party is not represented by an attorney but by himself or herself.

(iii) In compliance with a subpoena or court order, except that change of address or boxholder information which is not otherwise subject to disclosure under these regulations may be disclosed only pursuant to a court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service, but only after the Inspection Service has confirmed that the information is needed in the course of a criminal investigation. (All other requests from law enforcement agencies should be submitted in writing to the postmaster as in paragraph (d)(5)(i) of this section.)

(6) *Jury service.* The mailing address of any customer sought in connection with jury service, if known, will be furnished without charge upon prior written request to a court official, such as a judge, court clerk or jury commissioner.

(7) *Address verification.* The address of a postal customer will be verified at the request of a Federal, State, or local government agency upon written certification that the information is required for the performance of the agency's duties. "Verification" means advising such an agency whether or not its address for a postal customer is one at which mail for that customer is currently being delivered. "Verification" neither means nor implies knowledge on the part of the Postal Service as to the actual residence of the customer or as to the actual receipt by the customer of mail delivered to that address. The Postal Service requires government agencies to use the format appearing at the end of this section when requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, the postmaster will return the request to the agency, specifying the deficiency in the space marked "OTHER".

(8) *Business/Residence location.* If the location of a residence or a place of

§ 265.6

39 CFR Ch. I (7-1-16 Edition)

business is known to a Postal Service employee, whether as a result of official duties or otherwise, the employee may, but need not, disclose the location or give directions to it. No fee is charged for such information.

(9) *Private mailbox information.* Information from PS Form 1583, *Application for Delivery of Mail Through Agent*, will be provided as follows:

(i) Except as provided in paragraph (d)(9)(iii) of this section, information from PS Form 1583 will be provided only in the circumstance stated in paragraph (d)(5)(iii) of this section.

(ii) To the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed to the public from PS Form 1583.

(iii) Information concerning an individual who has filed a protective court order with the postmaster will not be disclosed except pursuant to the order of a court of competent jurisdiction.

(e) *Information not available for public disclosure.* (1) Except as provided by paragraph (a)(6) of this section, the Postal Service and its officers and employees shall not make available to the public by any means or for any purpose any mailing list or other list of names or addresses (past or present) of postal patrons or other persons.

(2) Records or other documents which are classified or otherwise specifically authorized by Executive Order 12356 and implementing regulations to be kept secret in the interest of the national defense or foreign policy are not subject to disclosure pursuant to this part.

(3) Records consisting of trade secrets or confidential financial data, the disclosure of which is prohibited by section 1905 of title 18, U.S.C., are not subject to disclosure pursuant to this part.

(4) Other records, the disclosure of which is prohibited by statute, are not subject to disclosure pursuant to this part.

(f) *Protection of the right of privacy.* If any record required or permitted by this part to be disclosed contains the name of, or other identifying details concerning, any person, including an employee of the Postal Service, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the name or other identifying details shall be deleted before the record is disclosed and the requester so informed.

(g) *Disclosure in part of otherwise exempt record.* Any reasonably segregable portion of a record shall be provided after deleting the information which is neither subject to mandatory disclosure nor available as a matter of discretion.

Change of Address or Boxholder Request Format — Process Servers

Postmaster _____	Date _____
_____ City, State, ZIP Code	
REQUEST FOR CHANGE OF ADDRESS OR BOXHOLDER INFORMATION NEEDED FOR SERVICE OF LEGAL PROCESS	
Please furnish the new address or the name and address (if a boxholder) for the following:	
Name: _____	
Address: _____	
<p>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.</p> <p>The following information is provided in accordance with 39 CFR 265.6(d)(5)(ii). There is no fee for providing boxholder or change of address information.</p>	
1. Capacity of requester (e.g., process server, attorney, party representing self): _____	
2. Statute or regulation that empowers me to serve process (not required when requester is an attorney or a party acting pro se — except a corporation acting pro se must cite statute): _____	
3. The names of all known parties to the litigation: _____	
4. The court in which the case has been or will be heard: _____	
5. Docket or other identifying number (a or b must be completed):	
<input type="checkbox"/> a. Docket or other identifying number: _____	
<input type="checkbox"/> b. Docket or other identifying number has not been issued.	
6. The capacity in which this individual is to be served (e.g., defendant or witness): _____	
<p>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).</p>	
I certify that the above information is true and that the address information is needed and will be used solely for service of legal process in conjunction with actual or prospective litigation.	
Signature _____	Address _____
Printed Name _____	City, State, ZIP Code _____
POST OFFICE USE ONLY	
<input type="checkbox"/> No change of address on file	NEW ADDRESS OR BOXHOLDER NAME POSTMARK
<input type="checkbox"/> Moved, left no forwarding address	AND STREET ADDRESS:
<input type="checkbox"/> No such address	_____

Address Information Request Format - Government Agencies

(AGENCY LETTERHEAD)	
TO: Postmaster _____	
Agency Control Number _____	
Date _____	
ADDRESS INFORMATION REQUEST	
Please furnish this agency with the new address, if available, for the following individuals or verify whether or not the address given below is one at which mail for this individual is currently being delivered. If the following address is a post office box, please furnish the address as recorded on the boxholder's application form.	
Name: _____	
Last Known Address: _____	
I certify that the address information for this individual is required for the performance of this agency's official duties.	
_____ (Signature of Agency Official)	
_____ (Title)	
FOR POST OFFICE USE ONLY	
<input type="checkbox"/> MAIL IS DELIVERED TO ADDRESS GIVEN	NEW ADDRESS
<input type="checkbox"/> NOT KNOWN AT ADDRESS GIVEN	_____
<input type="checkbox"/> MOVED, LEFT NO FORWARDING ADDRESS	_____
<input type="checkbox"/> NO SUCH ADDRESS	
<input type="checkbox"/> OTHER (SPECIFY)	BOXHOLDER STREET ADDRESS
_____	_____
_____	_____
Agency return address	Postmark/Date Stamp

[40 FR 7331, Feb. 19, 1975]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting §265.6, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at www.fdsys.gov.

§265.7 Procedure for submitting a FOIA request.

(a) *Submission of requests*—(1) *Form and content of request.* To permit expeditious handling and timely response in accordance with the provisions of this part, a request to inspect or to obtain a copy of an identifiable Postal Service record 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. A request must be clearly and prominently identified as such on the envelope or other cover. Requests for records, submitted by the public that are not labeled as Freedom of Information Act requests will be

United States Postal Service

§ 265.7

handled as FOIA requests when received by the appropriate Requester Service Center in accordance with paragraph (b) of this section, but they may be delayed in reaching the appropriate Requester Service Center. A Freedom of Information Act request must identify the record sought as completely as possible, by name, description, or subject matter, and be sufficient to permit the custodian to locate it with a reasonable amount of effort. The request may state the maximum amount of fees for which the requester is willing to accept liability without prior notice. See paragraph (f)(2) of § 265.8. If no amount is stated, the requester will be deemed willing to accept liability for fees not to exceed \$25.

(2) *To whom submitted.* A request must be submitted to the appropriate Freedom of Information Act (FOIA) Requester Service Center (RSC). If the FOIA RSC is not known, an inquiry should be directed to the FOIA Requester Service Center, Privacy and Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260, telephone (202) 268-2608. The FOIA RSC will either process the request or refer the request to the appropriate component or records custodians. The FOIA RSC will advise the requester of any such referral. A request that is not initially submitted to the appropriate FOIA RSC will be deemed to have been received by the Postal Service for purposes of computing the time for response in accordance with paragraph (b) of this section 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 custodians by a FOIA RSC, but in any case a request will be deemed to have been received no later than 10 days after the request is first received by a FOIA RSC. If a request seeks records maintained at two or more facilities, the custodian shall be deemed to be the next senior common supervisor of the heads of the facilities, e.g., district manager, area vice president. The Records Office is deemed to be the custodian, for purposes of this part, in all instances in which a request is for a listing of postal employees. See paragraph (a)(6) of § 265.6.

(3) *Reasons for request.* In view of the possibility that some or all of the records may be exempt from mandatory disclosure, the requester may state any reasons why the record should nevertheless be made available to him even if exempt.

(4) *Request for waiver of fees.* The requester may ask that fees or the advance payment of fees be waived in whole or in part. A fee waiver request shall indicate how the information will be used; to whom it will be provided; whether the requester intends to use the information for resale at a fee above actual cost; any personal or commercial benefit that the requester expects as a result of disclosure; in what manner the general public will benefit from disclosure; and information as to the intended user's identity, qualifications, expertise in the subject area, and ability and intention to disseminate the information to the public. (See § 265.9(g)(3).)

(5) *Categorical requests.* A request for all or substantially all of the records within a specific category will be deemed a reasonable description of those records only if it is possible, without further information, to determine which particular records are sought. See paragraph (b)(3) of this section concerning the providing of additional information.

(6) *Request for records located at numerous facilities.* A request for records which are, or may be, located at all or a substantial number of post offices or other postal facilities will be deemed to be a reasonable description only of such of those records as are maintained at the post office or other facility to which the request is submitted, and of those records maintained at any other post offices or facilities specifically identified in the request. See paragraph (a)(2) of this section concerning the custodian of records of two or more facilities.

(b) *Responsibilities of the custodian.* (1) The custodian of the requested record is the person responsible for determining whether to comply with or to deny the request. A custodian who is not an Officer as defined in § 221.8 of this chapter, however, should not deny a request until he has obtained the advice of Chief Field Counsel. If denial of

a request appears necessary, the custodian should seek advice as soon as possible after receipt of the request so as to provide adequate time for legal review. Denial must be made in accordance with paragraph (d) of this section.

(2) The custodian shall make the determination whether to release or deny the record(s) within 20 working days (i.e., exclusive of Saturdays, Sundays, and holidays) of receiving the request, and more rapidly if feasible. The custodian and the requester may, by mutual agreement, preferably in writing, establish a different response period.

(3) If a requested record cannot be located from the information supplied, the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his/her representative, in an attempt to provide a reasonable description of the records sought. If additional information is furnished, the request will be deemed to have been received by the custodian when sufficient additional information to identify and locate the record with a reasonable amount of effort has been received.

(4) The custodian shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the automated information system.

(5) The 20 working day response period allowed in paragraph (b)(2) of this section may be extended by the custodian, after consultation with Chief Field Counsel or with the General Counsel if the custodian is at Headquarters, for a period not to exceed an additional 10 working days, except as provided in paragraph (b)(7) of this section, when, and to the extent, reasonably necessary to permit the proper processing of a particular request, under one or more of the following unusual circumstances:

(i) The request requires a search for and collection of records from a facility other than that processing the request.

(ii) The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records.

(iii) The request requires consultation:

(A) With another agency having a substantial interest in the determination of whether to comply with the request or

(B) Among two or more components of the Postal Service having substantial subject matter interest in the determination of whether to comply with the request.

(6) When the custodian finds that the additional time is required, he shall acknowledge the request in writing within the initial 20-day response period, state the reason for the delay, and indicate the date on which a decision as to disclosure is expected.

(7) If a request cannot be processed within the additional time provided by paragraph (b)(5) of this section, in spite of the exercise of due diligence, the custodian shall notify the requester of the exceptional circumstances preventing timely compliance and of the date by which it is expected that the determination will be made. The custodian also shall provide the requester an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange with the custodian an alternative time frame for processing the request or a modified request. The custodian shall nonetheless make a determination on the request as promptly as possible.

(8) If a requested record is known to have been destroyed, disposed of, or otherwise not to exist, the requester shall be so notified.

(c) *Compliance with request upon affirmative determination by custodian.*

(1) When a requested record has been identified and is to be disclosed in whole or in part, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when and under what reasonable conditions, if any, including the payment of fees, the record will be available for inspection or copies will be available. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

United States Postal Service

§ 265.7

(2) Any fees authorized or required to be paid in advance by § 265.9(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.9(g).

(3) A custodian complying with a request may designate a representative to monitor any inspection or copying.

(d) *Denial of request.* (1) A reply denying a request in whole or in part shall be in writing, signed by the custodian or his designee, and shall include:

(i) A statement of the reason for, or justification of, the denial (e.g., records personal in nature), including, if applicable, a reference to the provision or provisions of § 265.6 authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested.

(ii) If entire records or pages are withheld, a reasonable estimate of the number of records or pages, unless providing such estimate would harm an interest protected by the exemption relied upon.

(iii) A statement of the right to appeal and of the appeal procedure within the Postal Service (described in paragraph (e) of this section).

(2) The custodian is ordinarily the person responsible for the denial of the request. If the denial of a particular request has been directed by higher authority, however, the name and title or position of the person directing the denial shall be given in the reply to the requester in place of the custodian as the person responsible for the denial, and a copy of the denial shall be sent to that person.

(3) When information is deleted from a record that is disclosed in part, the custodian shall indicate, on the released portion of the record, the amount of information deleted, unless including that indication would harm an interest protected by the exemption relied on. The indication must appear, if technically feasible, at the place in the record where such deletion is made.

(e) *Appeal procedure.* (1) If a request to inspect or to copy a record, or a request for expedited processing of the request, is denied, in whole or in part, if no determination is made within the period prescribed by this section, or if a request for waiver of fees is not

granted, the requester may appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260-1100.

(2) The requester shall submit his appeal in writing within 30 days of the date of the denial or of the other action complained of, or within a reasonable time if the appeal is from a failure of the custodian to act. The General Counsel may, in his discretion, consider late appeals.

(3) In the event of the denial of a request or of other action or failure to act on the part of a custodian from which no appeal is taken, the General Counsel may, if he considers that there is doubt as to the correctness of the custodian's action or failure to act, review the action or failure to act as though an appeal pursuant to this section had been taken.

(4) A letter of appeal should include, as applicable:

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

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

(iii) A statement of the reasons why the requester believes the action or failure to act is erroneous; and

(iv) A statement of the relief sought.

(f) *Action on appeals.* (1) The decision of the General Counsel or his designee constitutes the final decision of the Postal Service on the right of the requester to inspect or copy a record, or to expedited processing of the request, as appropriate. The General Counsel will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 working days from the time of the receipt by the General Counsel. The 20-day response period may be extended by the General Counsel or his designee for a period not to exceed an additional 10 working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (b)(5) of this section. The aggregate number of additional working days utilized pursuant to this paragraph (f)(1) and paragraph (b) of this section, however, may not exceed 10.

