

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.govinfo.gov](http://www.govinfo.gov).

## PART 233—INSPECTION SERVICE AUTHORITY

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AUTHORITY: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1), 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 (28 U.S.C. 2461 note); Pub. L. 104–208, 110 Stat. 3009; Secs. 106 and 108, Pub. L. 106–168, 113 Stat. 1806 (39 U.S.C. 3012, 3017); 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

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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

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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. 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.

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### 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

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

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

(5) *Fugitive* is any person who has fled from the United States or any State, the District of Columbia, territory or possession of the United States, to avoid prosecution for a crime, to avoid punishment for a crime, or to avoid

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giving testimony in a criminal proceeding.

(6) *Crime*, for the purposes of this section, is any commission of an act or the attempted commission of an act that is punishable by law by imprisonment for a term exceeding one year.

(7) *Postal statute* refers to a statute describing criminal activity, regardless of the term of imprisonment, for which the Postal Service has investigative authority, or which is directed against the Postal Service, its operations, programs, or revenues.

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

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

(ii) Protect the national security.

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

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

(ii) Sabotage, or international terrorism; or

(iii) Clandestine intelligence activities, including commercial espionage.

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

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

(2) Except for national security mail covers, the Chief Postal Inspector may also delegate any or all authority to the Manager, Inspection 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

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for that purpose in dead-mail offices, may open, or inspect the contents of, or permit the opening or inspection of sealed mail without a federal search warrant, even though it may contain criminal or otherwise nonmailable matter, or furnish evidence of the commission of a crime, or the violation of a postal statute.

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

- (i) Payment of proper postage, or
- (ii) Mailability.

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

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

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

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

(7) Except for fugitive cases, no mail cover shall remain in force when an information has been filed or the subject has been indicted for the matter for which the mail cover is requested. If

the subject is under investigation for further criminal violations, or a mail cover is required to assist in the identification of property, proceeds or assets forfeitable because of a violation of criminal law, a new mail cover order must be requested consistent with these regulations.

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

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

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

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

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

[58 FR 36599, July 8, 1993, as amended at 61 FR 42557, Aug. 16, 1996; 74 FR 18297, Apr. 22, 2009; 81 FR 74308, Oct. 26, 2016; 82 FR 32474, July 14, 2017]

#### § 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 personal 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;

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(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 investigate 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



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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.

(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 re-

sponsibilities 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

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

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

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

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

(8) *File or filed* has the following meanings:

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

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

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

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

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

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

(13) *Person* means an individual, partnership, corporation, joint business en-

terprise, 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

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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, tangible, evidentiary purpose, or that retention is necessary while the potential evidentiary significance of the currency is being determined by scientific testing or otherwise, or

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

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

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

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

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

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

(2) Further, at any time after seizure and before any claim is filed, such seized property may be released if the appropriate official determines that there is an innocent party with the right to immediate possession of the property or that the release would be in the best interest of justice or the Government.

(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,

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in addition to publishing notice, shall send personal written notice of the seizure to each interested party in a manner reasonably calculated to reach such parties.

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

(A) State the date when the personal written notice is sent;

(B) State the deadline for filing a claim, at least 35 days after the personal written notice is sent;

(C) State the date, statutory basis, and place of seizure;

(D) State the identity of the appropriate official of the Postal Inspection Service and the address where the claim must be filed; and

(E) Describe the seized property.

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

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

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

(A) Send timely personal written notice and continue the administrative forfeiture proceeding; or

(B) After consulting with the U.S. Attorney, terminate the administrative forfeiture proceeding and notify the custodian to return the property to

the person having the right to immediate possession unless the U.S. Attorney takes steps necessary to maintain custody of the property as provided in the applicable criminal forfeiture statute.

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

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

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

(5) *Tolling.* (i) In states or localities where orders are obtained from a state court authorizing the turnover of seized assets to the Postal Inspection Service, the period from the date an application or motion is presented to the state court for the turnover order through the date 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

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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

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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 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;

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

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

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

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

(n) *Disposition of property before forfeiture.* (1) Whenever it appears to the Postal Inspection Service that any seized property is liable to perish or to waste, or to be greatly reduced in value during its detention for forfeiture, or that the expense of keeping the property is or will be disproportionate to its value, the Chief Counsel for the Postal Inspection Service may order destruction, sale, or other disposition of such property prior to forfeiture. In addition, the owner may obtain release of the property by posting a substitute monetary amount with the Postal Inspection Service to be held subject to forfeiture proceedings in place of the seized property to be released. Upon approval by the Chief Counsel for the Postal Inspection Service, the property will be released to the owner upon the payment of an amount equal to the

