Office, suite 700, Kossman Building, Forbes Avenue & Stanwix Street, Pittsburgh, Pennsylvania 15222; and, Lieutenant Michael A. Suire, Project Attorney, Commander(d1), Second Coast Guard District, 1222 Spruce Street, room 2.102E, St. Louis, Missouri 63013-2832.

Discussion of Regulation

The U.S. Army Corps of Engineers, Pittsburgh District, is constructing a new lock at Grays Landing, mile 82.0 on the Monongahela River. The project is estimated to be completed on or about 31 December, 1992.

The erection of a cofferdam and steel sheet pile cells which will support the upper guard wall at the Grays Landing Lock has narrowed the width of the River to 372 feet. In the interest of vessel safety, protection of the cofferdam, and the safety of the persons working in the cofferdam, the Coast Guard is establishing an RNA to control vessel traffic through the construction area. The RNA is needed for large vessels, therefore traffic restrictions are only applicable to vessels required to carry a radiotelephone under title 33 CFR 26.03. The RNA extends from mile 81.0 to mile 83.0 of the Monongahela River.

Traffic on this two-mile length of the river is restricted to one-way passage, with no meeting, passing or overtaking authorized. Upbound vessels shall give way to downbound vessels and, when approaching mile 81.0, in the area of Cats Run Light and the daymark located on the right descending bank, shall contact any downbound vessels to arrange transit of the area. All downbound vessels, when approaching mile 83.0, in the vicinity of Warwick Mine on the left descending bank shall contact any upbound vessels to arrange transit of the area. Deviations from these requirements requires pre-authorization by the Captain of the Port, Pittsburgh. In addition, all vessels are required to remain at least 100 feet from the river face of the cofferdam and the upper guard wall cells.

The Waterways Association of Pittsburgh, a local waterborne commerce organization, was contacted to determine what impact, if any, the RNA would have on vessel traffic transiting the area. The Waterways Association stated that these restrictions will have no significant impact on commerce through this area since the configuration of the river has always necessitated caution in transit, and vessels have historically waited for one another to pass at certain points where the river bends.

Economic Assessment and Certification

This regulation has been reviewed under the provisions of Executive Order 12291 and has been determined not to be a major rule. In addition, this regulation is considered to be nonsignificant under the guidelines of DOT Order 2100.5 dated May 22, 1990, Policies and Procedures for Simplification, Analysis, and Review of Regulations. An economic evaluation has not been conducted and is deemed unnecessary as the impact of this regulation is expected to be minimal. Vessel traffic is not expected to be delayed for any extended period of time, and operations in this area have historically involved brief waiting periods for vessels in meeting situations. Vessels have traditionally stood by and waited for single file transit through restricted areas of this river.

Pursuant to 5 U.S.C. 601, *et seq.*, the Regulatory Flexibility Act, it is certified that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This action has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Determination is available for review in the docket.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria outlined in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment. As noted above, vessel traffic is not expected to be delayed for any extended period of time, and operations in this area have historically involved brief waiting periods for vessels in meeting situations. Vessels have traditionally stood by and waited for single file transit through restricted areas of this river.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5; 49 CFR 1.46.

2. Section 165.204 is added to read as follows:

§ 165.204 Monongahela River, Mile 81.0 to 83.0—Regulated Navigation Area.

(a) *Location.* The following is a regulated navigation area—The waters of the Monongahela River between mile 81.0 and mile 83.0.

(b) *Regulations.* Transit of the RNA by vessels required to have a radiotelephone under 33 CFR 26.03 may be made only under the following conditions:

(1) Traffic is restricted to one-way passage, with no meeting, passing, or overtaking authorized.

(2) Upbound vessels must give way to downbound vessels and, when approaching mile 81.0, in the area of Cats Run Light and the daymark located on the right descending bank, are to contact any downbound vessels in the area to coordinate transit of the area in accordance with this section.

(3) Downbound vessels, when approaching mile 83.0, in the vicinity of Warwick Mine on the left descending bank, are to contact any upbound vessels in the area to coordinate transit of the area in accordance with this section.