§ 265.8

39 CFR Ch. I (7–1–16 Edition)

(2) The decision on the appeal shall be in writing. If the decision sustains a denial of a record, in whole or in part, or if it denies expedited processing, it shall state the justification therefor and shall inform the requester of his right to judicial review. In the case of records withheld, the decision also shall specify any exemption or exemptions relied on and the manner in which they apply to the record, or portion thereof, withheld.

(3) If not prohibited by or under law, the General Counsel or his designee may direct the disclosure of a record even though its disclosure is not required by law or regulation.

(g) *Expedited processing*—(1) *Criteria*. A request for expedited processing of a request for records shall be granted when the requester demonstrates compelling need. For purposes of this paragraph, “compelling need” exists if:

(i) Failure of the requester to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or;

(ii) In the case of a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged federal government activity.

(2) *Request*. A request for expedited processing shall be directed in writing to the records custodian. The requester must provide information in sufficient detail to demonstrate compelling need for the records and certify this statement to be true and correct to the best of the requester’s knowledge and belief. The custodian may waive the formality of certification when deemed appropriate.

(3) *Determination*. The records custodian shall make a determination of whether to provide expedited processing and notify the requester within ten days after the date of the request for expedited processing. If the request is granted, the records custodian shall process the request for records as soon as practicable. If the request for expedited processing is denied, the written response will include the procedures at

paragraph (d) of this section for appealing the denial.

[40 FR 7331, Feb. 19, 1975, as amended at 45 FR 44271, July 1, 1980; 47 FR 20304, May 12, 1982; 51 FR 26386, July 23, 1986; 52 FR 13668, Apr. 24, 1987; 60 FR 57345, Nov. 15, 1995; 62 FR 64282, Dec. 5, 1997; 63 FR 6482, Feb. 9, 1998; 64 FR 41290, July 30, 1999; 68 FR 56559, Oct. 1, 2003; 69 FR 34935, June 23, 2004; 80 FR 45067, July 29, 2015]

§ 265.8 Business information; procedures for predisclosure notification to submitters.

(a) *In general*. This section provides a procedure by which persons submitting business information to the Postal Service can request that the information not be disclosed pursuant to a request under the Freedom of Information Act. This section does not affect the Postal Service’s right, authority, or obligation to disclose information in any other context, nor is it intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the Postal Service, its officers, or any person. Existing rights of submitters are also unaffected. For purposes of this section, the following definitions apply:

(1) *Business information* means commercial or financial information provided directly or indirectly to the Postal Service by a submitter that arguably is protected from disclosure under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), which is restated in § 265.6(b)(2).

(2) *Submitter* means any person or entity who provides business information, directly or indirectly, to the Postal Service. The term includes, but is not limited to, corporations, state governments, and foreign governments.

(b) *Notice to submitters*. (1) The custodian shall, to the extent permitted by law, provide a submitter with prompt written notice of a Freedom of Information Act request for the submitter’s business information whenever required under paragraph (c) of this section, except as provided in paragraph (d) of this section, in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (f) of this section. Such written notice shall either describe the exact nature of the business information requested

United States Postal Service

§ 265.8

or provide copies of the records or portions of records containing the business information. In the case of an administrative appeal, the General Counsel shall be responsible for providing such notification as may be appropriate under this section.

(2) When notice is given to a submitter under paragraph (b)(1) of this section, the requester also shall be notified that notice and an opportunity to object are being provided to the submitter pursuant to this section.

(c) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The submitter has in good faith designated the information as information deemed protected from disclosure under Exemption 4, in accordance with the procedure described in paragraph (e) of this section; or

(2) In the opinion of the custodian, or of the General Counsel in the case of an administrative appeal, it is likely that disclosure of the information would result in competitive harm to the submitter.

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

(1) The Postal Service determines without reference to the submitter that the information will not be disclosed;

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

(3) Disclosure of the information is required by law (other than the Freedom of Information Act, 5 U.S.C. 552); or

(4) Disclosure of the particular kind of information is required by a Postal Service regulation, except that, in such case, advance written notice of a decision to disclose shall be provided to the submitter if the submitter had provided written justification for protection of the information under Exemption 4 at the time of submission or a reasonable time thereafter.

(e) *Procedure for designating business information at the time of its submission.*

(1) Submitters of business information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, those portions of their submissions which they deem

to be protected from disclosure under Exemption 4. Each record, or portion thereof, to be so designated, shall be clearly marked with a suitable legend such as Privileged Business Information—Do Not Release. When the designated records contain some information for which an exemption is not claimed, the submitter shall clearly indicate the portions for which protection is sought.

(2) At the time a designation is made pursuant to paragraph (e)(1) of this section, the submitter shall furnish the Postal Service with the name, title, address and telephone number of the person or persons to be contacted for the purpose of the notification described in paragraph (b) of this section.

(3) Submitters who provide to a postal facility business information on a recurring basis and in substantially identical form may use the following simplified process: The first submission will provide in full the information required in paragraphs (e)(1) and (2) of this section; shall identify the type of information, *e.g.*, PS Form 3602, to which it is intended to apply; and shall state that it is intended to serve as a designation for all of the information of this type that is submitted to the particular facility. Thereafter when providing this type of information, the submitter need only mark a submission with a reference to the designation, *e.g.*, Privileged; see letter of 4-1-91. By written agreement with the head of the facility, even this marking may be dispensed with if it is not necessary to alert postal employees at that facility of the claim of exemption.

(4) A designation made pursuant to paragraph (e) of this section shall be deemed to have expired ten years after the date the records were submitted unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(5) The Postal Service will not determine the validity of any request for confidential treatment until a request for disclosure of the information is received.

(f) *Opportunity to object to disclosure.* Through the notice described in paragraph (b) of this section, the submitter shall be afforded a reasonable period of

§ 265.9

time within which to provide the Postal Service with a detailed written statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is contended to be a trade secret or commercial or financial information that is privileged or confidential. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter that the information in question is in fact confidential, has not been disclosed to the public by the submitter, and is not routinely available to the public from other sources. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(g) *Determination that confidential treatment is warranted.* If the custodian determines that confidential treatment is warranted for any part of the requested records, he shall inform the requester in writing in accordance with the procedures set out in §265.7(d) of this chapter, and shall advise the requester of the right to appeal. A copy of the letter of denial shall also be provided to the submitter of the records in any case in which the submitter had been notified of the request pursuant to paragraph (c) of this section.

(h) *Notice of intent to disclose.* The custodian, in the case of an initial request, or the General Counsel, in the case of an appeal, shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. In the event of a decision to disclose business information over the objection of the submitter, the submitter shall be furnished a written notice which shall include:

- (1) A description of the business information to be disclosed;
- (2) A statement of the reasons for which the submitter's disclosure objections were not sustained; and
- (3) The specific date upon which disclosure will occur. Such notice of intent to disclose shall be forwarded to the submitter a reasonable number of

39 CFR Ch. I (7-1-16 Edition)

days prior to the specified disclosure date and the requester shall be notified likewise.

(i) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information, the General Counsel shall promptly notify the submitter.

[56 FR 56934, Nov. 7, 1991]

§ 265.9 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to permit the furnishing of records to members of the public while recovering the full allowable direct costs incurred by the Postal Service. The Postal Service will use the most efficient and least costly methods available to it when complying with requests for records.

(b) *Standard rates—(1) Record retrieval.* Searches may be done manually or by computer using existing programming.

(i) *Manual search.* The fee for a manual search is \$32 per hour (fractions of an hour are rounded to the nearest half hour).

(ii) *Computer search.* The fee for retrieving data by computer is the actual direct cost of the retrieval, including computer search time, and personnel cost in effect at the time that the retrieval services are performed. The fees are subject to periodic revision. A copy of the fees are included within the public index. (See appendix A.)

(2) *Duplication.* (i) Except where otherwise specifically provided in postal regulations, the fee for duplicating any record or publication is \$.15 per page.

(ii) The Postal Service may at its discretion make coin-operated copy machines available at any location or otherwise give the requester the opportunity to make copies of Postal Service records at his own expense. Unless authorized by the Records Office, however, no off-site copying shall be permitted of records which, if lost, could not be replaced without inconvenience to the Postal Service.

(iii) The Postal Service will normally furnish only one copy of any record. If duplicate copies are furnished at the request of the requester, the \$.15 per page fee shall be charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to paragraph (c) or

(g) of this section. At his or her discretion, when it is reasonably necessary because of a lack of adequate copying facilities or other circumstances, the custodian may make the requested record available to the requester for inspection under reasonable conditions and need not furnish a copy thereof.

(3) *Review.* The fee for reviewing records located in response to a commercial use request is \$32 per hour (fractions of an hour are rounded to the nearest half hour). Only requesters who are seeking documents for commercial use may be charged for review. "Review" is defined in paragraph (h)(4) of this section; "commercial use" is defined in paragraph (h)(5) of this section.

(4) *Micrographics.* Paragraphs (b) (1), (2) and (3) of this section also apply to information stored within micrographic systems.

(c) *Four categories of fees to be charged.* For the purpose of assessing fees under this section, a requester shall be classified into one of four categories: commercial use requesters; educational and noncommercial scientific institutions; representatives of the news media; and all other requesters. Requesters in each category must reasonably describe the records sought. Fees shall be charged requesters in each category in accordance with the following.

(1) *Commercial use requesters.* Fees shall be charged to recover the full direct costs of search, review and duplication in accordance with the rates prescribed in paragraphs (b) (1) through (3) of this section, subject only to the general waiver set out in paragraph (g)(1) of this section. The term "commercial use request" is defined in paragraph (h)(5).

(2) *Educational and noncommercial scientific institutions.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not

sought for a commercial use, but are sought in furtherance of scholarly or scientific research. These institutions are defined in paragraphs (h)(6) and (h)(7) of this section, respectively.

(3) *Representatives of the news media.* Fees shall be charged only for duplication in accordance with paragraph (b)(2) of this section, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. (See also the general waiver provision in paragraph (g)(1) of this section.) To be eligible for the reduction of fees applicable to this category, the requester must meet the criteria in paragraph (h)(8) of this section, and the request must not be made for a commercial use.

(4) *All other requesters.* Fees shall be charged for search and duplication in accordance with paragraphs (b) (1) and (2) of this section, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. (See also paragraphs (g)(1) and (g)(2) of this section.)

(d) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly. The custodian shall not aggregate multiple requests when the requests pertain to unrelated subject matter. Requests made by more than one requester may be aggregated only when the custodian has a concrete basis on which to conclude that the requesters are acting in concert specifically to avoid payment of fees.

(e) *Other costs—(1) Publications.* Publications and other printed materials may, to the extent that they are available in sufficient quantity, be made available at the established price, if any, or at cost to the Postal Service. Fees established for printed materials pursuant to laws, other than the Freedom of Information Act, that specifically provide for the setting of fees for particular types of records are not subject to waiver or reduction under this section.

(2) *Other charges.* When a response to a request requires services or materials other than the common one listed in

paragraph (b) of this section, the direct cost of such services or materials to the Postal Service may be charged, but only if the requester has been notified of the nature and estimated amount of such cost before it is incurred.

(f) *Advance notice and payment of fees*—(1) *Liability and payment.* The requester is responsible, subject to limitations on liability provided by this section, for the payment of all fees for services resulting from his request, even if responsive records are not located or are determined to be exempt from disclosure. Checks in payment of fees should be made payable to “U.S. Postal Service.”

(2) *Advance notice.* To protect members of the public from unwittingly incurring liability for unexpectedly large fees, the custodian shall notify the requester if the estimated cost is expected to exceed \$25. When search fees are expected to exceed \$25, but it cannot be determined in advance whether any records will be located or made available, the custodian shall notify the requester of the estimated amount and of the responsibility to pay search fees even through records are not located or are determined to be exempt from disclosure. The notification shall be transmitted as soon as possible after physical receipt of the request, giving the best estimate then available. It shall include a brief explanatory statement of the nature and extent of the services upon which the estimate is based and shall offer the requester an opportunity to confer with the custodian or his representative in an attempt to reformulate the request so as to meet his needs at lower cost. The time period for responding to the request shall not run during the interval between the date such notification is transmitted and the date of receipt of the requester’s agreement to bear the cost. No notification is required if the request specifically states that whatever cost is involved is acceptable or is acceptable up to a specified amount that covers estimated costs or if payment of all fees in excess of \$25 has been waived.

(3) *Advance payment.* Advance payment of fees shall not be required, except: (i) When it is estimated that the fees chargeable under this section are

likely to exceed \$250. If the requester has a history of prompt payment of FOIA fees, the custodian shall notify the requester of the likely cost and obtain satisfactory assurance of full payment before commencing work on the request. If the requester has no history of payment, the custodian may require an advance payment of an amount up to the full estimated charge before commencing work on the request.

(ii) When a requester has previously failed to pay a fee in a timely fashion (i.e., within 30 days of the date of the billing), the requester shall be required to pay the full amount owed, and to make an advance payment of the full amount of the estimated fee before processing will begin on a new or pending request.

(iii) When advance payment is required under paragraphs (f)(3)(i) or (ii) of this section, the time periods for responding to the initial request or to an appeal shall not run during the interval between the date that notice of the requirement is transmitted and the date that the required payment or assurance of payment is received.

(g) *Restrictions on assessing fees*—(1) *General waiver.* No fees shall be charged to any requester if they would amount, in the aggregate, for a request or a series of related requests, to \$10 or less. When the fees for the first 100 pages or the first two hours of search time are excludable under paragraph (c) of this section, additional costs will not be assessed unless they exceed \$10.

(2) *Certain fees not charged*—(i) *All requests except those for commercial use.* Fees shall not be charged for the first 100 pages of duplication and the first two hours of search time except when the request is for a commercial use as defined in paragraph (h)(5) of this section. When search is done by computer, the fees to be excluded for the first two hours of search time shall be determined on the basis of fee for computer searches then in effect. (See appendix A.) Assessment of search fees will begin at the point when the cost of the search (including the cost of personnel and computer processing time) reaches the equivalent dollar amount of personnel fees for 2 hours.

