

17, U.S.C., whichever applies, shall not render the notice invalid.

(2) Without prejudice to the general rule provided by paragraph (e)(1) of this section, errors made in giving the date or registration number referred to in paragraph (b)(1)(iii) of this section, or in complying with the provisions of paragraph (b)(1)(vii) of this section, or in describing the precise relationships under paragraph (c)(2) of this section, shall not affect the validity of the notice if the errors were made in good faith and without any intention to deceive, mislead, or conceal relevant information.

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Dated: October 28, 2002.

Marybeth Peters,
Register of Copyrights.

James H. Billington,
The Librarian of Congress.

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POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations for checking postage meters out of service and for handling faulty meters. The need to ensure the security of Postal Service revenues mandates these changes. The changes will clarify the responsibilities of the meter provider and improve the secure handling of faulty postage meters.

DATES: The rule is effective November 15, 2002.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, Manager of Postage Technology Management, at 703-292-3782, or by fax at 703-292-4050.

SUPPLEMENTARY INFORMATION: The United States Postal Service is seeking to improve the secure handling of faulty postage meters by the approved postage meter providers and to enhance the accuracy of determinations by the postage meter providers of the proper amounts of postage to be refunded from faulty postage meters. We are amending the regulations for checking postage meters out of service and for handling faulty meters to address these concerns and to align the regulations with changes to the *Domestic Mail Manual* (DMM) regarding postage meters published in the **Federal Register** on

November 8, 2001 (Vol. 66, No. 217, pages 56432-56447). We have deleted references to mechanical meters from the amended section since all mechanical postage meters have been decertified since 1999 and should no longer be in service. In this final rule, the Postal Service clarifies the definition of "faulty" as it applies to postage meters. In the proposed rule, the manufacturer sent all faulty meters to a special, secure facility for examination to determine the additional processing required to withdraw each meter. In this final rule, the initial examination of a faulty meter occurs in the field where the manufacturer or the manufacturer's agent determines whether the faulty meter can be withdrawn in accordance with procedures for a nonfaulty meter, or needs to be handled at the special, secure facility. We are also revising the regulation to allow 7 business days to prepare and file the report on faulty meters when the meter registers cannot be read, a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved, and there is no evidence of tampering. We will amend the remaining sections of CFR part 501 in the near future so that they reflect the changes in the postage meter population and changes in the DMM.

The proposed rule was published in the **Federal Register** on May 2, 2002 (Vol. 67, No. 85, pages 22025-22027), with a request for submission of comments by June 3, 2002. We received three submissions from postage meter manufacturers in response to the solicitation of public comments. The Postal Service gave thorough consideration to the comments it received, modified the proposed rule as appropriate, and now announces the adoption of the final rule.

Discussion of Comments

1. The three commenters requested clarification of the term "faulty."

The Postal Service clarified the definition of "faulty" as it applies to postage meters. Faulty meters include those that are inoperable, those that are misregistering or the registers are unreadable, those that inaccurately reflect their current status, those that show any evidence of tampering or abuse, and those for which there is information or other indication that the meter has some mechanical or electrical malfunction of any critical security component, such as any component the improper operation of which could adversely affect Postal Service revenues, or of any memory component, or that affects the accuracy of the registers or the accuracy of the value printed. The

proposed rule is revised in response to these comments.

2. One commenter assumed that the requirement for manufacturers to "(e)nsure that faulty meters are not presented to the licensing Post Office for checkout or withdrawal" meant that nonfaulty meters could be presented to the licensing Post Office.

This assumption is incorrect. The meter licensee returns all meters to the manufacturer or the manufacturer's agent for withdrawal, as directed in DMM 57, section P030.3.13, Returning a Postage Evidencing System or PSD. The manufacturer or its agent checks nonfaulty meters out of service under § 510.23(g) and either has an approved process for withdrawal, or ensures that the meter is examined by a Postal Service employee. Faulty meters are returned to the manufacturer and handled by the manufacturer in accordance with the procedures in § 501.23(h). To clarify the withdrawal process, we deleted the paragraph referenced in this comment from the proposed rule.

3. Two commenters noted the difficulty of complying with the requirements for obtaining the licensee's signature to complete PS Form 3601-C, Postage Meter Activity Report, for faulty meters.

The Postal Service understands that as of the effective date of this rule, PS Form 3601-C does not include a specific place for the licensee's signature confirming that the information on the form is correct, as required by the proposed regulation. However, until the form is revised and widely distributed, and the inventory of old versions of the form is depleted, the manufacturer's representative should ensure that the licensee (or the licensee's approved representative) signs the form and prints his or her name clearly under items C3 and C5. The Postal Service suggests that when the licensee is unavailable, the licensee's representative or agent who is responsible for releasing the meter to the manufacturer and signing the manufacturer's paperwork should also be responsible to review and sign the Postal Service form. There is no change to the proposed rule as a result of this comment.

4. Some commenters requested more information on the reporting requirements for faulty meters. Commenters also requested additional time to submit the reports.

