

§ 254.8 May I appeal decisions under this part?

See 30 CFR part 290 for instructions on how to appeal any order or decision that we issue under this part.

PART 282—OPERATIONS IN THE OUTER CONTINENTAL SHELF FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR

5. The authority citation for part 282 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

§ 282.50 [Amended]

6. Section 282.50 is revised to read as follows:

§ 282.50 Appeals.

See 30 CFR part 290 for instructions on how to appeal any order or decision that we issue under this part.

Dated: January 11, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.
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POSTAL SERVICE**39 CFR Part 265****Release of Information**

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Postal Service regulations that govern the disclosure of information contained in PS Form 1093, Application for Post Office Box or Caller Service, and PS Form 1583, Application for Delivery of Mail Through Agent. The recorded business name, address, and telephone number of a post office box used for doing or soliciting business with the public will no longer be provided to the general public upon request. Disclosure to the public of information contained in Form 1583 will continue to be prohibited. In addition, information from both Forms 1093 and 1583 will no longer be made available in response to an oral request from a law enforcement agency engaged in a criminal investigation. Disclosure of information from either form also will be prohibited, except pursuant to the order of a court of competent jurisdiction, when the individual customer has presented the Postal Service with an appropriate court order of protection.

EFFECTIVE DATE: February 24, 2000.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION: This final rule adopts the change to the regulation governing disclosure of names and addresses of post office boxholders that was published as a proposed rule on August 26, 1999 (64 FR 46630). This change repeals the provision that authorized disclosure to the general public, upon request, of the name, address, and telephone number of the holder of a post office box being used for the purpose of doing or soliciting business with the public. The purpose of the change is to provide a greater degree of privacy and security to the growing number of small-business owners who operate out of the home. The background for this rulemaking was provided in the August 26 notice and will not be repeated here.

After consideration of the comments made on the August 26 proposal, which are discussed below, the Postal Service has decided to adopt as part of this final rule two additional changes to the regulations governing disclosure of information about post office boxholders and the customers of commercial mail receiving agencies (CMRAs). In response to concerns for the safety of battered individuals and their children, stalking victims, and other persons who consider themselves at risk of harm if their physical location is not kept private, the Postal Service will further restrict disclosure of the names and addresses of post office boxholders and CMRA customers in the following ways.

First, the existing provision that authorizes disclosure in response to oral requests of law enforcement agencies for criminal investigations, when made through the Inspection Service, is made inapplicable to information concerning post office boxholders and CMRA customers.

Second, when the individual boxholder has presented to the Postal Service a protective court order, information from neither Form 1093 nor Form 1583 will be made available under the existing provision that authorizes disclosure to federal, state, or local government agencies upon written request. In such a case, the government agency seeking the information must furnish to the Postal Service an order of a court of competent jurisdiction that requires disclosure to the agency. The Postal Service has already reserved the right to withhold information about a particular individual's address, including a boxholder's address, for sufficient reasons of personal safety, and has provided for the submission of protective court orders to block access of the general public in such situations. The present rule change respecting post

office boxholders and CMRA customers will block access not just of the public but also of government agencies, including law enforcement agencies, when there is a protective order on file, unless the agency obtains a countervailing court order that requires the Postal Service to release the information.

As revised by this rule, the regulations that govern the disclosure of information contained in Form 1093 and 1583 may be summarized as follows. Information provided by a post office boxholder on Form 1093 will not generally be available to the public. It will be disclosed only to a government agency upon written certification of official need; to an appropriate person when needed for the service of process; and in compliance with a subpoena, when appropriate, or a court order. When the boxholder is an individual, as opposed to a business or organization, a subpoena will not be honored—a court order signed by a judge will be required. In addition, copies of the 1093 will not be disclosed except when requested by a government agency upon written certification of official need or in compliance with a subpoena or court order. When the boxholder has submitted a court order of protection, the Postal Service will not disclose the boxholder's name, address, or telephone number pursuant to any of the foregoing provisions, nor make available a copy of the form, unless the requester has obtained an order of a court of competent jurisdiction that requires the disclosure notwithstanding the existence of the boxholder's protective order.

Information provided by a CMRA customer on Form 1583 will not be available to the public. It will be disclosed only to a government agency upon written certification of official need or pursuant to a subpoena (only if the CMRA customer is not an individual) or to a court order. When the customer has submitted a court order of protection, however, the Postal Service will not disclose the customer's name or address pursuant to these provisions, unless the requester obtains a court order as provided in the foregoing paragraph.

Analysis of Comments Received

A total of 318 written comments were received in response to the August 26 proposed rule. Nineteen of these were from state agencies, four were from members of Congress, two were from public-interest organizations, and the bulk of the remainder were from CMRA customers and operators. Only one commenter objected to the proposal to

repeal the provision that authorizes disclosure of information concerning a post office boxholder who uses the box to do or solicit business with the public. This comment came from an asset recovery firm that routinely relies on the provision to arrange for the return of assets to boxholders.