(ii) *Requests of educational and non-commercial scientific institutions, and*

representatives of the news media. Fees shall not be charged for time spent searching for records in response to requests submitted by educational and noncommercial scientific institutions or representatives of the news media.

(3) *Public interest waiver.* The custodian shall waive a fee, in whole or in part, and any requirement for advance payment of such a fee, when he determines that furnishing the records is deemed to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the federal government, and is not primarily in the commercial interest of the requester. This waiver may be granted notwithstanding the applicability of other fee reductions prescribed by this section for requesters in certain categories. In determining whether disclosure is in the public interest for the purposes of this waiver, the following factors may be considered:

(i) The relation of the records to the operations or activities of the Postal Services;

(ii) The informative value of the information to be disclosed;

(iii) Any contribution to an understanding of the subject by the general public likely to result from disclosure;

(iv) The significance of that contribution to the public understanding of the subject;

(v) The nature of the requester's personal interest, if any, in the disclosure requested; and

(vi) Whether the disclosure would be primarily in the requester's commercial interest.

(4) *Waiver by officer.* Any officer of the Postal Service, as defined in § 221.8, his designee, or the Manager, Records Office may waive in whole or in part any fee required by this part or the requirement for advance payment of any fee.

(5) *Fee for other services.* Waivers do not apply for fees for address correction services performed in accordance with section R900 of the *Domestic Mail Manual*.

(h) *Definitions.* As used in this section, the term:

(1) *Direct costs* include expenditures actually incurred in searching for and duplicating (and in the case of com-

mercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus a factor to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(2) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Searches may be done manually or by computer using existing programming. A line-by-line search will be conducted only when necessary to determine whether the document contains responsive information and will not be employed in those instances in which duplication of the entire document would be the less expensive and quicker method of complying with a request. *Search* does not include review of material to determine whether the material is exempt from disclosure (see paragraph (h)(4) of this section).

(3) *Duplication* refers to the process of making a copy of a document necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(4) *Review* refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (h)(5) of this section) to determine whether any portion of any document located is exempt from mandatory disclosure. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions. Charges may be assessed only for the initial review, i.e., the first time the applicability of a specific exemption is analyzed. Costs for a subsequent review are properly assessable only when a

§ 265.10

record or portion of a record withheld solely on the basis of an exemption later determined not to apply must be reviewed again to determine the applicability of other exemptions not previously considered.

(5) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a request properly belongs in this category, the Postal Service will look to the use to which the requester will put the documents requested. If the use is not clear from the request itself, or if there is reasonable cause to doubt the requester's stated use, the custodian shall seek additional clarification from the requester before assigning the request to this category.

(6) *Educational institution* refers to a pre-school, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Noncommercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is defined in paragraph (h)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Requests by news organizations for information that will be used for the furtherance of the organization's commercial interests, rather than for the dissemination of news to the public, shall be considered commercial use requests. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of

39 CFR Ch. I (7-1-16 Edition)

periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. A "freelance" journalist will be regarded as a representative of the news media if he can demonstrate a solid basis for expecting publication through a news organization, even though not actually employed by it. This may be demonstrated either by a publication contract with the news organization or by the past publication record of the requester.

[52 FR 13668, Apr. 24, 1987, as amended at 53 FR 49983, Dec. 13, 1988; 54 FR 7417, Feb. 21, 1989. Redesignated at 56 FR 56934, Nov. 7, 1991, and amended at 56 FR 57805, Nov. 14, 1991; 59 FR 11550, Mar. 11, 1994; 60 FR 57345, Nov. 15, 1995; 64 FR 41290, July 30, 1999; 68 FR 56559, Oct. 1, 2003; 69 FR 34935, June 23, 2004]

§ 265.10 Annual report.

A report concerning the administration of the Freedom of Information Act and this part will be submitted to the Attorney General of the United States on or before February 1 of each year, with the first such report, for fiscal year 1998, due on or before February 1, 1999. Data for the report will be collected on the basis of fiscal year that begins on October 1 of each year. The Attorney General, in consultation with the Director, Office of Management and Budget, will prescribe the form and content of the report. The report will be made available to the public at the headquarters Library and on the Postal Service's world wide web site at <http://www.usps.com/foia>.

[63 FR 6483, Feb. 9, 1998, as amended at 68 FR 56559, Oct. 1, 2003]

§ 265.11 Compliance with subpoena duces tecum, court orders, and summonses.

(a) *Compliance with subpoena duces tecum.* (1) Except as required by Part 262, produce other records of the Postal Service only in compliance with a subpoena duces tecum or appropriate court order.

(2) Time, leave, and payroll records of postal employees are subject to production when a subpoena duces tecum or

appropriate court order has been properly served. The custodian of the records may designate a postal employee to present the records. The presentation by a designee rather than the employee named in the subpoena or court order must meet with the approval of the attorneys for each side. In addition, such records may be released if authorized in writing by the employee.

(3) If the subpoena involves a job-connected injury, the records are under the exclusive jurisdiction of the Office of Workers' Compensation Programs, Department of Labor. Requests for authorization to produce these records shall be addressed to: Office of Workers' Compensation Programs, U.S. Department of Labor, Washington, DC 20210-0001. Also notify the attorney responsible for the issuance of the subpoena or court order.

(4) Employee medical records are primarily under the exclusive jurisdiction of the U.S. Civil Service Commission. The Commission has delegated authority to the Postal Service and to the Commission's Regional Directors to release medical information, in response to proper requests and upon competent medical advice, in accordance with the following criteria:

(i) Except in response to a subpoena or court order, do not release any medical information about an employee to any non-Federal entity or individual without authorization from the employee.

(ii) With authorization from the employee, the Area, Information Systems Service Center, or Chief Field Counsel will respond as follows to a request from a non-Federal source for medical information:

(a) If, in the opinion of a Federal medical officer, the medical information indicates the existence of a malignancy, a mental condition, or other condition about which a prudent physician would hesitate to inform a person suffering from such a condition as to its exact nature and probable outcome, do not release the medical information to the employee or to any individual designated by him, except to a physician, designated by the employee in writing. If a subpoena or court order was issued, the responding official shall

caution the moving party as to the possible dangers involved if the medical information is divulged.

(b) If, in the opinion of a Federal medical officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person of the exact nature and probable outcome of his condition, release it in response to a subpoena or court order, or to the employee or to any person, firm, or organization he authorizes in writing.

(c) If a Federal medical officer is not available, refer the request to the Civil Service Commission regional office with the medical certificates or other medical reports concerned.

(5) Do not release any records containing information as to the employee's security or loyalty.

(6) Honor subpoenas or court orders only when disclosure is authorized.

(7) When authorized to comply with a subpoena duces tecum, do not leave the original records with the court.

(b) [Reserved]

[40 FR 7331, Feb. 19, 1975, as amended at 51 FR 26386, July 23, 1986; 56 FR 55824, Oct. 30, 1991. Redesignated at 56 FR 56934, Nov. 7, 1991; 60 FR 36712, July 18, 1995; 60 FR 57345, Nov. 15, 1995]

§ 265.12 Demands for testimony or records in certain legal proceedings.

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service;

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

§ 265.12

39 CFR Ch. I (7-1-16 Edition)

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress;

(iii) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the employee's official duties or the functions of the Postal Service; or

(iv) A demand for testimony or records submitted to the Postal Inspection Service (a demand for Inspection Service records or testimony will be handled in accordance with rules in § 265.11).

(4) This section does not exempt a request from applicable confidentiality requirements, including the requirements of the Privacy Act, 5 U.S.C. 552a.

(b) *Definitions.* The following definitions apply to this section:

(1) *Adjudicative authority* includes, but is not limited to, the following:

(i) A court of law or other judicial forums, whether local, state, or federal; and

(ii) Mediation, arbitration, or other forums for dispute resolution.

(2) *Demand* includes a subpoena, subpoena duces tecum, request, order, or other notice for testimony or records arising in a legal proceeding.

(3) *Employee* means a current employee or official of the Postal Service.

(4) *General Counsel* means the General Counsel of the United States Postal Service, the Chief Field Counsels, or an employee of the Postal Service acting for the General Counsel under a delegation of authority.

(5) *Legal proceeding means:*

(i) A proceeding before an adjudicative authority;

(ii) A legislative proceeding, except for a proceeding before either House of Congress or before any committee or subcommittee of Congress; or

(iii) An administrative proceeding.

(6) *Private litigation* means a legal proceeding to which the United States is not a party.

(7) *Records custodian* means the employee who maintains a requested record. For assistance in identifying the custodian of a specific record, con-

tact the Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260, telephone (202) 268-2608.

(8) *Testimony* means statements made in connection with a legal proceeding, including but not limited to statements in court or other forums, depositions, declarations, affidavits, or responses to interrogatories.

(9) *United States* means the federal government of the United States and any of its agencies, establishments, or instrumentalities, including the United States Postal Service.

(c) *Requirements for submitting a demand for testimony or records.* (1) Ordinarily, a party seeking to obtain records from the Postal Service should submit a request in accordance with the provisions of the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the Postal Service's regulations implementing the FOIA at 39 CFR 265.1 through 265.9 or the Privacy Act, 5 U.S.C. 552a and the Postal Service's regulations implementing the Privacy Act at 39 CFR 266.1 through 266.9.

(2) A demand for testimony or records issued pursuant to the rules governing the legal proceeding in which the demand arises must:

(i) Be in writing;

(ii) Identify the requested record and/or state the nature of the requested testimony, describe the relevance of the record or testimony to the proceeding, and why the information sought is unavailable by any other means; and

(iii) If testimony is requested, contain a summary of the requested testimony and a showing that no document could be provided and used in lieu of testimony.

(3) Procedures for service of demand are made as follows:

(i) Service of a demand for testimony or records (including, but not limited to, personnel or payroll information) relating to a current or former employee must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the District Manager, Customer Services and Sales, for all current employees whose work location

United States Postal Service

§ 265.12

is within the geographic boundaries of the manager's district, and any former employee whose last position was within the geographic boundaries of the manager's district. A demand for testimony or records must be received by the employee whose testimony is requested and the appropriate District Manager, Customer Services and Sales, at least ten (10) working days before the date the testimony or records are needed.

(ii) Service of a demand for testimony or records other than those described in paragraph (c)(3)(i) of this section must be made in accordance with the applicable rules of civil procedure on the employee whose testimony is requested or the records custodian. The requester also shall deliver a copy of the demand to the General Counsel, United States Postal Service, 475 L'Enfant Plaza, SW, Washington DC 20260-1100, or the Chief Field Counsel. A demand for testimony or records must be received by the employee and the General Counsel or Chief Field Counsel at least ten (10) working days before the date testimony or records are needed.

(d) *Procedures followed in response to a demand for testimony or records.* (1) After an employee receives a demand for testimony or records, the employee shall immediately notify the General Counsel or Chief Field Counsel and request instructions.

(2) An employee may not give testimony or produce records without the prior authorization of the General Counsel.

(3)(i) The General Counsel may allow an employee to testify or produce records if the General Counsel determines that granting permission:

(A) Would be appropriate under the rules of procedure governing the matter in which the demand arises and other applicable laws, privileges, rules, authority, and regulations; and

(B) Would not be contrary to the interest of the United States. The interest of the United States includes, but is not limited to, furthering a public interest of the Postal Service and protecting the human and financial resources of the United States.

(ii) An employee's testimony shall be limited to the information set forth in

the statement described at paragraph (c)(2) of this section or to such portions thereof as the General Counsel determines are not subject to objection. An employee's testimony shall be limited to facts within the personal knowledge of the employee. A Postal Service employee authorized to give testimony under this rule is prohibited from giving expert or opinion testimony, answering hypothetical or speculative questions, or giving testimony with respect to privileged subject matter. The General Counsel may waive the prohibition of expert testimony under this paragraph only upon application and showing of exceptional circumstances and the request substantially meets the requirements of this section.

(4) The General Counsel may establish conditions under which the employee may testify. If the General Counsel authorizes the testimony of an employee, the party seeking testimony shall make arrangements for the taking of testimony by those methods that, in the General Counsel's view, will least disrupt the employee's official duties. For example, at the General Counsel's discretion, testimony may be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(5) If a response to a demand for testimony or records is required before the General Counsel determines whether to allow an employee to testify, the employee or counsel for the employee shall do the following:

(i) Inform the court or other authority of the regulations in this section; and

(ii) Request that the demand be stayed pending the employee's receipt of the General Counsel's instructions.

(6) If the court or other authority declines the request for a stay, or rules that the employee must comply with the demand regardless of the General Counsel's instructions, the employee or counsel for the employee shall respectfully decline to comply with the demand, citing *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and the regulations in this section.

(7) The General Counsel may request the assistance of the Department of

§ 265.13

39 CFR Ch. I (7-1-16 Edition)

Justice or a U.S. Attorney where necessary to represent the interests of the Postal Service and the employee.

(8) At his or her discretion, the General Counsel may grant a waiver of any procedure described by this section, where waiver is considered necessary to promote a significant interest of the United States or for other good cause.

(9) If it otherwise is permissible, the records custodian may authenticate, upon the request of the party seeking disclosure, copies of the records. No employee of the Postal Service shall respond in strict compliance with the terms of a subpoena duces tecum unless specifically authorized by the General Counsel.

(e) *Postal Service employees as expert witnesses.* No Postal Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's official duties or the functions of the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the General Counsel may approve such expert testimony in private litigation. A Postal Service employee may not testify as such an expert witness without the express authorization of the General Counsel. A litigant must obtain authorization of the General Counsel before designating a Postal Service employee as an expert witness.

(f) *Substitution of Postal Service employees.* Although a demand for testimony may be directed to a named Postal Service employee, the General Counsel, where appropriate, may designate another Postal Service employee to give testimony. Upon request and for good cause shown (for example, when a particular Postal Service employee has direct knowledge of a material fact not known to the substitute employee designated by the Postal Service), the General Counsel may permit testimony by a named Postal Service employee.