(4) All vessels must remain at least 100 feet from the river face of the cofferdam and the upper guard wall cell which have been erected as part of the Grays Landing Lock construction.

(c) Any deviations from this section must be authorized by the Captain of the Port, Pittsburgh, PA, prior to entering the RNA.

Dated: July 22, 1991.

W.J. Ecker,

Rear Admiral (Lower Half), United States Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 91-26122 Filed 10-29-91; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 223

Sale and Disposal of National Forest Timber; Periodic Payments; Extension of Deadline To Apply for a Contract Modification To Provide for Periodic Payment and Market-related Contract Term Addition

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule is being issued to provide additional time for holders of timber sale contracts awarded on or before July 31, 1991, to apply for contract modification under 36 CFR 223.50(f). The new deadline for application is December 1, 1991. This rule-making responds to requests from timber sale purchasers who have found the current deadline inadequate. The intended effect is to ensure that affected purchasers have adquate time to evaluate the financial effect of requesting market-related contract term additions.

EFFECTIVE DATE: This rule is effective October 30, 1991.

FOR FURTHER INFORMATION CONTACT: Fred O. Walk, Timber Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090 (202) 205–0858.

SUPPLEMENTARY INFORMATION: On July 31, 1991, (56 FR 36099), the Secretary of Agriculture adopted a final rule governing downpayments and periodic payments on National Forest System timber sale contracts. Paragraph (e) of 36 CFR 223.50 provides for adjustment of periodic payment determination dates when market-related contract term additions are granted under 36 CFR 223.52. Paragraph (f), however, provides that contracts executed prior to July 31, 1991, would not be modified to include the new provision for a market-related contract term addition unless the purchaser made a simultaneous request for modification implementing the new periodic payment requirements of § 223.50 by September 16, 1991. Only contracts executed prior to July 31, 1919 are subject to this deadline.

Subsequent to the publication of the final rule on July 31, 1991, timber industry associations and individual companies raised concerns that the deadline provided an insufficient amount of time to adequately evaluate the financial effect of the contract provisions implementing the final rule. Since the implementing contract provisions were not issued in final form until September 13, 1991, these industry representatives have requested that additional time be provided to assess the financial effects of modification of their contracts. If additional time is not provided, many purchasers will be precluded from taking advantage of the provisions because they have not requested modification and the current deadline has passed, or purchasers would have been compelled to submit a written request for contract modification based on incomplete information and evaluation of the benefit or risk of the modification just to meet the deadline. When a request for modification is received by the Contracting Officer, a modification package is prepared and provided for the purchaser's acceptance and signature. If the purchaser determined at this later date not to accept the modification, the Government would have needlessly incurred a significant cost in preparing the modification package.

In response to these concerns, the Department has concluded that the deadline of September 16, 1991, did not provide sufficient time for contract holders to adequately assess the desirability of requesting a contract modification. Moreover, the deadline affects a limited number of timber sale purchasers holding contracts for timber that were awarded on or before July 31, 1991. These purchasers may request modification of these existing contracts to include the market-related contract term addition and periodic payment provisions. Other than providing additional time for affected purchasers to make application, this rule does not provide any special consideration for these contract holders, since all contracts advertised and awarded after July 31, 1991, contain both the periodic payment requirement and the market-related contract term addition option.

The effect of this final rule will be to provide an additional 75 days, until December 1, 1991, for purchasers of contracts executed prior to July 31, 1991, to make a written request to include a contract provision that provides for market-related contract term additions and a simultaneous modification implementing periodic payment requirements.

Due to the operating season consideration and the approaching termination dates of a substantial number of timber sale contracts, the Agency finds it undesirable to extend the deadline beyond December 1, 1991. Further, all holders of eligible Forest Service timber sale contracts will receive actual notice of the extended deadline. Notice and public comment on the 45-day extension of the recently expired deadline for submission of written requests for modification of existing contracts under 36 CFR 223.50 is hereby determined to be impracticable and unnecessary pursuant to 5 U.S.C. 553. Thus, it is determined that good cause exists for not subjecting this administrative change to notice and public comment.