Postage Technology Management will notify manufacturers when there are any changes from current reporting requirements for faulty meters. The Postal Service has reviewed the request

for additional time to submit required reports and agrees that additional time should be allowed. The regulation is revised to allow 7 business days to prepare and file the report on faulty meters when the meter registers cannot be read, a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved, and there is no evidence of tampering.

5. One commenter suggested that instead of requiring licensees to submit daily usage logs whenever register values cannot be read, the logs should only be required when the manufacturer is unable to obtain the systems report from the meter.

The Postal Service wants to encourage meter licensees to keep daily usage logs. Providing adequate backup for register values is the manufacturer's responsibility and the logs can provide the information when the meter is faulty. There is no change to the proposed rule as a result of this comment.

6. One commenter asked if there can be more than one dedicated secure facility for handling faulty meters that cannot be handled under the procedures used for nonfaulty meters.

A manufacturer can have multiple secure facilities for handling faulty meters that cannot be handled under the procedures used for nonfaulty meters. However, the Postal Service must inspect and approve each such facility. No change is made to the proposed rule as a result of this comment.

7. Some commenters questioned the requirement to ship faulty meters via Registered Mail service, Express Mail® service, or Priority Mail® service with Delivery Confirmation™ service.

The initial examination of a faulty meter occurs in the field where the manufacturer or the manufacturer's agent determines whether the faulty meter can be withdrawn in accordance with procedures for a nonfaulty meter, or needs special handling. However, when the registers cannot be read, or a summary report of the appropriate redundant electronic register memory readouts is not available using Postal Service-approved methods, or there is evidence of tampering, or there is some information or other indication that the meter has some mechanical or electrical malfunction that affects the accuracy of the registers or the accuracy of the value printed, the meter must be returned to the special, secure facility for processing. Shipment of these meters poses a special risk. No manufacturer has or will be granted written Postal Service approval to ship these faulty meters using means other than

Registered Mail service, Express Mail service, or Priority Mail service with Delivery Confirmation service. If these meters are shipped by alternative (non-Postal Service) means, the Postal Service will not authorize payment of refunds for postage value left on the meter, since a lack of security in shipping could make the faulty meter vulnerable to tampering. However, nonfaulty meters, and faulty meters that can be withdrawn using the same procedures as for nonfaulty meters, may be shipped using alternate carriers when the manager of Postage Technology Management, Postal Service Headquarters, gives written permission to ship by another means or service, based upon an assessment of the security of the proposed alternative. No change is made to the regulation in response to these comments.

8. One of the commenters questioned the use of "highest average daily usage" in calculating refund amounts, especially for seasonal users, and asked that the regulation recognize other means to retrieve meter register readings.

The methods for developing other data to support the request for Postal Service approval of a refund amount are given as examples of approved approaches and are not meant to preclude the use of other approaches. No change is made to the regulation in response to this comment.

9. One of the commenters suggested the Postal Service consider a minimum hold period for faulty meters to be sure all Postal Service questions are answered.

The manufacturer should hold the faulty meter for as long as it believes necessary to respond to any questions from the Postal Service or to appeal a Postal Service decision on a postage adjustment amount. No change is made to the regulation in response to this comment.

10. Commenters asked for clarification of when the Postal Service would require the manufacturer, rather than the Postal Service, to issue the refund of any postage value said to remain in a faulty meter. One commenter suggested that the Postal Service give prior notice to the manufacturer before requiring the manufacturer to issue the refunds. The commenters also suggested alternative methods for handling refunds for postage value remaining on a faulty meter.

The Postal Service reimburses remaining postage value in a defective postage meter because the funds are Postal Service funds. Normally, the Postal Service handles the refund and

processes the reimbursement for customer convenience. However, when a meter or meter model is defective, the manufacturer, rather than the Postal Service, is responsible for the defect and should be responsible for handling the refund of Postal Service funds to the customer subject to reimbursement by the Postal Service. The Postal Service may not have prior notice that a meter model was defective and susceptible to malfunctioning until it sees a pattern of excessive refund requests. Excessive defects may require resubmission of the meter model in question for additional testing to ensure that it meets all performance criteria and maintains the security of Postal Service funds. The regulation does not specify or limit the choice of payment mechanism to be used when the manufacturer issues the refund of any postage value remaining in a faulty meter. No change is made to the regulation as a result of these comments.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

The Amendment

For the reasons set out in this document, the Postal Service is amending 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended); and 5 U.S.C. App. 3.

2. Revise paragraphs (g) and (h) of § 501.23 to read as follows:

§ 501.23 Distribution controls.

* * * * *

(g) Check a nonfaulty meter out of service in accordance with the procedures that the Postal Service has approved for that meter when the meter is to be removed from service for any reason. Ensure that a Postal Service employee certifies the register readings and clears the descending register when the meter is checked out of service, unless the Postal Service has approved other procedures for the specific meter model. Complete the checkout process in a timely manner and transmit the required data to the appropriate Postal Service information systems. Ensure that no employee of the meter manufacturer or any third-party changes, interferes with, or performs

any element of the Postal Service employee's established checkout and withdrawal process for any meter, unless approval for the change in procedures is granted in writing by the Postal Service.