(g) *Fees and costs.* (1) The Postal Service may charge fees, not to exceed actual costs, to private litigants seeking testimony or records by request or demand. The fees, which are to be calculated to reimburse fully the Postal Service for processing the demand and

providing the witness or records, may include, among others:

(i) Costs of time spent by employees, including attorneys, of the Postal Service to process and respond to the demand;

(ii) Costs of attendance of the employee and agency attorney at any deposition, hearing, or trial;

(iii) Travel costs of the employee and agency attorney;

(iv) Costs of materials and equipment used to search for, process, and make available information.

(2) All costs for employee time shall be calculated on the hourly pay of the employee (including all pay, allowance, and benefits) and shall include the hourly fee for each hour, or portion of each hour, when the employee is in travel, in attendance at a deposition, hearing, or trial, or is processing or responding to a request or demand.

(3) At the discretion of the Postal Service, where appropriate, costs may be estimated and collected before testimony is given.

(h) *Acceptance of service.* This section does not in any way abrogate or modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

[60 FR 17224, Apr. 5, 1995, as amended at 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56559, Oct. 1, 2003]

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

(a) *Applicability of this section.* The rules in this section apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

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

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

(3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(4) Employees serving as expert witnesses in connection with professional and consultative services under 5 CFR

part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(5) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (e.g., cases arising from traffic accidents, domestic relations) and do not involve professional or consultative services; and

(6) When in the opinion of the Counsel or the Counsel's designee, Office of the Chief Postal Inspector, it has been determined that it is in the best interest of the Inspection Service or in the public interest.

(b) *Purpose and scope.* The provisions in this section limit the participation of postal employees within or assigned to the Inspection Service, in private litigation, and other proceedings in which the Postal Service, the United States, or any other federal agency is not a party. The rules are intended to promote the careful supervision of Inspection Service resources and to reduce the risk of inappropriate disclosures that might affect postal operations.

(c) *Definitions.* For the purposes of this section:

(1) *Authorizing official* is the person responsible for giving the authorization for release of documents or permission to testify.

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

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

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

(5) *Employee or Inspection Service employee*, for the purpose of this section only, refers to a Postal Service employee currently or formerly assigned to the Postal Inspection Service, student interns, contractors and employees of contractors who have access to Inspection Service information and records.

(6) *Inspection Service* means the organizational unit within the Postal Service as outlined in § 224.3 of this chapter.

(7) *Inspection Service Legal Counsel* is an attorney authorized by the Chief Postal Inspector to give legal advice to members of the Inspection Service.

(8) *Inspection Service Manual* is the directive containing the standard operating procedures for Postal Inspectors and certain Inspection Service employees.

(9) *Nonpublic* includes any material or information not subject to mandatory public disclosure under § 265.6(b).

(10) *Official case file* means official documents that relate to a particular case or investigation. These documents may be kept at any location and do not necessarily have to be in the same location in order to constitute the file.

(11) *Postal Inspector reports* include all written reports, letters, recordings, or other memorializations made in conjunction with the duties of a Postal Inspector.

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

(13) *Third-party action* means an action, judicial or administrative, in which the United States, the Postal Service, or any other federal agency is not a named party.

(d) *Policy.* (1) No current or former employee within the Inspection Service may testify or produce documents concerning information acquired in the course of employment or as a result of his or her relationship with the Postal Service in any proceeding to which this section applies (see paragraph (a) of this section), unless authorized to do so. Authorization will be provided by:

(i) The Postal Inspector in Charge of the affected field Division, or designee,

for Division personnel and records, after that official has determined through consultation with Inspection Service legal counsel that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(ii) The Chief Postal Inspector or designee for Headquarters employees and records, after that official has determined through consultation with Inspection Service legal counsel, that no legal objection, privilege, or exemption applies to such testimony or production of documents.

(2) Consideration shall be given to:

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

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

(iii) Inspection Service rules and regulations and the public interest;

(iv) Conservation of employee time; and

(v) Prevention of the expenditure of Postal Service resources for private purposes.

(3) If additional information is necessary before a determination can be made, the authorizing official may, in coordination with Inspection Service legal counsel, request assistance from the Department of Justice.

(e) *Compliance with subpoena duces tecum.* (1) Except as required by part 262 of this chapter, produce any other record of the Postal Service only in compliance with a subpoena *duces tecum* or appropriate court order.

(2) Do not release any record containing information relating to an employee's security or loyalty.

(3) Honor subpoenas and court orders only when disclosure is authorized.

(4) When authorized to comply with a subpoena *duces tecum* or court order, do not leave the originals with the court.

(5) Postal Inspector reports are considered to be confidential internal documents and shall not be released unless there is specific authorization by the Chief Postal Inspector or the Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel.

(6) The Inspection Service Manual and other operating instructions issued

to Inspection Service employees are considered to be confidential and shall not be released unless there is specific authorization, after consultation with Inspection Service legal counsel. If the requested information relates to confidential investigative techniques, or release of the information would adversely affect the law enforcement mission of the Inspection Service, the subpoenaed official, through Inspection Service legal counsel, may request an *in camera, ex parte* conference to determine the necessity for the release of the information. The entire Manual should not be given to any party.

(7) Notes, memoranda, reports, transcriptions, whether written or recorded and made pursuant to an official investigation conducted by a member of the Inspection Service, are the property of the Inspection Service and are part of the official case file, whether stored with the official file.

(f) *Compliance with summonses and subpoenas ad testificandum.* (1) If an Inspection Service employee is served with a third-party summons or a subpoena requiring an appearance in court, contact should be made with Inspection Service legal counsel to determine whether and which exemptions or restrictions apply to proposed testimony. Inspection Service employees are directed to comply with summonses, subpoenas, and court orders, as to appearance, but may not testify without authorization.

(2) Postal Inspector reports or records will not be presented during testimony, in either state or federal courts in which the United States, the Postal Service, or another federal agency is not a party in interest, unless authorized by the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, who will make the decision after consulting with Inspection Service legal counsel. If an attempt is made to compel production, through testimony, the employee is directed to decline to produce the information or matter and to state that it may be exempted and may not be disclosed or produced without the specific approval of the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division. The Postal Service will offer all

United States Postal Service

§ 265.13

possible assistance to the courts, but the question of disclosing information for which an exemption may be claimed is a matter of discretion that rests with the appropriate official. Paragraph (e) of this section covers the release of Inspection Service documents in cases where the Postal Service or the United States is not a party.

(g) *General procedures for obtaining Inspection Service documents and testimony from Inspection Service employees.* (1) To facilitate the orderly response to demands for the testimony of Inspection Service employees and production of documents in cases where the United States, the Postal Service, or another federal agency is not a party, all demands for the production of nonpublic documents or testimony of Inspection Service employees concerning matters relating to their official duties and not subject to the exemptions set forth in paragraph (a) of this section shall be in writing and conform to the requirements outlined in paragraphs (g)(2) and (g)(3) of this section.

(2) Before or simultaneously with service of a demand described in paragraph (g)(1) of this section, the requesting party shall serve on the Counsel, Office of the Chief Postal Inspector, 475 L'Enfant Plaza SW., Washington, DC 20260-2181, an affidavit or declaration containing the following information:

- (i) The title of the case and the forum where it will be heard;
- (ii) The party's interest in the case;
- (iii) The reasons for the demand;
- (iv) A showing that the requested information is available, by law, to a party outside the Postal Service;
- (v) If testimony is sought, a summary of the anticipated testimony;
- (vi) If testimony is sought, a showing that Inspection Service records could not be provided and used in place of the requested testimony;
- (vii) The intended use of the documents or testimony; and
- (viii) An affirmative statement that the documents or testimony is necessary for defending or prosecuting the case at issue.

(3) The Counsel, Office of the Chief Postal Inspector, shall act as agent for the receipt of legal process for demands for production of records or testimony of Inspection Service employees where

the United States, the Postal Service, or any other federal agency is not a party. A subpoena for testimony or for the production of documents from an Inspection Service employee concerning official matters shall be served in accordance with the applicable rules of civil procedure. A copy of the subpoena and affidavit or declaration, if not previously furnished, shall also be sent to the Chief Postal Inspector or the appropriate Postal Inspector in Charge.

(4) Any Inspection Service employee who is served with a demand shall promptly inform the Chief Postal Inspector, or the appropriate Postal Inspector in Charge, of the nature of the documents or testimony sought and all relevant facts and circumstances.

(h) *Authorization of testimony or production of documents.* (1) The Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division, after consulting with Inspection Service legal counsel, shall determine whether testimony or the production of documents will be authorized.

(2) Before authorizing the requested testimony or the production of documents, the Chief Postal Inspector or the Postal Inspector in Charge of the affected field Division shall consider the following factors:

- (i) Statutory restrictions, as well as any legal objection, exemption, or privilege that may apply;
- (ii) Relevant legal standards for disclosure of nonpublic information and documents;
- (iii) Inspection Service rules and regulations and the public interest;
- (iv) Conservation of employee time; and
- (v) Prevention of expenditures of government time and resources solely for private purposes.

(3) If, in the opinion of the authorizing official, the documents should not be released or testimony should not be furnished, that official's decision is final.

(4) Inspection Service legal counsel may consult or negotiate with the party or the party's counsel seeking testimony or documents to refine and limit the demand, so that compliance

is less burdensome, or obtain information necessary to make the determination whether the documents or testimony will be authorized. If the party or party's counsel seeking the documents or testimony fails to cooperate in good faith, preventing Inspection Service legal counsel from making an informed recommendation to the authorizing official, that failure may be presented to the court or other body conducting the proceeding as a basis for objection.

(5) Permission to testify or to release documents in all cases will be limited to matters outlined in the affidavit or declaration described in paragraph (g)(2) of this section or to such parts as deemed appropriate by the authorizing official.

(6) If the authorizing official allows the release of documents or testimony to be given by an employee, arrangements shall be made for the taking of testimony or receipt of documents by the least disruptive methods to the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(i) While giving a deposition, the employee may, at the option of the authorizing official, be represented by Inspection Service legal counsel.

(ii) While completing affidavits, or other written reports or at any time during the process of preparing for testimony or releasing documents, the employee may seek the assistance of Inspection Service legal counsel.

(7) Absent written authorization from the authorizing official, the employee shall respectfully decline to produce the requested documents, testify, or, otherwise, disclose the requested information.

(8) If the authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any document on the basis of the regulations in this section.

(9) The employee shall appear as ordered by the subpoena, summons, or other appropriate court order, unless:

(i) Legal counsel has advised the employee that an appearance is inappropriate, as in cases where the subpoena, summons, or other court order was not properly issued or served, has been withdrawn, discovery has been stayed; or

(ii) Where the Postal Service will present a legal objection to furnishing the requested information or testimony.

(i) *Inspection Service employees as expert or opinion witnesses.* No Inspection Service employee may testify as an expert or opinion witness, with regard to any matter arising out of the employee's duties or functions at the Postal Service, for any party other than the United States, except that in extraordinary circumstances, the Counsel, Office of the Chief Postal Inspector, may approve such testimony in private litigation. An Inspection Service employee may not testify as such an expert or opinion witness without the express authorization of the Counsel, Office of the Chief Postal Inspector. A litigant must first obtain authorization of the Counsel, Office of the Chief Postal Inspector, before designating an Inspection Service employee as an expert or opinion witness.

(j) *Postal liability.* This section is intended to provide instructions to Inspection Service employees and does not create any right or benefit, substantive or procedural, enforceable by any party against the Postal Service.

(k) *Fees.* (1) Unless determined by 28 U.S.C. 1821 or other applicable statute, the costs of providing testimony, including transcripts, shall be borne by the requesting party.

(2) Unless limited by statute, such costs shall also include reimbursement to the Postal Service for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses as follows:

(i) The Inspection Service is authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Postal Service for the cost of responding to a demand, may include

United States Postal Service

§ 266.3

the costs of time expended by Inspection Service employees, including attorneys, to process and respond to the demand; attorney time for reviewing the demand and for legal work in connection with the demand; expenses generated by equipment used to search for, produce, and copy the requested information; travel costs of the employee and the agency attorney, including lodging and per diem where appropriate. Such fees shall be assessed at the rates and in the manner specified in §265.9.

(ii) At the discretion of the Inspection Service where appropriate, fees and costs may be estimated and collected before testimony is given.

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

(l) *Acceptance of service.* The rules in this section in no way modify the requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix) regarding service of process.

[60 FR 36712, July 18, 1995, as amended at 69 FR 34935, June 23, 2004]

APPENDIX A TO PART 265—FEES FOR COMPUTER SEARCHES

When requested information must be retrieved by computer, fees charged to the requester are based on rates for personnel and computer time. Estimates are provided to the requester in advance and are based on the following rates:

	Price	Unit
Personnel:		
High technical	\$120	per hour.
Medium technical	70	per hour.
Low technical	50	per hour.
Computer Processing:		
Mainframe usage39	per second.
Midrange server usage06	per second.
PC usage	7.00	per 15 minutes.
Printing computer output14	per page.
Magnetic tape production ...	24.00	per volume.

[68 FR 56559, Oct. 1, 2003]

PART 266—PRIVACY OF INFORMATION

- Sec.
- 266.1 Purpose and scope.
- 266.2 Policy.
- 266.3 Responsibility.

- 266.4 Collection and disclosure of information about individuals.
- 266.5 Notification.
- 266.6 Procedures for requesting inspection, copying, or amendment of records.
- 266.7 Appeal procedure.
- 266.8 Schedule of fees.
- 266.9 Exemptions.
- 266.10 Computer matching.

AUTHORITY: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 266.1 Purpose and scope.

This part is intended to protect individual privacy and affects all personal information collection and usage activities of the entire U.S. Postal Service. This includes the information interface of Postal Service employees to other employees, to individuals from the public at large, and to any private organization or governmental agency.

[40 FR 45723, Oct. 2, 1975]

§ 266.2 Policy.