Government appraised value of the property if the property is not evidence of a violation of law, is not contraband, and has no design or other characteristics that particularly suit it for use in illegal activities. This payment must be in the form of a money order, an official bank check, or a cashier's check made payable to the Postal Inspection Service. A bond in the form of a cashier's check or official bank check will be considered as paid once the check has been accepted for payment by the financial institution that issued the check. If a substitute amount is posted and the property is administratively forfeited, the Postal Inspection Service will forfeit the substitute amount in lieu of the property. The pre-forfeiture destruction, sale, or other disposition of seized property pursuant to this subsection shall not extinguish any person's rights to the value of the property under applicable law. The authority vested in the Chief Counsel for the Postal Inspection Service under this subsection may not be delegated.

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

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

(p) *Return of property.* (1) If, under 18 U.S.C. 983(a)(3), the Postal Inspection Service is notified by the U.S. Attorney in charge of the matter that the 90-

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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 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.

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

(A) Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package, or distribute a controlled substance;

(B) Information from reliable sources indicating possession of a controlled substance with intent to distribute;

(C) The arrest or conviction record of the person or persons in actual or constructive possession of the controlled substance for offenses under Federal, state, or local law that indicates an intent to distribute a controlled substance;

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

(E) Circumstances or reliable information indicating that the controlled

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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 administrative forfeiture involving controlled substances in personal use quantities, the owner may petition the Postal Inspection Service for expedited release of the property.

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

(3) The owner filing the petition for expedited release shall establish the following:

(i) The owner has a valid, good faith interest in the seized property as owner or otherwise;

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(ii) The owner reasonably attempted to ascertain the use of the property in a normal and customary manner; and

(iii) The owner did not know of or consent to the illegal use of the property, or in the event that the owner knew or should have known of the illegal use, the owner did what reasonably could be expected to prevent the violation.

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

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

(6) The petition shall include the following:

(i) A complete description of the property, including identification numbers, if any, and the date and place of seizure;

(ii) The petitioner’s interest in the property, which shall be supported by title documentation, bills of sale, contracts, mortgages, or other satisfactory documentary evidence; and

(iii) A statement of the facts and circumstances, to be established by satisfactory proof, relied upon by the petitioner to justify expedited release of the seized property.

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

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

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

(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.

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(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 attor-

neys or managers working under the supervision of the Chief Counsel.

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

(4) *Applicability.* The time periods and internal requirements established in this section are designed to guide the orderly administration of the remission and mitigation process and are not intended to create rights or entitlements in favor of individuals seeking remission or mitigation. The regulations will apply to all forfeiture actions commenced on or after May 1, 2012.

(b) *Definitions.* As used in this section:

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

(2) *Appraised value* means the estimated market value of an asset at the time and place of seizure if such or similar property was freely offered for sale between a willing seller and a willing buyer.

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

(4) *Attorney General* means the Attorney General of the United States or that official’s designee.

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

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

(7) *General creditor* means one whose claim or debt is not secured by a specific right to obtain satisfaction

against the particular property subject to forfeiture.

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

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

(10) *Lienholder* means a creditor whose claim or debt is secured by a specific right to obtain satisfaction against the particular property subject to forfeiture. A lien creditor qualifies as a lienholder if the lien:

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

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

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

(11) *Net equity* means the amount of a lienholder's monetary interest in the property subject to forfeiture. Net equity shall be computed by determining the amount of unpaid principal and unpaid interest at the time of seizure, and by adding to that sum unpaid interest calculated from the date of seizure through the last full month prior to the date of the decision on the petition. Where a rate of interest is set forth in a security agreement, the rate of interest to be used in this computation will be the annual percentage rate so specified in the security agreement that is the basis of the lienholder's interest. In this computation, however, there shall be no allowances for attorneys' fees, accelerated or enhanced interest charges, amounts set by contract as damages, unearned extended warranty fees, insurance, service contract charges incurred after the date of seizure, allowances for dealer's reserve, or any other similar charges.

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

(13) *Owner* means the person in whose primary title is vested or whose interest is manifested by the actual and beneficial use of the property, even though the title is vested in another. A

victim of an offense, as defined in paragraph (b)(22) of this section, may also be an owner if that person has a present legally cognizable ownership interest in the property forfeited. A nominal owner of property will not be treated as its true owner if that person is not its beneficial owner.

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

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

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

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

(18) *Record* means a series of arrests for related crimes, unless the arrestee was acquitted or the charges were dismissed for lack of evidence, a conviction for a related crime or completion of sentence within 10 years of the acquisition of the property subject to forfeiture, or two convictions for a related crime at any time in the past.