(h) Handle faulty meters, including those that are inoperable, those that are misregistering or the registers are unreadable, those that inaccurately reflect their current status, those that show any evidence of tampering or abuse, and those for which there is information or other indication that the meter has some mechanical or electrical malfunction of any critical security component, such as any component the improper operation of which could adversely affect Postal Service revenues, or of any memory component, or that affects the accuracy of the registers or the accuracy of the value printed, as follows:

(1) Ensure that all functions required to handle faulty meters are completed in a timely manner and in accordance with Postal Service regulations and procedures.

(2) Begin the process to retrieve any faulty meter within 2 business days of being notified of a problem.

(3) Complete PS Form 3601-C, Postage Meter Activity Report, in the presence of the licensee and obtain the licensee's signature on the form confirming that the information is accurate.

(i) Include the register information on the form when the registers can be read.

(ii) Print the system report, if available for the meter, and attach the report to PS Form 3601-C when the register values cannot be read.

(iii) Have the licensee provide any original daily usage logs with PS Form 3601-C for refund calculation when the register values cannot be read.

(4) Identify and tag the meter as faulty as soon as the manufacturer or the manufacturer's agent receives it from the customer. Keep the identification tag and the PS Form 3601-C, which was completed under paragraph (h)(3) of this section, with the faulty meter until processing is completed and the meter is returned to service or is scrapped.

(5) Secure all faulty meters and maintain the integrity of the meter and of the information residing on the meter. Maintain control of the meter until processing is completed.

(6) Ensure that under no circumstance are registers on a faulty meter cleared or any funds refunded or transferred until examination and processing are completed, the Postal Service has reviewed and analyzed the manufacturer's report and determined the appropriate postage adjustment, if

any, and approved refund procedures are followed.

(7) Maintain a record of the faulty meter and all changes in its custody, state, and condition (including availability of register information) from the time the meter is reported as faulty until processing is completed under paragraphs (h)(9), (12), or (14) of this section. Make the record available to the Postal Service for its review upon request.

(8) Examine each meter withdrawn for faulty operation as soon it is received from the customer to determine if the registers can be read and if there is any evidence of tampering.

(9) When the registers can be read or a summary report of the appropriate redundant electronic register memory readouts is available using Postal Service-approved methods, and there is no evidence of tampering or any problem covered by paragraph (h)(13) of this section:

(i) Check out the meter and withdraw it from service under paragraph (g) of this section.

(ii) Submit a report to the Postal Service by the 15th of each month listing all faulty meters with readable displays and no other problems received in the prior month, identifying the meter and including an explanation of the meter malfunction.

(10) Maintain a dedicated, secure facility, approved by the Postal Service, for handling faulty meters that cannot be handled under paragraph (h)(9) of this section.

(11) Ship faulty meters not handled under paragraph (h)(9) of this section directly to the secure facility described in paragraph (h)(10) of this section for processing. Ship these faulty meters via Registered Mail service, Express Mail service, or Priority Mail service with Delivery Confirmation service.

(12) If there is no evidence of tampering, if the meter registers cannot be read, and if a summary report of the appropriate redundant electronic register memory readouts cannot be retrieved:

(i) Develop other data to support the request for Postal Service approval of a postage adjustment amount, such as a manual calculation of the estimated value of the descending register based on estimated highest average daily usage, or applicable system-generated register documentation. Include the original daily usage logs maintained by the customer, if any, with the supporting data.

(ii) Furnish a report explaining the malfunction to the Postal Service within 7 days of receiving the meter. Accompany the report with a

recommendation of the postage adjustment amount that includes all data developed to support the recommendation.

(iii) Maintain control of those meters that have unreadable registers and hold them in the manufacturer's dedicated, secure facility described in paragraph (h)(10) of this section until a representative of the Postal Service approves the postage adjustment amount or verifies the condition of the meter before proceeding with the meter repair or destruction.

(13) In some instances, even though the registers can be read, there is information or other indication that the meter has some mechanical or electrical malfunction that affects the accuracy of the registers or the accuracy of the value printed. Handle such meters under paragraph (h)(12) of this section.

(14) If there is evidence or suspicion of tampering:

(i) Ensure that the meter is handled in a secure manner and maintained in its original state until the Postal Service or its agent can be present during the examination.

(ii) After examination, if approved by the Postal Service or its agent, process the meter under paragraph (h)(12) of this section.

(15) Issue the refund of any postage value said to remain in a faulty meter, after Postal Service approval of the amount of the refund, when the Postal Service requires it. Request reimbursement from the Postal Service for these refunds by periodically submitting a reimbursement request letter to the Postal Service. Accompany the letter with listings and support documentation for each refund and indicate the cause of failure for each incident.

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Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-079-SIPS; FRL-7408-5]

Motor Vehicle Emissions Budgets in Progress, Attainment, and Maintenance State Implementation Plans for Ozone, Carbon Monoxide, and Nitrogen Dioxide; California

AGENCY: Environmental Protection Agency (EPA).