It is the policy of the U.S. Postal Service to ensure that any record within its custody that identifies or describes any characteristic or provides historical information about an individual or that affords a basis for inferring personal characteristics, or things done by or to such individual, including the record of any affiliation with an organization or activity, or admission to an institution, is accurate, complete, timely, relevant, and reasonably secure from unauthorized access. Additionally, it is the policy to provide the means for individuals to know: (a) Of the existence of all Postal Service Privacy Act systems of records, (b) the recipients and usage made of such information, (c) what information is optional or mandatory to provide to the Postal Service, (d) the procedures for individuals to review and request update to all information maintained about themselves, (e) the reproduction fees for releasing records, (f) the procedures for individual legal appeal in cases of dissatisfaction; and (g) of the establishment or revision of a computer matching program.

[45 FR 44272, July 1, 1980, as amended at 59 FR 37160, July 21, 1994]

§ 266.3 Responsibility.

(a) *Records Office.* The Records Office, within the Privacy Office, will ensure

§ 266.4

Postal Service-wide compliance with this policy.

(b) *Custodian*. Custodians are responsible for adherence to this part within their respective units and in particular for affording individuals their rights to inspect and obtain copies of records concerning them.

(c) *Information System Executive*. These managers are responsible for reporting to the Records Office the existence or proposed development of Privacy Act systems of records. They also must report any change that would alter the systems description as published in the FEDERAL REGISTER. They establish the relevancy of the information within those systems.

(d) *Data Integrity Board*—(1) *Responsibilities*. The Data Integrity Board oversees Postal Service computer matching activities. Its principal function is to review, approve, and maintain all written agreements for use of Postal Service records in matching programs to ensure compliance with the Privacy Act and all relevant statutes, regulations, and guidelines. In addition, the Board annually reviews matching programs and other matching activities in which the Postal Service has participated during the preceding year to determine compliance with applicable laws, regulations, and agreements; compiles a biennial matching report of matching activities; and performs review and advisement functions relating to records accuracy, recordkeeping and disposal practices, and other computer matching activities.

(2) *Composition*. The Privacy Act requires that the senior official responsible for implementation of agency Privacy Act policy and the Inspector General serve on the Board. The Chief Privacy Officer, as administrator of Postal Service Privacy Act policy, serves as Secretary of the Board and performs the administrative functions of the Board. The Board is composed of these and other members designated by the Postmaster General, as follows:

- (i) Vice President and Consumer Advocate (Chairman).
- (ii) Chief Postal Inspector.
- (iii) Inspector General.
- (iv) Senior Vice President, Human Resources.

39 CFR Ch. I (7–1–16 Edition)

- (v) Vice President, General Counsel.
- (vi) Chief Privacy Officer.

[40 FR 45723, Oct. 2, 1975, as amended at 45 FR 44272, July 1, 1980; 59 FR 37160, July 21, 1994; 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003]

§ 266.4 Collection and disclosure of information about individuals.

(a) The following rules govern the collection of information about individuals throughout Postal Service operations;

(1) The Postal Service will:

(i) Collect, solicit and maintain only such information about an individual as is relevant and necessary to accomplish a purpose required by statute or Executive Order,

(ii) Collect information, to the greatest extent practicable, directly from the subject individual when such information may result in adverse determinations about an individual's rights, benefits or privileges,

(iii) Inform any individual who has been asked to furnish information about himself whether that disclosure is mandatory or voluntary, by what authority it is being solicited, the principal purposes for which it is intended to be used, the routine uses which may be made of it, and any penalties and specific consequences for the individual, which are known to the Postal Service, which will result from refusal to furnish it.

(2) The Postal Service will not discriminate against any individual who fails to provide information about himself unless that information is required or necessary for the conduct of the system or program in which the individual desires to participate.

(3) No information will be collected (or maintained) describing how individuals exercise rights guaranteed by the First Amendment unless the Postmaster General specifically determines that such information is relevant and necessary to carry out a statutory purpose of the Postal Service.

(4) The Postal Service will not require individuals to furnish their Social Security account number or deny a right, privilege or benefit because of an individual's refusal to furnish the number unless it must be provided by Federal law.

United States Postal Service

§ 266.4

(b) *Disclosures*—(1) *Disclosure: Limitations On.* The Postal Service will not disseminate information about an individual unless reasonable efforts have been made to assure that the information is accurate, complete, timely and relevant and unless:

(i) The individual to whom the record pertains has requested in writing that the information be disseminated, or

(ii) It has obtained the prior written consent of the individual to whom the record pertains, or

(iii) The dissemination is in accordance with paragraph (b)(2) of this section.

(2) Dissemination of personal information may be made:

(i) To a person pursuant to a requirement of the Freedom of Information Act (5 U.S.C. 552);

(ii) To those officers and employees of the Postal Service who have a need for such information in the performance of their duties;

(iii) For a routine use as contained in the system notices published in the FEDERAL REGISTER;

(iv) To a recipient who has provided advance adequate written assurance that the information will be used solely as a statistical reporting or research record, and to whom the information is transferred in a form that is not individually identifiable;

(v) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of title 13, U.S.C.;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the U.S. Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual;

(viii) To a federal agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if

such activity is authorized by law and if the head of the agency or instrumentality has made a written request to the Postal Service specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;

(ix) To either House of Congress or its committees or subcommittees to the extent of matter within their jurisdiction;

(x) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction.

(3) *Names and Addresses of Postal Customers.* The disclosure of lists of names or addresses of Postal customers or other persons to the public is prohibited (39 U.S.C. 412). Names or addresses will be disclosed only in those cases permitted by 39 CFR 265.6(d) relating to the Release of Information.

(4) *Employee Credit References.* A credit bureau or commercial firm from which an employee is seeking credit may be given the following information upon request: grade, duty status, length of service, job title, and salary.

(5) *Employee Job References.* Prospective employers of a postal employee or a former postal employee may be furnished with the information in paragraph (b)(4) of this section, in addition to the date and the reason for separation, if applicable. The reason for separation must be limited to one of the following terms: retired, resigned, or separated. Other terms or variations of these terms (e.g., retired—disability) may not be used. If additional information is desired, the requester must submit the written consent of the employee, and an accounting of the disclosure must be kept.

(6) *Computer matching purposes.* Records from a Postal Service system of records may be disclosed to another agency for the purpose of conducting a computer matching program or other matching activity as defined in paragraphs (c) and (d) of §262.5, but only after a determination by the Data Integrity Board that the procedural requirements of the Privacy Act, the

§ 266.5

39 CFR Ch. I (7–1–16 Edition)

guidelines issued by the Office of Management and Budget, and these regulations as may be applicable are met. These requirements include:

(i) *Routine use.* Disclosure is made only when permitted as a routine use of the system of records. The Manager, Records Office, determines the applicability of a particular routine use and the necessity for adoption of a new routine use.

(ii) *Notice.* Publication of new or revised matching programs in the FEDERAL REGISTER and advance notice to Congress and the Office of Management and Budget must be made pursuant to paragraph (f) of § 266.5.

(iii) *Computer matching agreement.* The participants in a computer matching program must enter into a written agreement specifying the terms under which the matching program is to be conducted (see § 266.10). The Manager, Records Office, may require that other matching activities be conducted in accordance with a written agreement.

(iv) *Data Integrity Board approval.* No record from a Postal Service system of records may be disclosed for use in a computer matching program unless the matching agreement has received approval by the Postal Service Data Integrity Board (see § 266.10). Other matching activities may, at the discretion of the Manager, Records Office, be submitted for Board approval.

(c) *Correction Disclosure.* Any person or other agency to which a personal record has been or is to be disclosed shall be informed of any corrections or notations of dispute relating thereto affecting the accuracy, timeliness or relevance of that personal record.

(d) *Recording of Disclosure.* (1) An accurate accounting of each disclosure will be kept in all instances except those in which disclosure is made to the subject of the record, or to Postal Service employees in the performance of their duties or is required by the Freedom of Information Act (5 U.S.C. 552).

(2) The accounting will be maintained for at least five (5) years or the life of the record, whichever is longer.

(3) The accounting will be made available to the individual named in the record upon inquiry, except for disclosures made pursuant to provision

paragraph (b)(2)(viii) of this section relating to law enforcement activities.

[40 FR 45723, Oct. 2, 1975, as amended at 45 FR 44272, July 1, 1980; 58 FR 62036, Nov. 24, 1993; 59 FR 37160, July 21, 1994; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003]

§ 266.5 Notification.

(a) *Notification of Systems.* Upon written request, the Postal Service will notify any individual whether a specific system named by the individual contains a record pertaining to him or her. See § 266.6 for suggested form of request.

(b) *Notification of Disclosure.* The Postal Service shall make reasonable efforts to serve notice on an individual before any personal information on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(c) *Notification of Amendment.* (See § 266.6(c)(1) relating to amendment of records upon request.)

(d) *Notification of New Use.* Any newly intended use of personal information maintained by the Postal Service will be published in the FEDERAL REGISTER thirty (30) days before such use becomes operational. Public views may then be submitted to the Records Office.

(e) *Notification of Exemptions.* The Postal Service will publish within the FEDERAL REGISTER its intent to exempt any system of records and shall specify the nature and purpose of that system.

(f) *Notification of computer matching program.* The Postal Service publishes in the FEDERAL REGISTER and forwards to Congress and the Office of Management and Budget advance notice of its intent to establish, substantially revise, or renew a matching program, unless such notice is published by another participant agency. In those instances in which the Postal Service is the “recipient” agency, as defined in the Act, but another participant agency sponsors and derives the principal benefit from the matching program, the other agency is expected to publish the notice. The notice must be sent to Congress and OMB 40 days, and published at least thirty (30) days, prior to (1) initiation of any matching activity under

a new or substantially revised program, or (2) expiration of the existing matching agreement in the case of a renewal of a continuing program.

[40 FR 45724, Oct. 2, 1975; 40 FR 48512, Oct. 16, 1975, as amended at 45 FR 44272, July 1, 1980; 59 FR 37161, July 21, 1994; 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003; 69 FR 34935, June 23, 2004]

§ 266.6 Procedures for requesting inspection, copying, or amendment of records.

The purpose of this section is to provide procedures by which an individual may have access and request amendment to personal information within a Privacy Act System of Records.

(a) *Submission of Requests*—(1) *Manner of submission.* Inquiries regarding the contents of records systems or access or amendment to personal information should be submitted in writing to the custodian of the official record, if known, or to the Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260, telephone (202) 268-2608. Requests submitted to the Office of Inspector General should be submitted to the Freedom of Information Act/Privacy Officer, Office of Inspector General, 1735 North Lynn Street, Arlington, Virginia, 22209-2020. Inquiries should be clearly marked, "Privacy Act Request". Any inquiry concerning a specific system of records should provide the Postal Service with the information contained under "Notification" for that system as published in the FEDERAL REGISTER. If the information supplied is insufficient to locate or identify the record, the requester will be notified promptly and, if possible, informed of additional information required. If the requester is not a Postal Service employee, he should designate the post office at which he wishes to review or obtain copies of records. Amendment requests contest the relevance, accuracy, timeliness or completeness of the record and will include a statement of the amendment requested.

(2) *Third party inquiries.* Anyone desiring to review or copy records pertaining to another person must have the written consent of that person.

(3) *Period for response by custodian.* Upon receipt of an inquiry, the custodian will respond with an acknowledgment of receipt within ten (10) days. If the inquiry requires the custodian to determine whether a particular record exists, the inquirer shall be informed of this determination as a part of the acknowledgment letter.

(b) *Compliance with Request for Access*—(1) *Notification of time and place for inspection.* When a requested record has been identified and is to be disclosed, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when the record will be available for inspection or copying. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) *Identification of requester.* The requester must present personal identification sufficient to satisfy the custodian as to his identity prior to record review. Examples of sufficient identification are a valid driver's license, Medicare card, and employee identification cards.

(3) *Responsibilities of requester.* The requester shall assume the following responsibilities regarding the review of official personal records:

(i) Requester must agree not to leave Postal Services premises with official records unless specifically given a copy for that purpose by the custodian or his representative.

(ii) Requester must sign a statement indicating he has reviewed a specific record(s) or category of record.

(iii) Requester may be accompanied by a person he so chooses to aid in the inspection of information; however, requester must furnish the Postal Service with written authorization for such review in that person's presence.

(4) *Special rules for medical records.* A medical record shall be disclosed to the requester to whom it pertains unless, in the judgment of the medical officer, access to such record could have an adverse effect upon such individual. When

§ 266.7

39 CFR Ch. I (7–1–16 Edition)

the medical officer determines that the disclosure of medical information could have an adverse effect upon the individual to whom it pertains, the medical officer will transmit such information to a medical doctor named by the requesting individual.

(5) *Limitations on access.* Nothing in this section shall allow an individual access to any information compiled in reasonable anticipation of a civil action or proceeding. Other limitations on access are those specifically addressed in §§ 266.6(b)(4) and 266.9.

(6) *Response when compliance is not possible.* A reply denying a written request to review a record shall be in writing signed by the custodian or other appropriate official and shall be made only if such a record does not exist or does not contain personal information relating to the requester, or is exempt from disclosure. This reply shall include a statement regarding the determining factors of denial, and the right to appeal to denial to the General Counsel.

(c) *Compliance With Request for Amendment.* (1) Correct or eliminate any information that is found to be incomplete, inaccurate, not relevant to a statutory purpose of the Postal Service, or not timely and notify the requester when this action is complete, or

(2) Not later than thirty (30) working days after receipt of a request to amend, notify the requester of a determination not to amend and of the requester's right to appeal, or to submit, in lieu of an appeal, a statement of reasonable length setting forth a position regarding the disputed information to be attached to the contested personal record.

(d) *Availability of Assistance in Exercising Rights.* The Manager, Records Office is available to provide an individual with assistance in exercising rights pursuant to this part.

[40 FR 45723, Oct. 2, 1975, as amended at 45 FR 44272, July 1, 1980; 51 FR 26386, July 23, 1986; 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 67 FR 16024, Apr. 4, 2002; 68 FR 56560, Oct. 1, 2003]

§ 266.7 Appeal procedure.

(a) *Appeal Procedure.* (1) If a request to inspect, copy, or amend a record is

denied, in whole or in part, or if no determination is made within the period prescribed by this part, the requester shall appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260–1100.