Environmental Impact

This final rule only provides 75 days of additional time for certain timber sale purchasers to make a written request to modify timber sale contracts. It will not affect the amount of the timber to be sold, where the contracts or sales will be located, the contract size, or any site specific resource impacts. This rule does not alter the requirement that each timber sale should be analyzed in compliance with the National Environmental Policy Act and its implementing regulations. Therefore, this rule will have no impact on the quality of the human environment, individually or cumulatively, and documentation of analysis of environmental effects of this rule in an environmental assessment or an environmental impact statement is not required.

Controlling Paperwork Burdens on the Public

This action will not result in additional procedures, paperwork, or other information collection not already required by law and approved for use. Under this final rule, only purchasers who wish to modify existing contracts to take advantage of the market-related contract term addition are required to make a written request. This requirement is a simple election which dose not require the purchaser to produce "facts" or "opinions." The requirements for making a written request to the Contracting Officer were discussed in the final rule published July 31, 1991, (56 FR 36103), and are unchanged by this rule.

The Department of Agriculture concludes that the establishment of December 1, 1991, as a deadline for making a written request for modification does not consitute a "collection of information" (under 5 CFR 1320.7(c) or 44 U.S.C. 3507(a)), and review pursuant to the Paperwork Reduction Act is not required.

Regulatory Impact

This final rule has been reviewed pursuant to Executive Order 12291 and Department of Agriculture procedures, and it has been determined that this regulation is not a major rule. The rule merely provides additional time for holders of timber sale contracts awarded on or before July 31, 1991, to apply for contract modification. This action will not have an annual effect of $100 million or more on the economy, or substantially increase prices or costs for consumers, individual industries, Federal, State, or local governments or geographic regions. Furthermore, this action will not have signficant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The final rule imposes no additional requirements on small business timber sale purchasers or other small entities.

Lists of Subjects in 36 CFR Part 223

Exports, Government contracts, National forests, Reporting and recordkeeping requirements, Timber.

Therefore, for the reasons set forth in the preamble, part 223 of title 36 of the Code of Federal Regulations is amended as follows:

PART 223—SALE AND DISPOSAL OF NATIONAL FOREST TIMBER

1. The authority citation for part 223 continues to read:

Authority: 90 Stat. 2958, 16 U.C.C. 472a, 98 Stat. 2213, 16 U.S.C. 618, unless otherwise noted.

Subpart B—Timber Sale Contracts

2. Amend § 223.50 by revising paragraph (f) to read as follows:

§ 223.50 Midpoint payment.

* * * * *

(f) In accordance with 36 CFR 223.52(a), no contract executed before July 31, 1991, shall be modified to allow for market-related contract term additions unless the purchaser makes a written request to the Contracting Officer by December 1, 1991, for a simultaneous modification implementing the periodic payment requirements of this section. The midpoint payment clause in contracts executed before July 31, 1991, is not the "periodic payment requirement" mandated by 36 CFR 223.52(a).

Dated: September 27, 1991.

George M. Leonard,

Associate Chief.

[FR Doc. 91-26107 Filed 10-29-91; 8:45 am]

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POSTAL SERVICE

39 CFR Parts 221, 222, 224, 233, 265, 273, 959

Conforming Postal Regulations to the Inspector General Act, Participation of Postal Employees Within the Inspection Service in Proceedings Where the United States Is Not a Party, and Other Miscellaneous Amendments

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The primary purpose of this rule is to amend postal regulations to reflect the application of the Inspector General Act to the Postal Service by the Inspector General Act Amendments of 1988. It also adopts guidelines to regulate the participation of postal employees within the Inspection Service in proceedings where the United States is not a party, and makes minor editorial revisions and corrections.

EFFECTIVE DATE: October 30, 1991.

FOR FURTHER INFORMATION CONTACT: H.J. Bauman, 202-268-4415.