Twenty-five commenters stated their unqualified approval of the proposal. Nineteen others limited their comments to approval of the existing regulations as they authorize disclosure to government agencies. These latter comments were provided by the Attorneys General for 18 states and one state agency for workforce development. The comments of the states' Attorneys General stressed the need of state law enforcement agencies (and those state agencies that work with them) for the information in connection with the investigation and prosecution of fraud, including consumer and charities fraud. They stated that it is "critical" that these investigatory agencies have access to the 1583s.

Twenty-four comments were limited to objections to the underlying CMRA regulations and so are not within the scope of the present rulemaking. While most of the remaining 80 percent of the commenters stated approval of the repeal of the provision allowing disclosure of information about post office boxholders doing business with the public, none discussed that provision; instead, they focused their attention on objections to various provisions relating to CMRA customers. Overall, these latter comments revealed widespread misinformation about the existing regulations and the limited nature of the current proposal. Only a few of those providing negative comments appeared to understand that no new disclosure was proposed in the August 26 notice. A number of comments revealed a fundamental misunderstanding of this rulemaking by complaining that the new rule would allow the release of private boxholder information when the box is being used to conduct business with the public. The Postal Service withdrew its proposal to make such a provision applicable to CMRA customers in the August 26 notice, and, in the same notice, proposed to eliminate the existing parallel provision respecting post office boxholders.

A national nonprofit organization interested in the prevention of domestic violence objected to the release of information from the Form 1583 to government agencies, including law enforcement agencies, without a warrant. The organization stated that it is "imperative" that no one obtain the

address of a battered women's shelter without a warrant. The commenter expressed concern that disclosure to law enforcement would increase the possibility of unwitting release to the public, to a person impersonating a law enforcement officer, or to a law enforcement officer engaging in misconduct. Several other individual commenters objected to release of information in response to oral law enforcement requests made through the Inspection Service, because they thought that this would produce no "paper trail" and thus encourage abuse.

The national organization also objected to disclosure to government agencies in general as an expansion of the categories of persons having access to the information. This latter comment suggests a misunderstanding of what the current regulation permits. Postal regulations have authorized the disclosure of information from Form 1583 to government agencies, including law enforcement, in appropriate circumstances for as long as the Postal Service has used the form. This is not something newly proposed in one of the recent notices of proposed rules. While the Postal Service is unaware of any instance in which disclosure of this information to a government agency or law enforcement officer has resulted in harm to a boxholder or other individual, it is nonetheless sympathetic to the concern expressed in these comments. Because of the potential for abuse, it has decided to eliminate the longstanding rule that authorizes disclosure in response to oral requests of law enforcement agencies when conducting criminal investigations. The Postal Service is not, however, persuaded of the necessity to require government agencies to obtain a warrant as a precondition to access in all cases. This would place an undue burden on an agency's performance of legitimate law enforcement or other governmental functions. In the absence of any history of abuse of the provision, the Postal Service believes that the requirement that the requester certify in writing on agency letterhead that the information is required for the performance of official duties provides a reasonable amount of protection against unwarranted invasions of the privacy of most boxholders. For those boxholders who are in particular risk of danger if located, the Postal Service believes that it is not an unreasonable burden for them to obtain an appropriate protective order to be placed on file with the 1093 or the 1583, thus requiring the requesting agency to first obtain a court order.

This commenter also urged the need for security measures to govern the maintenance of Forms 1583 at the local post office and the need for a method by which a victim of abuse could confirm with local postal officials whether the information had been released. The Postal Service already has procedures in place, mandated by the Privacy Act of 1974, that address these last two concerns.

One private corporation claiming to comment "on behalf of the several million American citizens that choose to receive their mail at private and P.O. boxes" stated that the underlying CMRA revisions made final on March 25, 1999, "are in fact the only issue." Those revisions are not at issue, however, in the present rulemaking. Principal among its comments regarding the present rule is an objection to the "changes" in the August 26 notice that would allow release of information about private or post office boxholders to anyone without a warrant, subpoena, or court order. These "changes," the commenter states, are in conflict with the safeguards of the Privacy Act and violate the Fourth Amendment, which protects against warrantless searches and seizures. The commenter's references to "changes," supposedly made by the August 26 notice, indicate a basic misunderstanding of the Postal Service's regulations in this area. The regulations have long authorized disclosure to government agencies upon written certification and to law enforcement when oral requests are made through the Inspection Service. These objections, therefore, are to regulations that have been in effect for a long time, and not to any recently proposed changes. The Postal Service, moreover, is not persuaded that its regulations are in conflict with the Privacy Act or violate the Fourth Amendment. The Postal Service's routine uses provide sufficient authorization for disclosure of information on Form 1583 to government agencies, consistent with the requirements of the Privacy Act. The safeguards required by the Act have long since been implemented by the Postal Service with respect to the information contained in the 1583. Further, the Postal Service is not aware that any court has extended the protection of the Fourth Amendment to an individual's name or address. The commenter also states that the Privacy Act statement on Form 1583 is "defective" because it does not inform the customer how the information will be used or released. The Postal Service intends to amend the statement to bring

it into conformity with the regulations as revised by this final rule, after this rule becomes effective.