(19) *Related crime* as used in paragraphs (b)(18) and (f) of this section means any crime similar in nature to that which gives rise to the seizure of property for forfeiture. For example, where property is seized for a violation of the Federal laws relating to drugs, a related crime would be any offense involving a violation of the Federal laws relating to drugs, or the laws of any state or political subdivision thereof relating to drugs.

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

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(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 client's sworn notice of representation pursuant to 28 U.S.C. 1746, as set forth in paragraph (i)(7) of this section; and shall be submitted to the U.S. Attorney for the district in which the judicial forfeiture proceedings are brought.

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

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

(8) *Petitions granted*. If the Chief grants a remission or mitigates the forfeiture, the Chief shall mail a copy of the decision to the petitioner (or, if



represented by an attorney, to the petitioner's attorney), and shall mail or transmit electronically a copy of the decision to the appropriate U.S. Attorney, the U.S. Marshals Service or other property custodian, and the seizing agency. The written decision shall include the terms and conditions, if any, upon which the remission or mitigation is granted and the procedures the petitioner must follow to obtain release of the property or the monetary interest therein. The Chief shall advise the petitioner or the petitioner's attorney to consult with the U.S. Attorney as to such terms and conditions. The U.S. Attorney shall confer with the seizing agency regarding the release and shall coordinate disposition of the property with that office and the U.S. Marshals Service or other property custodian.

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

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

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

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

(C) The request is based on information or evidence not previously considered that is material to the basis for the denial or presents a basis clearly demonstrating that the denial was erroneous.

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

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

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

(11) *Restoration of proceeds from sale.*

(i) A petition for restoration of the proceeds from the sale of forfeited property, or for the appraised value of forfeited property when the forfeited property has been retained by or delivered to a Government agency for official use, may be submitted by an owner or lienholder in cases in which the petitioner:

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

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

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

(e) *Criteria governing administrative and judicial remission and mitigation—*(1)

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

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

(iii) The petitioner has the burden of establishing the basis for granting a petition for remission or mitigation of

forfeited property, a restoration of proceeds 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

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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 reim-

burse 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 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.

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(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, 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

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of a written request, in lieu of ruling on a petition for remission or mitigation.

(6) *Transfers to foreign governments.* A Ruling Official may decline to grant remission to any petitioner other than an owner or lienholder so that forfeited assets may be transferred to a foreign government pursuant to 18 U.S.C. 981(i)(1); 19 U.S.C. 1616a(c)(2); or 21 U.S.C. 881(e)(1)(E).

(7) *Filing by attorneys.* (i) A petition for remission or mitigation may be filed by a petitioner or by that person's attorney or legal guardian. If an attorney files on behalf of the petitioner, the petition must include a signed and sworn statement by the client-petitioner stating that:

(A) The attorney has the authority to represent the petitioner in this proceeding;

(B) The petitioner has fully reviewed the petition; and

(C) The petition is truthful and accurate in every respect.

(ii) Verbal notification of representation is not acceptable. Responses and notification of rulings shall not be sent to an attorney claiming to represent a petitioner unless a written notice of representation is filed. No extensions of time shall be granted due to delays in submission of the notice of representation.

(8) *Consolidated petitions.* At the discretion of the Ruling Official in individual cases, a petition may be filed by one petitioner on behalf of other petitioners, provided the petitions are based on similar underlying facts, and the petitioner who files the petition has written authority to do so on behalf of other petitioners. This authority must be either expressed in documents giving the petitioner the authority to file petitions for remission, or reasonably implied from documents giving the petitioner express authority to file claims or lawsuits related to the course of conduct in question on behalf of these petitioners. An insurer or an administrator of an employee benefit plan, for example, which itself has standing to file a petition as a "victim" within the meaning of paragraph (b)(22) of this section, may also file a petition on behalf of its insured or plan beneficiaries for any claims they may

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have based on co-payments made to the perpetrator of the offense underlying the forfeiture, or the perpetrator of a "related offense" within the meaning of paragraph (b)(20), if the authority to file claims or lawsuits is contained in the document or documents establishing the plan. Where such a petition is filed, any amounts granted as remission must be transferred to the other petitioners, not the party filing the petition; although, as a matter of discretion, the Ruling Official may use the actual petitioner as an intermediary for transferring the amounts authorized as a remission to the other petitioners.

[77 FR 25602, May 1, 2012]

## § 233.10 [Reserved]

## § 233.11 Mail screening.

(a) *Screening of mail transported by aircraft—(1) Authority.* Pursuant to 39 U.S.C. 5401, the Postal Service is authorized to provide for the safe and expeditious transportation of mail by aircraft and may make such rules, regulations, and orders consistent with part A of subtitle VII of title 49 [49 U.S.C. 40101 *et seq.*], or any order, rule, or regulation made by the Secretary of Transportation thereunder, as may be necessary for such transportation, except as otherwise provided in 39 U.S.C. 5402.