SUPPLEMENTARY INFORMATION: Section 8E of the Inspector General Act of 1978, Public Law No. 95-452, 5 U.S.C. app. 3, as added by the Inspector General Act Amendments of 1988, Public Law No. 100-504, established a statutory Office of Inspector General in certain "designated Federal entities" including the Postal Service. The application of the Inspector General Act to the Postal Service imposed new duties and responsibilities on, and extended new authority to, the Chief Postal Inspector, who, as provided by section 8E(f)(1) of the Act, also serves as the Inspector General of the Postal Service. The amendments to title 39, Code of Federal Regulations, described below, are intended to reflect the changes introduced by Public Law No. 100-504. In addition, they regulate the role postal employees within the Inspection Service may play in proceedings to which the United States is not a party, and make other miscellaneous amendments, minor editorial revisions, and corrections.

Part 221 is amended to include the Inspector General Act in the authority citation for the part, and, in § 221.8, to conform to the requirements in section 8E(f)(1) of the Inspector General Act that (1) the Postmaster General's appointment of the Chief Postal Inspector must be made "in consultation with the Governors" of the Postal Service, and (2) the Postmaster General's authority to remove or transfer that official can be exercised only "with the concurrence of the Governors." It is also amended to reflect the Act's requirement that the Postmaster General provide written notice to both Houses of Congress of the reasons for the removal or transfer of the Chief Postal Inspector.

Part 222 is amended to include the Inspector General Act in the authority citation for that part.

Part 224 is amended to include the Inspector General Act in the authority citation for that part, and, in § 224.3(a), to conform to the Act's provision that the Chief Postal Inspector shall also serve as the Inspector General of the Postal Service. In addition, revised § 224.3(b) provides an outline of the duties of the Postal Inspection Service, and § 224.3(c) is added to clarify that the Inspection Service is responsible for exercising the authority, and carrying out the duties, functions, and responsibilities, assigned to the Office of the Inspector General by the Inspector General Act. New § 224.3(d) authorizes independent legal counsel for the Chief Postal Inspector when acting as the Inspector General of the Postal Service.

Part 233 is given a new heading and the authority citation for that part is revised to include the Inspector General Act and 18 U.S.C. 3061.

The heading for § 233.1 is also revised and paragraph (a) is amended to refer to the authority under 18 U.S.C. 3061, as amended by Public Law 100-690, for Postal Inspectors to carry firearms and to make seizures of property as provided by law.

Section 233.1(b) is revised to provide that, in addition to enforcing postal laws, the investigative powers listed in § 233.1(a) may be used to enforce non-postal laws to the extent provided in an agreement between the Attorney General and the Postal Service.

Section 233.1(c), pertaining to authority to issue subpoenas for documents and information under the Program Fraud Civil Remedies Act, is revised to include reference to the authority to issue subpoenas provided under section 6(a)(4) of the Inspector General Act. It also delegates the Chief Postal Inspector's authority to sign and issue administrative subpoenas to certain officials in the Inspection Service, and prescribes how such subpoenas may be served.

New § 233.1(d) is added to authorize Postal Inspectors to accept, maintain custody of, and deliver mail while engaged in an audit or investigation.

Part 265 is amended to include the Inspector General Act in the authority citation for that part. In addition, new § 265.10(c) is added to prohibit postal employees within the Inspection Service from testifying or producing documents in cases where the Postal Service or the United States is not a party, unless authorization is provided by the Chief Postal Inspector or appropriate Regional Chief Postal Inspector.

Part 273 is amended to correct typographical errors and to make minor editorial changes.

Part 959 is amended to reflect the Chief Postal Inspector's authority, under the Inspector General Act, to issue subpoenas for the production of documents and information.

List of Subjects in 39 CFR Parts 221, 222, 224, 233, 265, 273, 959

Administrative practice and procedure, Authority delegation (Government agencies) Freedom of information, Organizations and functions (Government agencies), Penalties, Postal Service, Privacy.

Accordingly, title 39 CFR, is amended as follows:

PART 221—GENERAL PRINCIPLES OF ORGANIZATION

1. The authority citation for part 221 is revised to read as follows:

Authority: 39 U.S.C. 201, 202, 203, 204, 401(2), 402, 403, 404; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

2. In § 221.8, the first sentence of paragraph (a) is revised, and paragraph (c) is added, to read as follows:

§ 221.8 Officers.