(2) The requester should submit his appeal in writing within thirty (30) days of the date of denial, or within ninety (90) days of such request if the appeal is from a failure of the custodian to make a determination. The letter of appeal should include, as applicable:

(i) Reasonable identification of the record access to which or the amendment of which was requested.

(ii) A statement of the Postal Service action or failure to act and of the relief sought.

(iii) A copy of the request, of the notification of denial and of any other related correspondence.

(3) Any record found on appeal to be incomplete, inaccurate, not relevant, or not timely, shall within thirty (30) working days of the date of such findings be appropriately amended.

(4) The decision of the General Counsel, constitutes the final decision of the Postal Service on the right of the requester to inspect, copy, change, or update a record. The decision on the appeal shall be in writing and in the event of a denial shall set forth the reasons for such denial and state the individual's right to obtain judicial review in a district court. An indexed file of decisions on appeals shall be maintained by the General Counsel.

(b) *Submission of Statement of Disagreement.* If the final decision concerning a request for the amendment of a record does not satisfy the requester, any statement of reasonable length provided by that individual setting forth a position regarding the disputed information will be accepted and attached to the relevant personal record.

[40 FR 45723, Oct. 2, 1975, as amended at 41 FR 24709, June 18, 1976; 45 FR 44273, July 1, 1980; 51 FR 26386, July 23, 1986; 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003]

§ 266.8 Schedule of fees.

(a) *Policy.* The purpose of this section is to establish fair and equitable fees to

United States Postal Service

§ 266.9

permit duplication of records for subject individuals (or authorized representatives) while recovering the full allowable direct costs incurred by the Postal Service.

(b) *Duplication.* (1) For duplicating any paper or micrographic record or publication or computer report, the fee is \$.15 per page, except that the first 100 pages furnished in response to a particular request shall be furnished without charge. See paragraph (d) of this section for fee limitations.

(2) The Postal Service may at its discretion make coin-operated copy machines available at any location. In that event, requesters will be given the opportunity to make copies at their own expense.

(3) The Postal Service normally will not furnish more than one copy of any record. If duplicate copies are furnished at the request of the requester, \$.15 per page fee is charged for each copy of each duplicate page without regard to whether the requester is eligible for free copies pursuant to § 266.8(b)(1).

(c) *Aggregating requests.* When the custodian reasonably believes that a requester is attempting to break a request for similar types of records down into a series of requests in order to evade the assessment of fees, the custodian may aggregate the requests and charge accordingly.

(d) *Limitations.* No fee will be charged an individual for the process of retrieving, reviewing, or amending a record pertaining to that individual.

(e) The Postal Service may, at its discretion, require reimbursement of its costs as a condition of participation in a computer matching program or activity with another agency. The agency to be charged is notified in writing of the approximate costs before they are incurred. Costs are calculated in accordance with the schedule of fees at § 265.9.

[52 FR 38230, Oct. 15, 1987, as amended at 59 FR 37161, July 21, 1994; 68 FR 56560, Oct. 1, 2003]

§ 266.9 Exemptions.

(a) Subsections 552a(j) and (k) of 5 U.S.C. 552a empower the Postmaster General to exempt systems of records meeting certain criteria from various

other subsections of 5 U.S.C. 552a. With respect to systems of records so exempted, nothing in this part shall require compliance with provisions hereof implementing any subsections of 5 U.S.C. 552a from which those systems have been exempted.

(b) Paragraph (b)(1) of this section contains a summary of provisions of 5 U.S.C. 552a for which exemption is claimed for some systems of records pursuant to, and to the extent permitted by, subsections 552a(j) and (k) of 5 U.S.C. 552a. Paragraphs (b)(2) through (5) of this section identify the exempted systems of records, the exemptions applied to each, and the reasons for the exemptions:

(1) *Explanation of provisions under 5 U.S.C. 552a for which an exemption is claimed in the systems discussed below.* (i) Subsection (c)(3) requires an agency to make available to the individual named in the records an accounting of each disclosure of records.

(ii) Subsection (c)(4) requires an agency to inform any person or other agency to which a record has been disclosed of any correction or notation of dispute the agency has made to the record in accordance with 5 U.S.C. 552a(d).

(iii) Subsections (d)(1) through (4) require an agency to permit an individual to gain access to records about the individual, to request amendment of such records, to request a review of an agency decision not to amend such records, and to provide a statement of disagreement about a disputed record to be filed and disclosed with the disputed record.

(iv) Subsection (e)(1) requires an agency to maintain in its records only such information about an individual that is relevant and necessary to accomplish a purpose required by statute or executive order of the President.

(v) Subsection (e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs.

(vi) Subsection (e)(3) requires an agency to inform each person whom it

§ 266.9

39 CFR Ch. I (7-1-16 Edition)

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 sub-

sections 552a (c)(3), (c)(4), (d)(1)–(4), (e)(1)–(3), (e)(4) (G) and (H), (e)(5), (e)(8), (f), (g), and (m) because the systems contain information pertaining to the enforcement of criminal laws. The reasons for exemption follow:

(i) Disclosure to the record subject pursuant to subsections (c)(3), (c)(4), or (d)(1)–(4) could:

(A) Alert subjects that they are targets of an investigation or mail cover by the Postal Inspection Service or an investigation by the Office of Inspector General;

(B) Alert subjects of the nature and scope of the investigation and of evidence obtained;

(C) Enable the subject of an investigation to avoid detection or apprehension;

(D) Subject confidential sources, witnesses, and law enforcement personnel to harassment or intimidation if their identities were released to the target of an investigation;

(E) Constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation;

(F) Intimidate potential witnesses and cause them to be reluctant to offer information;

(G) Lead to the improper influencing of witnesses, the destruction or alteration of evidence yet to be discovered, the fabrication of testimony, or the compromising of classified material; and

(H) Seriously impede or compromise law enforcement, mail cover, or background investigations that might involve law enforcement aspects as a result of the above.

(ii) Application of subsections (e)(1) and (e)(5) is impractical because the relevance, necessity, or correctness of specific information might be established only after considerable analysis and as the investigation progresses. As to relevance (subsection (e)(1)), effective law enforcement requires the keeping of information not relevant to a specific Postal Inspection Service investigation or Office of Inspector General investigation. Such information may be kept to provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Office of

United States Postal Service

§ 266.9

Inspector General, Postal Inspection Service, and/or other agencies. As to accuracy (subsection (e)(5)), the correctness of records sometimes can be established only in a court of law.

(iii) Application of subsections (e)(2) and (e)(3) would require collection of information directly from the subject of a potential or ongoing investigation. The subject would be put on alert that he or she is a target of an investigation by the Office of Inspector General, or an investigation or mail cover by the Postal Inspection Service, enabling avoidance of detection or apprehension, thereby seriously compromising law enforcement, mail cover, or background investigations involving law enforcement aspects. Moreover, in certain circumstances the subject of an investigation is not required to provide information to investigators, and information must be collected from other sources.

(iv) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(v) Application of subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(vi) The provisions of subsection (g) do not apply because exemption from the provisions of subsection (d) renders the provisions on suits to enforce subsection (d) inapplicable.

(vii) If one of these systems of records is operated in whole or in part by a contractor, the exemptions claimed herein shall remain applicable to it (subsection (m)).

(3) Pursuant to subsection 552a(k)(2), *Labor Relations Records, USPS 200.000; Emergency Management Records, USPS 500.300; Inspection Service Investigative File System, USPS 700.000; Mail Cover Program Records, USPS 700.100; Inspector General Investigative Records, USPS 700.300; and Financial Transactions, USPS 860.000*, are exempt from certain subsections of 5 U.S.C. 552a because the systems contain investigatory material compiled for law enforcement purposes

other than material within the scope of subsection 552a(j)(2).

(i) *Emergency Management Records, USPS 500.300; Inspection Service Investigative File System, USPS 700.000; Mail Cover Program Records, USPS 700.100; and Inspector General Investigative Records, USPS 700.300*, are exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4) (G) and (H), and (f) for the same reasons as stated in paragraph (b)(2) of this section.

(ii) *Labor Relations Records, USPS 200.000*, is exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Application of the requirements at subsections (d)(1)–(4) would cause disruption of enforcement of the laws relating to equal employment opportunity (EEO). It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(B) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply for the same reasons described in paragraph (b)(2)(iv) of this section.

(iii) *Financial Transactions, USPS 860.000*, is exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Disclosure to the record subject pursuant to subsections (c)(3) and (d)(1)–(4) would violate the non-notification provision of the Bank Secrecy Act, 31 U.S.C. 5318(g)(2), under which the Postal Service is prohibited from notifying a transaction participant that a suspicious transaction report has been made. In addition, the access provisions of subsections (c)(3) and (d)(1)–(4) would alert individuals that they have been identified as suspects or possible subjects of investigation and thus seriously hinder the law enforcement purposes underlying the suspicious transaction reports.

(B) This system is in compliance with subsection (e)(1) because maintenance of the records is required by law. Strict application of the relevance and necessity requirements of subsection (e)(1)

to suspicious transactions would be impractical, however, because the relevance or necessity of specific information can often be established only after considerable analysis and as an investigation progresses.

(C) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(4) Pursuant to subsection 552a(k)(5), *Recruiting, Examining, and Placement Records, USPS 100.100; Labor Relations Records, USPS 200.000; Inspection Service Investigative File System, USPS 700.000; and Inspector General Investigative Records, USPS 700.300* are exempt from certain subsections of 5 U.S.C. 552a because the systems contain investigatory material compiled for the purpose of determining suitability, eligibility, or qualifications for employment, contracts, or access to classified information.

(i) *Recruiting, Examining, and Placement Records, USPS 100.100*, is exempt from subsections 552a(d)(1)–(4) and (e)(1) for the following reasons:

(A) During its investigation and evaluation of an applicant for a position, the Postal Service contacts individuals who, without an assurance of anonymity, would refuse to provide information concerning the subject of the investigation. If a record subject were given access pursuant to subsection (d)(1)–(4), the promised confidentiality would be breached and the confidential source would be identified. The result would be restriction of the free flow of information vital to a determination of an individual's qualifications and suitability for appointment to or continued occupancy of his or her position.

(B) In collecting information for investigative and evaluative purposes, it is impossible to determine in advance what information might be of assistance in determining the qualifications and suitability of an individual for appointment. Information that seems irrelevant, when linked with other information, can sometimes provide a composite picture of an individual that assists in determining whether that indi-

vidual should be appointed to or retained in a position. For this reason, exemption from subsection (e)(1) is claimed.

(C) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(ii) *Labor Relations Records, USPS 200.000*, is exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Application of the provisions at subsection (d)(1)–(4) would reveal to the EEO complainant the identity of individuals who supplied information under a promise of anonymity. It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(B) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(iii) *Inspection Service Investigative File System, USPS 700.000; and Inspector General Investigative Records, USPS 700.300*, are exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (b)(2) of this section.

(5) Pursuant to subsection 552a(k)(6), *Employee Development and Training Records, USPS 100.300; Personnel Research Records, 100.600; and Emergency Management Records, USPS 500.300* are exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) because the systems contain testing or examination material the disclosure of which would compromise the objectivity or fairness of the material. The reasons for exemption follow:

(i) These systems contain questions and answers to standard testing materials, the disclosure of which would compromise the fairness of the future

use of these materials. It is not feasible to develop entirely new examinations after each administration as would be necessary if questions or answers were available for inspection and copying. Consequently, exemption from subsection (d) is claimed.

(ii) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

[70 FR 22513, Apr. 29, 2005]

§ 266.10 Computer matching.

(a) *General.* Any agency or Postal Service component that wishes to use records from a Postal Service automated system of records in a computerized comparison with other postal or non-postal records must submit its proposal to the Postal Service Manager Records Office. Computer matching programs as defined in paragraph (c) of § 262.5 must be conducted in accordance with the Privacy Act, implementing guidance issued by the Office of Management and Budget and these regulations. Records may not be exchanged for a matching program until all procedural requirements of the Act and these regulations have been met. Other matching activities must be conducted in accordance with the Privacy Act and with the approval of the Manager, Records Office. See paragraph (b)(6) of § 266.4.

(b) *Procedure for submission of matching proposals.* A proposal must include information required for the matching agreement discussed in paragraph (d)(1) of this section. The Inspection Service must submit its proposals for matching programs and other matching activities to the Postal Service Manager Records Office through: Independent Counsel, Inspection Service, U.S. Postal Service, 475 L'Enfant Plaza SW, Rm 3417, Washington, DC 20260-2181. All other matching proposals, whether from postal organizations or other government agencies, must be mailed directly to: Manager, Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260.

(c) *Lead time.* Proposals must be submitted to the Postal Service Manager Records Office at least 3 months in advance of the anticipated starting date to allow time to meet Privacy Act publication and review requirements.

(d) *Matching agreements.* The participants in a computer matching program must enter into a written agreement specifying the terms under which the matching program is to be conducted. The Manager, Records Office may require similar written agreements for other matching activities.

(1) *Content.* Agreements must specify:

(i) The purpose and legal authority for conducting the matching program;

(ii) The justification for the program and the anticipated results, including, when appropriate, a specific estimate of any savings in terms of expected costs and benefits, in sufficient detail for the Data Integrity Board to make an informed decision;

(iii) A description of the records that are to be matched, including the data elements to be used, the number of records, and the approximate dates of the matching program;

(iv) Procedures for providing notice to individuals who supply information that the information may be subject to verification through computer matching programs;

(v) Procedures for verifying information produced in a matching program and for providing individuals an opportunity to contest the findings in accordance with the requirement that an agency may not take adverse action against an individual as a result of information produced by a matching program until the agency has independently verified the information and provided the individual with due process;

(vi) Procedures for ensuring the administrative, technical, and physical security of the records matched; for the retention and timely destruction of records created by the matching program; and for the use and return or destruction of records used in the program;

(vii) Prohibitions concerning duplication and redisclosure of records exchanged, except where required by law or essential to the conduct of the matching program;

(viii) Assessments of the accuracy of the records to be used in the matching program; and

(ix) A statement that the Comptroller General may have access to all records of the participant agencies in order to monitor compliance with the agreement.

