

the facts demonstrate that the agreement amount would not have increased even if the available data had been submitted before the date of agreement on cost; or

(4) In the event of an overpayment, the carrier shall be liable to and shall pay the United States at that time such overpayment as was made, with simple interest on the amount of such overpayment to be computed from the date(s) of overpayment to the carrier to the date the Government is repaid by the carrier at the applicable underpayment rate effective for each quarter prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2).

§ 100.20 Accounting for unallowable costs.

To ensure that the Government does not reimburse carriers for unallowable costs, the following provisions are included:

(a) Costs that are expressly unallowable or mutually agreed to be unallowable, including mutually agreed to be unallowable directly associated costs, shall be identified and excluded from any billing, claim, or proposal applicable to reimbursement under CALEA. When an unallowable cost is incurred, its directly associated costs are also unallowable.

(b) The detail and depth of records required as backup support for cost estimates, billings, or claims shall be those which are adequate to establish and maintain visibility of identified unallowable costs, including their directly associated costs. Unallowable costs involved in determining rates used for standard costs, or for allocable cost proposals or billing, need be identified only at the time rates are proposed, established, revised, or adjusted. These requirements may be satisfied by any form of cost identification which is adequate for purposes of cost determination and verification.

§ 100.21 Confidentiality of trade secrets/ proprietary information.

With respect to any information provided to the FBI under this part that is identified as company proprietary information, it shall be treated as privileged and confidential. It shall not be disclosed outside the government for any reason inclusive of Freedom of Information requests, without the prior written approval of the company. Information provided will be used exclusively for the implementation of CALEA. This restriction does not limit the government's right to use the information provided if obtained from any other source without limitation.

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POSTAL SERVICE

39 CFR Part 233

Addition of Commercial Espionage to Mail Cover Regulations

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule will amend the United States Postal Service's mail cover regulations to add commercial espionage by foreign sources as a criminal activity for which national security mail covers may be authorized. This change is effected by expanding the definition of "protection of the national security" found at 39 CFR 233.3(c)(9) to include commercial espionage.

DATES: Comments must be received on or before June 10, 1996.

ADDRESSES: Written comments should be mailed or delivered to Counsel, Postal Inspection Service, 475 L'Enfant Plaza SW, Room 3411, Washington, DC 20260-2181.

FOR FURTHER INFORMATION CONTACT: Henry J. Bauman, Counsel, Postal Inspection Service, (202) 268-4415.

SUPPLEMENTARY INFORMATION: Postal Service regulations on mail covers are published in Title 39 of the Code of Federal Regulations (CFR) at § 233. Paragraph (c)(9) of § 233.3 currently defines "protection of the national security" as "actual or potential threats to the security of the United States of America by a foreign power or its agents." This definition will be expanded to include commercial espionage.

Commercial espionage by foreign sources has become an increasing threat to the economic well-being and ability of the United States to compete in the international market. For the purposes of this proposed revision, "commercial espionage" is defined as either "economic espionage" or "industrial espionage." According to the Federal Bureau of Investigation (FBI) white paper, FBI Strategy to Address the Problem of Economic Espionage and Industrial Espionage (Washington, DC: FBI Headquarters, undated), "economic espionage" is "government-directed, sponsored, or coordinated intelligence activity, which may or may not constitute violation of the law, conducted for the purpose of enhancing that country's or another country's economic competitiveness by the use of the information by the foreign government or by providing it to a foreign business entity thereby giving that entity a competitive advantage in the marketplace." "Industrial

espionage" is defined by the FBI as "individual or private business entity sponsorship or coordination of intelligence activity conducted for the purpose of enhancing a private business and its competitive advantage in the marketplace, which is a violation of law."

Revising the Postal Service's national security mail cover regulations to include commercial espionage will enhance the ability of law enforcement to protect national security.

List of Subjects in 39 CFR Part 233

Administrative practice and procedures, Banks and banking, Credit, Crime, Law Enforcement, Postal Service, Privacy, Seizure and forfeiture.

Accordingly, 39 CFR 233 is proposed to be amended as set forth below.

PART 233—INSPECTION SERVICE/ INSPECTOR GENERAL AUTHORITY

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401-3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95-452, as amended), 5 U.S.C. App.3.

2. Paragraph (c)(9) of § 233.3 is revised to read as follows:

§ 233.3 Mail covers.

* * * * *

(c) * * *

(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.

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Stanley F. Mires,

Chief Counsel, Legislative.

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