(a) Except for the Chief Postal Inspector, officers serve at the pleasure of the Postmaster General. * * *

* * * * *

(c) The Postmaster General, in consultation with the Governors of the Postal Service, shall appoint the Chief Postal Inspector. With the concurrence of the Governors of the Postal Service, the Postmaster General may remove the Chief Postal Inspector or transfer the Chief Postal Inspector to another position or location in the Postal Service. If the Chief Postal Inspector is removed or transferred, the Postmaster General shall promptly notify both House of Congress in writing of the reasons for such removal or transfer.

PART 222—DELEGATIONS OF AUTHORITY

3. The authority citation for part 222 is revised to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 402, 403, 404, 409; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

PART 224—ORGANIZATIONS REPORTING DIRECTLY TO THE POSTMASTER GENERAL

4. The authority citation for part 224 is revised to read as follows:

Authority: 39 U.S.C. 203, 204, 401(2), 403, 404, 409, 1001; Inspector General Act of 1978, as amended (Pub. L. No. 95–452, as amended), 5 U.S.C. App. 3.

5. Section 224.3 is revised to read as follows:

§ 224.3 Postal Inspection Service.

(a) The Postal Inspection Service is headed by the Chief Postal Inspector who also acts as:

(1) The Inspector General for the Postal Service,

(2) The investigating official under the Program Fraud and Civil Remedies Act, and

(3) The Security Officer and Defense Coordinator for the Postal Service.

(b) The Postal Inspection Service is responsible for:

(1) Protecting mail matter, postal facilities and other postal assets, employees, and people on postal premises.

(2) Enforcing laws related to the Postal Service, the mails, other postal offenses and other laws of the United States.

(3) Conducting investigations into violations of federal laws that the Attorney General determines have a detrimental effect upon the operations of the Postal Service.

(4) Carrying out investigations and presenting evidence to the Department of Justice, U.S. Attorneys, and state and local authorities, in investigations of a criminal or civil nature.

(5) Carrying out administrative and civil investigations and presenting findings and evidence to postal management and attorneys in connection with administrative and civil actions.

(6) Performing internal audits of postal financial and nonfinancial operations.

(7) Providing security and defense coordination for the Postal Service.

(8) Maintaining liaison with investigative and law enforcement agencies, and all levels of government on matters of mutual interest.

(c) The Postal Inspection Service is responsible for exercising the authority, and carrying out the duties, functions, and responsibilities assigned to the Office of the Inspector General by the Inspector General Act.

(d) When the Chief Inspector determines it is necessary for carrying out the duties of Inspector General of the Postal Service, the Chief Inspector my employ independent legal counsel.

§ 224.41 [Amended]

6. Section 224.4(b)(1) is amended by inseritng a comma and the words "except as provided in § 224.3(d)" immediately after "Postal Service" the second time it appears.

PART 233—INSPECTION SERVICE/ INSPECTOR GENERAL AUTHORITY

7. The heading of part 233 is revised to read as set forth above.

8. The authority citation for part 233 is revised to read as follows:

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

9. In § 233.1, the section heading and the introductory text of paragraph (a) are revised, the word "subpenas" is replaced by "subpoenas" in paragraph (a)(1); the word "and" is removed following the semicolon in paragraph (a)(2); the period is replaced by a semicolon at the end of paragraph (a)(3); paragraphs (b) and (c) are revised; and paragraphs (a)(4), (a)(5) and (d) are added to read as follows:

§ 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:

* * * * *

(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; and

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

(c) Issuance of subpoenas. (1) In accordance with part 273 of this chapter, the Chief Postal Inspector may issue subpoenas under the Program Fraud Civil Remedies Act.

(2) In accordance with the Inspector General Act of 1978, the Chief Postal Inspector may issue subpoenas to persons or entities other than Federal

agencies for the production of information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of functions assigned by the Inspector General Act.