(2) *Approval.* Before the Postal Service may participate in a computer matching program or other computer matching activity that involves both USPS and non-USPS records, the Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement. To be effective, the matching agreement must receive approval by each member of the Board. Votes are collected by the Postal Service Manager Records Office. Agreements are signed on behalf of the Board by the Chairman. If a matching agreement is disapproved by the Board, any party may appeal the disapproval in writing to the Director, Office of Management and Budget, Washington, DC 20503–0001, within 30 days following the Board's written disapproval.

(3) *Effective dates.* No matching agreement is effective until 40 days after the date on which a copy is sent to Congress. The agreement remains in effect only as long as necessary to accomplish the specific matching purpose, but no longer than 18 months, at which time the agreement expires unless extended. The Data Integrity Board may extend an agreement for one additional year, without further review, if within 3 months prior to expiration of the 18-month period it finds that the matching program is to be conducted without change, and each party to the agreement certifies that the program has been conducted in compliance with the matching agreement. Renewal of a continuing matching program that has run for the full 30-month period requires a new agreement that has received Data Integrity Board approval.

[59 FR 37161, July 21, 1994, as amended at 60 FR 57345, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003; 69 FR 34935, June 23, 2004]

PART 267—PROTECTION OF INFORMATION

Sec.

267.1 Purpose and scope.

267.2 Policy.

267.3 Responsibility.

267.4 Information security standards.

267.5 National Security Information.

AUTHORITY: 39 U.S.C. 401; Pub. L. 93–579, 88 Stat. 1896.

§ 267.1 Purpose and scope.

This part addresses the protection of information and records in the custody of the Postal Service throughout all phases of information flow and within all organization components, and includes micromated, manual and data processing information.

[40 FR 45726, Oct. 2, 1975]

§ 267.2 Policy.

Consistent with the responsibility of the Postal Service to make its official records available to the public to the maximum extent required by the public interest, and to ensure the security, confidentiality, and integrity of official records containing sensitive or national security information, it is the policy of the Postal Service to maintain definitive and uniform information security safeguards. These safeguards will have as their purpose: (a) Ensuring the effective operation of the Postal Service through appropriate controls over critical information, and (b) Protecting personal privacy, the public interest, and the national security by limiting unauthorized access to both restricted and national security information.

[44 FR 51224, Aug. 31, 1979]

§ 267.3 Responsibility.

(a) *Chief Postal Inspector and Chief Privacy Officer.* The Chief Postal Inspector and the Chief Privacy Officer will ensure within their respective areas of jurisdiction:

(1) Postal Service-wide compliance with this policy and related standards and procedures; and

(2) Implementation of remedial action when violations or attempted violations of these standards and procedures occur.

United States Postal Service

§ 267.5

(b) *Custodians.* All custodians are responsible for insuring that information security standards and procedures are followed and that all relevant employees participate in the information security awareness programs.

[40 FR 45726, Oct. 2, 1975, as amended at 60 FR 57345, Nov. 15, 1995; 68 FR 56560, Oct. 1, 2003]

§ 267.4 Information security standards.

(a) The Postal Service will operate under a uniform set of information security standards which address the following functional aspects of information flow and management:

- (1) Information system development,
- (2) Information collection,
- (3) Information handling and processing,
- (4) Information dissemination and disclosure,
- (5) Information storage and destruction.

(b) Supplementing this list are information security standards pertaining to the following administrative areas:

- (1) Personnel selection and training,
- (2) Physical environment protection,
- (3) Contingency planning,
- (4) Information processing or storage system procurement,
- (5) Contractual relationships.

[40 FR 45726, Oct. 2, 1975; 40 FR 48512, Oct. 16, 1975]

§ 267.5 National Security Information.

(a) *Purpose and scope.* The purpose of this section is to provide regulations implementing Executive Order 12356 National Security Information (hereinafter referred to as the Executive Order) which deals with the protection, handling and classification of national security information.

(b) *Definitions.* (1) In this section, *National Security Information* means information on the national defense and foreign relations of the United States that has been determined under the Executive Order or prior Orders to require protection against unauthorized disclosure and has been so designated.

(2) *Derivative Classification* means the carrying forward of a classification from one document to a newly created document that contains national security information which is in substance

the same as information that is currently classified.

(3) *In the Custody of the Postal Service* means any national security information transmitted to and held by the U.S. Postal Service for the information and use of postal officials. (This does not include any national security information in the U.S. Mails.)

(c) *Responsibility and authority.* (1) The Manager, Payroll Accounting and Records, serves as the USPS National Security Information Oversight Officer. This officer shall:

(i) Conduct an active oversight program to ensure that the appropriate provisions of these regulations are complied with;

(ii) Chair a committee composed of the Manager, Payroll Accounting and Records; the Chief Postal Inspector (USPS Security Officer); the General Counsel; the Executive Assistant to the Postmaster General; and the Director, Operating Policies Office; or their designees, with authority to act on all suggestions and complaints concerning compliance by the Postal Service with the regulations in this part;

(iii) Ensure that appropriate and prompt corrective action is taken whenever a postal employee knowingly, willfully and without authorization:

(A) Discloses national security information properly classified under the Executive order, or prior orders,

(B) Compromises properly classified information through negligence, or

(C) Violates any provisions of these regulations or procedures;

(iv) Establish, staff, and direct activities for controlling documents containing national security information at USPS Headquarters and to provide functional direction to the field.

(v) In conjunction with the USPS Security Officer, prepare and issue instructions for the control, protection, and derivative classification of national security information in the custody of, and use by, the Postal Service. These instructions shall include requirements that:

(A) A demonstrable need for access to national security information is established before requesting the initiation of administrative clearance procedures;

(B) Ensure that the number of people granted access to national security information is reduced to and maintained at the minimum number consistent with operational requirements and needs;

(vi) Establish, staff and direct activities for controlling documents containing national security information at USPS Headquarters and provide functional direction to each Regional Records Control Officer;

(vii) As part of the overall program implementation, develop a training program to familiarize appropriate postal employees of the requirements for control, protection and classification; and

(viii) Report to the USPS Security Officer any incidents of possible loss or compromise of national security information.

(2) The USPS Security Officer (the Chief Postal Inspector) shall:

(i) Provide technical guidance to the Manager, Payroll Accounting and Records in implementing the national security information program;

(ii) Conduct investigations into reported program violations or loss or possible compromise of national security information and report any actual loss or compromise to the originating agency;

(iii) Periodically conduct an audit of the USPS national security information program;

(iv) Process requests for sensitive clearances; conduct the appropriate investigations and grant or deny a sensitive clearance to postal employees having an official “need to know” national security information; and

(v) Report to the Attorney General any evidence of possible violations of federal criminal law by a USPS employee and of possible violations by any other person of those federal criminal laws.

(3) All postal employees who have access to national security information shall:

(i) Sign a nondisclosure agreement;

(ii) Be familiar with and follow all Program regulations and instructions;

(iii) Actively protect and be accountable for all national security information entrusted to their care;

(iv) Disclose national security information only to another individual who is authorized access;

(v) Immediately report to the Manager, Payroll Accounting and Records and the USPS Security Officer any suspected or actual loss or compromise of national security information; and

(vi) Be subject to administrative sanctions should requirements (ii) through (v) not be followed.

(d) *Derivative classification.* When applying derivative classifications to documents created by the Postal Service, the Postal Service shall:

(1) Respect original classification decisions;

(2) Verify the information’s current level of classification so far as practicable before applying the markings; and

(3) Carry forward to any newly created documents the assigned dates or events for declassification or review and any additional authorized markings in accordance with section 2 of the Executive order.

(e) *General provisions*—(1) *Dissemination.* National security information received by the U.S. Postal Service shall not be further disseminated to any other agency without the consent of the originating agency.

(2) *Disposal.* Classified documents no longer needed by the Postal Service shall be either properly destroyed or returned to the originating agency.

(3) Freedom of Information Act or mandatory review requests.

(i) Requests for classified documents made under the Freedom of Information Act (FOIA) and mandatory review requests (requests under Section 3–501 of the Executive Order for the declassification and release of information), including requests by the news media, should be submitted to: Manager, Records Office, U.S. Postal Service, 475 L’Enfant Plaza, SW., Washington, DC 20260.

(ii) In response to an FOIA request or a mandatory review request, the Postal Service shall not refuse to confirm the existence or non-existence of a document, unless the fact of its existence or non-existence would itself be classifiable.

(iii) The Postal Service shall forward all FOIA and mandatory review requests for national security information in its custody (including that within records derivatively classified by the USPS) to the originating agency for review unless the agency objects on the grounds that its association with the information requires protection. The requester shall be notified that:

(A) The request was referred; and

(B) The originating agency will provide a direct response.

(4) *Research requests.* Requests from historical researchers for access to national security information shall be referred to the originating agency.

(39 U.S.C. 401 (2), (10), 404(a)(7))

[44 FR 51224, Aug. 31, 1979, as amended at 45 FR 30069, May 7, 1980; 49 FR 22476, May 30, 1984; 60 FR 57345, 57346, Nov. 15, 1995; 64 FR 41291, July 30, 1999; 68 FR 56560, Oct. 1, 2003]

PART 268—PRIVACY OF INFORMATION—EMPLOYEE RULES OF CONDUCT

Sec.

268.1 General principles.

268.2 Consequences of non-compliance.

AUTHORITY: 39 U.S.C. 401; 5 U.S.C. 552a.

§ 268.1 General principles.

In order to conduct its business, the Postal Service has the need to collect various types of personally identifiable information about its customers, employees and other individuals. Information of this nature has been entrusted to the Postal Service, and employees handling it have a legal and ethical obligation to hold it in confidence and to actively protect it from uses other than those compatible with the purpose for which the information was collected. This obligation is legally imposed by the Privacy Act of 1974, which places specific requirements upon all Federal agencies, including the Postal Service, and their employees. In implementation of these requirements, the following rules of conduct apply:

(a) Except as specifically authorized in § 266.4(b)(2) of this chapter, no employee shall disclose, directly or indirectly, the contents of any record about another individual to any person or organization. Managers are to pro-

vide guidance in this regard to all employees who must handle such information.

(b) *No employee will maintain a secret system of records about individuals.* All records systems containing personally identifiable information about individuals must be reported to the Manager, Records Office.

(c) All employees shall adhere strictly to the procedures established by the U.S. Postal Service to ensure the confidentiality and integrity of information about individuals that is collected, maintained and used for official Postal Service business. Employees shall be held responsible for any violation of these procedures.

[45 FR 44273, July 1, 1980, as amended at 60 FR 57346, Nov. 15, 1995; 68 FR 56560, Oct. 1, 2003]

§ 268.2 Consequences of non-compliance.

(a) The Privacy Act authorizes any individual, whether or not an employee, to bring a civil action in U.S. District Court to obtain judicial review of the failure of the Postal Service to comply with the requirements of the Act or its implementing regulations. In certain instances of willful or intentional non-compliance, the plaintiff may recover damages from the Postal Service in the minimum amount of \$1,000 together with costs of the action and attorney fees.

(b) The Act provides criminal sanctions for individuals, including employees, who violate certain of its provisions.

(1) Any officer or employee who, by virtue of his employment or position, has possession of, or access to, official records which contain individually identifiable information and who, knowing that disclosure of the specific material is prohibited by Postal Service regulations, willfully discloses the material to a person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

(2) Any officer or employee who willfully maintains a system of records

without meeting the notice requirements set forth in Postal Service regulations shall be guilty of a misdemeanor and fined not more than \$5,000.

(3) Any person who knowingly and willfully requests or obtains any record concerning another individual from the Postal Service under false pretense shall be guilty of a misdemeanor and fined not more than \$5,000.

(c) In addition to the criminal sanctions, any employee violating any provisions of these rules of conduct is subject to disciplinary action which may result in dismissal from the Postal Service.

[40 FR 45726, Oct. 2, 1975]

PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT

Sec.

273.1 Purpose.

273.2 Definitions.

273.3 Liability for false claims and statements.

273.4 Non-exclusivity of penalty authority.

273.5 Investigations of alleged violations.

273.6 Evaluation by reviewing official.

273.7 Concurrence of Attorney General.

273.8 Issuance of complaint.

273.9 Collection of civil penalties or assessments.

273.10 Reports.

AUTHORITY: 31 U.S.C. Chapter 38; 39 U.S.C. 401.

SOURCE: 52 FR 12901, Apr. 20, 1987, unless otherwise noted.

§ 273.1 Purpose.

This part establishes procedures for imposing civil penalties and assessments under the Program Fraud Civil Remedies Act of 1986 (codified at 31 U.S.C. 3801-3812) against any person who makes, submits, or presents, or causes to be made, submitted, or presented, a false fictitious, or fraudulent claim or written statement to the Postal Service. Procedures governing the hearing and appeal rights of any person alleged to be liable for such penalties and assessments are set forth in part 962 of this title.

§ 273.2 Definitions.

(a) *Claim* means any request, demand, or submission:

(1) Made to the Postal Service for property, services, or money (including money representing grants, loans, insurance, or benefits); or

(2) Made to a recipient of property, services, or money from the Postal Service or to a party to a contract with the Postal Service:

(i) For property or services if the United States:

(A) Provided such property or services;

(B) Provided any portion of the funds for the purchase of such property or services; or

(C) Will reimburse such recipient or party for the purchase of such property or services; or

(ii) For the payment of money (including money representing grants, loans, insurance or benefits) if the United States:

(A) Provided any portion of the money requested or demanded; or

(B) Will reimburse such recipient or party for any portion of the money paid on such request or demand; or

(3) Made to the Postal Service which has the effect of decreasing an obligation to pay or account for property, services, or money.

(b) *Complaint* refers to the administrative Complaint served by the Reviewing Official on a Respondent pursuant to § 273.8.

(c) *Investigating Official* refers to the Inspector General of the Postal Service or any designee within the United States Office of the Inspector General who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-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:

United States Postal Service

§ 273.3

(1) Has actual knowledge that the claim or statement is false, fictitious, or fraudulent;

(2) Acts in deliberate ignorance of the truth or falsity of the claim or statement; or

(3) Acts in reckless disregard of the truth or falsity of the claim or statement.