Almost all of the remaining commenters, primarily CMRA customers, echoed nearly verbatim the objections discussed in the preceding paragraph. A number of these commenters also took the opportunity to voice their objections to the underlying CMRA regulations, which will not be addressed here.

A nonprofit organization that is interested in rights and responsibilities in the "electronic world" objected to the creation of a national database of information from Form 1583, because the existence of such a database would be a "boon to identity thieves." Several other individual commenters stated their concern that the Postal Service will use Forms 1583 to create a national database. In the August 26 notice, the Postal Service addressed this concern by stating that the forms are maintained locally and that it has no intention of creating a national database with the information contained in them. The nonprofit organization stated that although the Postal Service may not intend to create such a database, this will necessarily be the result of storage of the forms in a Federal Records Center and from the maintenance of the forms at each CMRA and local post office. The Postal Service disagrees with this analysis. There is a great deal of difference in terms of risk to personal privacy between a collection of paper records locally maintained in secure conditions, or stored in boxes in a federal records depository, and information collected and maintained in a national electronic database. The secure storage of paper records simply does not pose the same kind of risk of improper data sharing as is posed by maintenance in an electronic database. Moreover, the maintenance of these paper forms over many years has not resulted in any incidents of identity theft so far as the Postal Service is aware. This commenter also complained that the proposal ignores the Fair Information Practices of the Federal Trade Commission. These guidelines, developed specifically in connection with the FTC's work regarding online privacy, are already embedded in the procedures required by the Privacy Act of 1974 and so are addressed elsewhere in the Postal Service's regulations that implement the Act. The regulation at hand is not the appropriate place for their inclusion. See the Postal Service's Privacy Act regulations, 39 CFR Part 266, and the system notice for the system of records titled USPS 010.050, Collection and Delivery Records—

Delivery of Mail Through Agents, last published in full at 54 FR 43660 (October 26, 1989), with amendments appearing at 59 FR 22874 (May 3, 1994) and 64 FR 8878 (February 23, 1999). Finally, this commenter claimed that the Postal Service is violating two provisions of the Privacy Act: subsection (e)(1) through the "over-collection of information," namely, the ages of any children who will receive mail at the CMRA address, and subsection (e)(2) by "coercing" the CMRA to collect the information rather than collecting the information itself. The Postal Service sees no merit in either contention. Subsection (e)(1) limits an agency's maintenance of information about an individual to that which is "relevant and necessary to accomplish a [legally required] purpose of the agency." The provision permitting the boxholder to list the names and addresses of his or her minor children is an exception to the general requirement that all individuals receiving mail through a private box submit a Form 1583. Ages are necessary to determine when the child no longer qualifies for this exception. Subsection (e)(2) provides for collection of information "to the greatest extent practicable directly from the subject individual." Since the CMRA customer is asked to fill out the Form 1583, the Postal Service believes that it is in compliance with this provision.

Finally, a number of commenters stated that the Postal Service has no authority to collect information about CMRA customers. Others stated that the Postal Service is expressly forbidden to collect the information. No reference to an authority for either proposition was given, and the Postal Service knows of none. The Postal Service believes it has ample authority to require agents for the receipt of mail to prove the bona fides of their agency agreements with postal customers. This cannot be done without submitting the names and addresses of the principals to such agreements.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of Information, Government employees, Release of information.

For the reasons set forth in this document, the Postal Service is amending 39 CFR Part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

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

2. Section 265.6(d)(3) and (d)(8) are revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(3) *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)(3)(iii) of this section, information from PS Form 1093 will be provided only in those circumstances stated at paragraphs (d)(4)(i) through (d)(4)(iii) of this section.

(ii) Except as provided in paragraph (d)(3)(iii) of this section, copies of PS Form 1093 will be furnished only in those circumstances stated at paragraphs (d)(4)(i) and (d)(4)(iii) of this section.

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

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(8) *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)(8)(iii) of this section, information from PS Form 1583 will be provided only in those circumstances stated at paragraphs (d)(4)(i) and (d)(4)(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.

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Stanley F. Mires,

Chief Counsel, Legislative.

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