(2) *Purpose.* To prevent and deter the carriage of unauthorized explosives, incendiaries, or other destructive substances or items in the mail or in postal products onboard aircraft and to ensure the security and safety of all persons and property onboard aircraft carrying mail.

(3) *Policy.* Mail of sufficient weight to pose a hazard to aviation may, without a search warrant or the sender's or addressee's consent, be screened by any means capable of identifying explosives, nonmailable firearms, or other dangerous contents in the mails that are destructive or could endanger life or property.

(b) *Screening of surface transported mail—(1) Authority.* Pursuant to 39 U.S.C. 404, the Postal Service has specific power to provide for, among other things, the handling of mail. Mail may be screened without a search warrant

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or the sender's or addressee's consent in exigent circumstances to identify explosives or other dangerous contents in the mails.

(2) *Purpose.* To prevent and deter the carriage of unauthorized explosives or other dangerous content in the mail or in postal products transported via surface transportation providers and to ensure the security and safety of all persons and property associated with mail usage, processing, handling, and transportation.

(3) *Policy.* When the Chief Postal Inspector or designee determines there is a credible threat that certain mail may contain a bomb, explosives, or other material that could endanger life or property, including nonmailable firearms, the Chief Postal Inspector or designee 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.

(c) *Mail screening restrictions.* Screening of mail authorized by paragraphs (a) and (b) of this section is subject to the following restrictions:

(1) *No unreasonable delay.* The mail must be screened in a manner which does not unreasonably delay its delivery.

(2) *Authorization to screen mail.* The mail screening may be conducted by Postal Service employees or persons not employed by the Postal Service, as authorized by the Chief Postal Inspector, under such instruction that requires compliance with this part and protects the security of the mail. No information obtained from this mail screening may be disclosed unless authorized by this part.

(3) *Mail of insufficient weight to pose a threat.* Mail of insufficient weight to pose a hazard to air transportation, surface transportation, or to contain firearms must be excluded from such screening.

(4) *Additional limitations.* The screening must be within the limits of this section and conducted without opening mail that is sealed against inspection or revealing the contents of correspondence within mail that is sealed against inspection.

(d) *Identified threatening pieces of mail*—(1) *Hazardous mail.* Mail, sealed or unsealed, reasonably suspected of posing an immediate danger to life or limb or an immediate substantial danger to property as a result of screening or other information may, without a search warrant, be detained, opened, removed from postal custody, processed, and treated, but only to the extent necessary to determine and eliminate the danger. Such mail must be processed in accordance with the instructions promptly furnished by the Inspection Service.

(2) *Indeterminate mail.* 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 processed in accordance with the instructions promptly furnished by the Inspection Service.

(3) *Mandatory reporting.* Any person who opens mail sealed against inspection, in accordance with paragraph (d)(1) or (2) of this section, is required to provide a complete written and sworn statement regarding the detention, screening, opening, and treatment of the mail piece, as well as the circumstances surrounding its identification as a possible threat. The statement is required to be signed by the person purporting to act under this section and promptly forwarded to the Chief Postal Inspector. 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.

[86 FR 53222, Sept. 27, 2021]

### § 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: \$85,637 for each mailing less than 50,000 pieces, \$171,269 for each mailing of 50,000 to 100,000 pieces, and \$17,128 for each additional 10,000 pieces above 100,000 not to exceed \$3,425,405.

(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: \$42,818 for each mailing that is less than 50,000 pieces, \$85,637 for each mailing of 50,000 to 100,000 pieces, and an additional \$8,564 for each additional 10,000 pieces above 100,000 not to exceed \$1,712,703.

(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 \$17,128 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 \$3,425,405 per violation.

(e) *Reckless mailing of skill contest or sweepstakes matter.* Under 39 U.S.C. 3017(h)(1)(A), any promoter who recklessly mails nonmailable skill contest or sweepstakes matter may be liable to the United States for a civil penalty for each mailing to an individual. As adjusted under Public Law 114–74, the penalty is \$17,128 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 \$371, but not more than \$147,675 for each violation.

[81 FR 42533, June 30, 2016, as amended at 82 FR 6277, Jan. 19, 2017; 84 FR 20805, May 13, 2019; 85 FR 2037, Jan. 14, 2020; 86 FR 2987, Jan. 14, 2021; 87 FR 1675, Jan. 12, 2022; 88 FR 1514, Jan. 11, 2023]

## 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.