(f) *Person* refers to any individual, partnership, corporation, association, or private organization.

(g) *Postmaster General* refers to the Postmaster General of the United States or his designee.

(h) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing authorized by 31 U.S.C. 3803 in accordance with Part 962 of this title.

(i) *Respondent* refers to any person alleged to be liable for civil penalty or assessment under 31 U.S.C. 3802.

(j) *Reviewing Official* refers to the General Counsel of the Postal Service or any designee within the Law Department who serves in a position for which the rate of basic pay is not less than the minimum rate of basic pay for grade GS-16 under the General Schedule.

(k) *Statement* means any representation, certification, affirmation, document, record, or accounting or book-keeping entry made:

(1) With respect to a claim or to obtain the approval or payment of a claim (including relating to eligibility to make a claim); or

(2) With respect to (including relating to eligibility for)—

(i) A contract with, or a bid or proposal for a contract with; or

(ii) A grant, loan, or benefit from, the Postal Service, or any State, political subdivision of a State, or other party, if the United States Government provides any portion of the money or property under such contract or for such grant, loan, or benefit, or if the Government will reimburse such State, political subdivision, or party for any portion of the money or property under such contract or for such grant, loan or benefit.

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991; 67 FR 16024, Apr. 4, 2002; 72 FR 39012, July 17, 2007]

§ 273.3 Liability for false claims and statements.

Section 3802 of title 31, United States Code, provides for liability as follows:

(a) *Claims.* (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a claim that the person knows or has reason to know—

(i) Is false, fictitious, or fraudulent; or

(ii) Includes or is supported by any written statement asserting a material fact which is false, fictitious, or fraudulent; or

(iii) Includes or is supported by any written statement that—

(A) Omits a material fact;

(B) Is false, fictitious, or fraudulent as a result of such omission; and

(C) Is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact; or

(iv) Is for payment for the provision of property or services which the person has not provided as claimed

Shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,500 for each such claim.

(2) Each voucher, invoice, claim form, or other individual request or demand for property, services, or money constitutes a separate claim.

(3) A claim shall be considered made, presented, or submitted to the Postal Service, recipient, or party when such claim is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service, recipient, or party.

(4) Each claim for property, services, or money is subject to the civil penalty referred to in paragraph (a)(1) of this section regardless of whether such property, service, or money is actually delivered or paid.

(5) If the Government has made payment on a claim, a person subject to the civil penalty referred to in paragraph (a)(1) of this section shall also be subject to an assessment of not more than twice the amount of such claim or twice the amount of that portion thereof that is determined to be in violation of paragraph (a)(1) of this section. This assessment shall be in lieu of

§ 273.4

damages sustained by the United States because of such claim.

(b) Statements. (1) Any person who makes, presents, or submits, or causes to be made, presented, or submitted, a written statement that—

(i) The person knows or has reason to know—

(A) Asserts a material fact which is false, fictitious, or fraudulent; or

(B) Is false, fictitious, or fraudulent because it omits a material fact that the person making, presenting or submitting such statement had a duty to include in such statement; and

(ii) Contains or is accompanied by an express certification or affirmation of the truthfulness and accuracy of the contents of the statement.

Shall be subject to, in addition to any other remedy that may be prescribed by law, a civil penalty of not more than \$5,500 for each such statement.

(2) Each written representation, certification, or affirmation constitutes a separate statement.

(3) A statement shall be considered made, presented, or submitted to the Postal Service when such statement is actually made to an agent, fiscal intermediary, or other entity, including any State or political subdivision thereof, acting for or on behalf of the Postal Service.

(c) In any case in which it is determined that more than one person is liable for making a claim or statement under this section, the civil penalty referred to in paragraph (a)(1) of this section may be imposed on each such person without regard to the amount of any penalties collected or demanded from others.

(d) In any case in which it is determined that more than one person is liable for making a claim under this section on which the Government has made payment, an assessment may be imposed against any such person or jointly and severally against any combination of such persons. The aggregate amount of the assessments collected with respect to such claim shall not exceed twice the portion of such claim determined to be in violation of paragraph (a)(1) of this section.

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991; 61 FR 55750, Oct. 29, 1996]

39 CFR Ch. I (7–1–16 Edition)

§ 273.4 Non-exclusivity of penalty authority.

(a) A determination by the Reviewing Official that there is adequate evidence to believe that a person is liable under 31 U.S.C 3802, or a final determination that a person is liable under such statute, may provide the Postal Service with grounds for commencing any administrative or contractual action against such person which is authorized by law and which is in addition to any action against such person under chapter 38 of title 31, United States Code.

(b) In the case of an administrative or contractual action to suspend or debar any person from eligibility to enter into contracts with the Postal Service, a determination referred to in paragraph (a) of this section shall not be considered as a conclusive determination of such person's responsibility pursuant to Postal Service procurement regulations.

§ 273.5 Investigations of alleged violations.

(a) Investigations of allegations of liability under 31 U.S.C. 3802 shall be conducted by the Investigating Official.

(b)(1) For purposes of an investigation under this part, the Investigating Official may issue a subpoena requiring the production of all information, documents, reports, answers, records, accounts, papers, and data not otherwise reasonably available to the Postal Service. Any subpoena issued by the Investigating Official under this authority shall cite 31 U.S.C. 3804(a) as the authority under which it is issued, shall be signed by the Investigating Official, and shall command each person to whom it is directed to produce the specified documentary material at a prescribed time and place.

(2) In the case of contumacy or refusal to obey a subpoena issued pursuant to paragraph (b)(1) of this section, the district courts of the United States have jurisdiction to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt. In any case in which the Postal Service seeks the enforcement of a subpoena under this section,

United States Postal Service

§ 273.7

the Postal Service shall request the Attorney General to petition the district court for the district in which the person receiving the subpoena resides or conducts business to issue such an order.

(c) Upon completing an investigation under this part, the Investigating Official shall submit to the Reviewing Official a report containing the findings and conclusions of his investigation, including:

(1) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(2) A description of any evidence which supports allegations of liability under 31 U.S.C. 3802, or where applicable, a description of any evidence that tends to support a conclusion that such statute has not been violated;

(3) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(4) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(5) A statement of the amount of penalties and assessments that, considering the information described in paragraphs (c) (3) and (4) of this section, the Investigating Official recommends be demanded from the person alleged to be liable; and

(6) An estimate of the prospects of collecting the amount specified in paragraph (c)(5) of this section, and any reasons supporting such estimate.

(d) Nothing in these regulations modifies any responsibility of the Investigating Official to report violations of criminal law to the Attorney General

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991]

§ 273.6 Evaluation by reviewing official.

(a) Based upon the investigatory report prepared by the Investigating Official, the Reviewing Official shall determine whether there is adequate evidence to believe that a person is liable under 31 U.S.C. 3802, and, if so, whether prosecution would likely result in the imposition and collection of civil penalties and applicable assessments.

(b) If the Reviewing Official determines that a case has merit and should be referred to the Judicial Officer for assignment to a Presiding Officer, he must first transmit to the Attorney General a written notice containing the following information:

(1) A statement setting forth the Reviewing Official's reasons for proposing to refer the case to a Presiding Officer;

(2) A description of the claims or statements for which liability under 31 U.S.C. 3802 is alleged;

(3) A statement specifying the evidence that supports the allegations of liability;

(4) An estimate of the amount of money or the value of property or services allegedly requested or demanded in violation of 31 U.S.C. 3802;

(5) A statement of any exculpatory or mitigating circumstances which may relate to the claims or statements under investigation;

(6) A statement of the amount of penalties and assessments that, considering the factors listed in paragraphs (b)(4) and (5) of this section, the Reviewing Official recommends be demanded from the person alleged to be liable; and

(7) A statement that, in the opinion of the Reviewing Official, there is a reasonable prospect of collecting the amount specified in paragraph (b)(6) of this section and the reasons supporting such statement.

(c) No allegations of liability under 31 U.S.C. 3802 with respect to any claim made, presented, or submitted by any person shall be referred to the Judicial Officer if the Reviewing Official determines that (1) an amount of money in excess of \$150,000; or (2) property or service with a value in excess of \$150,000 is requested or demanded in violation of section 3802 in such claim or in a group of related claims which are submitted at the time such claim is submitted.

§ 273.7 Concurrence of Attorney General.

(a) The Attorney General is required by 31 U.S.C. 3803(b) to respond to the Reviewing Official's written notice described in § 273.6 within 90 days. The Reviewing Official may refer allegations of liability to the Judicial Officer

§ 273.8

39 CFR Ch. I (7–1–16 Edition)

only if the Attorney General or his designee approves such action in a written statement which specifies:

(1) That the Attorney General or his designee approves the referral to the Judicial Officer of the allegations of liability set forth in the notice described in § 273.6; and

(2) That the initiation of a proceeding under the Program Fraud Civil Remedies Act is appropriate.

(b) If at any time after the Attorney General approves the referral of a case to the Judicial Officer, the Attorney General or his designee transmits to the Postmaster General a written finding that the continuation of any proceeding under the Program Fraud Civil Remedies Act with respect to a claim or statement may adversely affect any pending or potential criminal or civil action related to such claim or statement, such proceeding shall be immediately stayed and may be resumed only upon written authorization of the Attorney General.

§ 273.8 Issuance of complaint.

(a) If the Attorney General or his designee approves the referral of allegations of liability to the Judicial Officer, the Reviewing Official shall serve on the Respondent, pursuant to paragraph (b) of this section, a Complaint, which:

(1) Specifies the allegations of liability against the Respondent, including the statutory basis for liability;

(2) Identifies the claims or statements that are the basis for the alleged liability, and the reasons why liability allegedly arises from such claims or statements;

(3) Specifies the amount of penalties or assessments the Postal Service seeks to impose;

(4) Informs the Respondent of his right to request an oral hearing before, or a decision on the record by, a Presiding Officer concerning the allegations of liability and the amount of proposed penalties or assessments;

(5) Informs the Respondent of how to request a hearing described in paragraph (a)(4) of this section;

(6) Includes a copy of the procedures which govern hearings under the Program Fraud Civil Remedies Act, and

which are set forth in part 962 of this title; and

(7) Notifies the Respondent that his or her failure to request a hearing on the issues raised by the Complaint within 30 days of its receipt may result in the imposition of the proposed penalty and assessments pursuant to §§ 962.4(a) and 962.15(d) of this title.

(b) Service of a Complaint issued under paragraph (a) of this section must be effected by registered or certified mail, return-receipt requested, or by personal delivery. In the case of personal service, the person making service shall, if possible, secure from the person sought to be served, or his or her agent, a written acknowledgment of receipt, showing the date and time of such receipt. If the person upon whom service is made declines to acknowledge receipt, the person effecting service shall execute a statement, indicating the time, place and manner of service, which shall constitute evidence of service.

[52 FR 12901, Apr. 20, 1987, as amended at 56 FR 55825, Oct. 30, 1991]

§ 273.9 Collection of civil penalties or assessments.

(a) Any penalty or assessment imposed under the Program Fraud Civil Remedies Act may be recovered in a civil action brought by the Attorney General. In any such action, no matter that was raised or that could have been raised in a hearing conducted under part 962 of this title or pursuant to judicial review under 31 U.S.C. 3805 may be raised as a defense and the determination of liability and the determination of amounts of penalties and assessments shall not be subject to review. A civil action to recover a penalty or assessment shall be commenced within three years after the date on which the determination of liability for such penalty or assessment becomes final.

(b) The amount of any penalty or assessment which has become final may be collected by administrative offset in accordance with 31 U.S.C 3716, 3807.

(c) Any penalty or assessment imposed by the Postal Service under this part shall be deposited in the Postal Service Fund established by section 2003 of title 39.

United States Postal Service

§ 281.4

§ 273.10 Reports.

(a) Not later than October 31 of each year, the Postmaster General shall prepare and transmit to the appropriate committees and subcommittees of the Congress an annual report summarizing actions taken under the Program Fraud Civil Remedies Act during the most recent 12-month period ending the previous September 30.

(b) The report referred to in paragraph (a) of this section shall include the following information for the period covered by the report:

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

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

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

(4) A summary of the actions taken during the reporting period to collect any civil penalty or assessment imposed under the Program Fraud Civil Remedies Act.

Damage to or Destruction of Firm Mailings

PART 281—FIRM MAILINGS DAMAGED OR DESTROYED THROUGH TRANSPORTATION ACCIDENTS OR CATASTROPHES

Sec.

281.1 Notification of firm mailers.

281.2 Action required by processing postal officials.

281.3 Postal inspector responsibilities.

281.4 Disclaimer.

AUTHORITY: 39 U.S.C. 401, 403, and 404.

§ 281.1 Notification of firm mailers.

Whenever bulk firm mail shipments are involved in transportation accidents or catastrophes, such as train or highway accidents, fire, flood, etc., it

will be the responsibility of the sectional center director of customer services at the office of mailing to give known mailers timely notification of the incident and its effect on their mail shipment(s).

[39 FR 20974, June 17, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

§ 281.2 Action required by processing postal officials.

Postal officials processing salvable mail recovered from the scene of an accident or catastrophe are responsible for giving timely notification of the incident to the sectional center director of customer services at the office of mailing. The notification should include, but not be limited to:

(a) The determinable names of the major mailers involved;

(b) The nature and extent of damage or destruction;

(c) Anticipated delivery delay; and

(d) If known, the shipment delivery destination(s).

[39 FR 20974, June 17, 1974, as amended at 40 FR 2179, Jan. 10, 1975]

§ 281.3 Postal inspector responsibilities.

The postal inspector investigating the incident should assure that the processing postal officials are fulfilling their notification responsibilities on a timely basis. Should the situation arise where no postal officials are involved in processing affected mail, then the investigating postal inspector will take necessary action to insure that appropriate notification is made.

[39 FR 20974, June 17, 1974]

§ 281.4 Disclaimer.

The Postal Service will not be liable in damages for any loss occasioned by any failure to notify firm mailers in accordance with this part of damage to or destruction of firm mailings.

[39 FR 20974, June 17, 1974]