(3) The Chief Postal Inspector hereby delegates authority to sign and issue administrative subpoenas to the following officials: Assistant Chief Inspectors, Regional Chief Postal Inspectors, Assistant Regional Chief Postal Inspectors, and the Inspector in Charge—Special Investigations Division.

(4) 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 or audit, Postal Inspectors are authorized to accept, maintain custody of, and deliver mail.

PART 265—RELEASE OF INFORMATION

10. The authority citation for part 265 is revised to read as folows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

11. In § 265.10, revise the section heading and add paragraph (c) to read as follows:

§ 265.10 Compliance with subpoena duces tecum, court orders, and summonses; regulation of testimony by postal employees within the Inspection Service and production of documents in cases where the Postal Service or the United States is not a party.

* * * * *

(c) Testimony by postal employees within the Inspection Service and production of documents in cases where the Postal Service or the United States is not a party.

(1) *Purpose and scope.* This provision limits the participation of (postal employees within) the Inspection Service in private litigation and other proceedings in which the Postal Service or the United States is not a party. The rules set out below are intended to promote careful supervision of Inspection Service resources and to reduce the risk of inappropriate disclosures which may affect postal operations.

(2) *Policy.* No postal employee within the Inspection Service may testify or produce documents concerning information acquired in the course of his or her employment or as a result of his or her official relationship with the Postal Service in any proceeding to which this subsection applies (see paragraph (c)(3) of this section), unless authorized to do so. Authorization will be provided if the Regional Chief Postal Inspector determines after consulting with the Chief Field Counsel, that no legal objection, privilege, or exemption applies to such testimony or production of documents. The Chief Postal Inspector is the authorizing official for Headquarters employees and records. If additional information is necessary before a determination can be made, the authorizing official, through counsel, may request assistance from the Department of Justice.

(3) *Applicability.* These rules apply to all Federal, State, and local court proceedings, as well as administrative and legislative proceedings, other than:

(i) Proceedings where the United States, the Postal Service, or any other Federal agency is a party;

(ii) Congressional requests or subpoenas for testimony or documents;

(iii) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(iv) Employees serving as expert witnesses in connection with professional and consultative services under § 447.23 of this chapter, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service; and

(v) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (i.e., cases arising from traffic accidents, domestic relations, etc.) and do not involve professional and consultative services.

(4) *Definitions.* For the purposes of this subsection:

(i) *Employee* refers to a Postal Service employee currently or formerly assigned to the Inspection Service;

(ii) *Demand* includes any request, order, or subpoena for testimony or the production of documents;

(iii) *Nonpublic* includes any material or information not subject to mandatory public disclosure under § 265.6(b);

(iv) *Document* means all records, papers, or official files, including but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analysis, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, and sound or mechanical reproductions;

(v) *Case* or *matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the Postal Service or the United States is not a named party; and

(vi) *Testify* or *testimony* includes both in-person, oral statements before any body conducting a judicial or administrative proceeding, and statements made in depositions, answers to interrogatories, declarations, affidavits, or other similar documents.

(5) *General procedures.* (i) To facilitate an orderly response to demands for the testimony of postal employees within the Inspection Service, and the production of documents in cases where the Postal Service or the United States is not a party, all demands for the production of nonpublic documents or testimony of postal employees within the Inspection Service concerning matters relating to their official duties and not subject to the exceptions set forth in paragraph (c)(3) of this section should be in writing and conform with paragraphs (c)(5) (ii) and (iii) of this section.

(ii) Before or simultaneously with a demand described in paragraph (c)(5)(i) of this section, the requesting party should serve the Chief Postal Inspector with an affidavit or statement containing the following information:

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

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

(C) The reasons for the request;

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

(E) A showing that the desired documents or testimony cannot be reasonably obtained by any other means.

(iii) Where testimony is sought, in addition to the requirements of paragraph (c)(5)(ii) of this section, the requesting party should also provide the following:

(A) A summary of the testimony desired;

(B) The intended use of the testimony; and

(C) A showing that Inspection Service records could not be provided and used in place of the requested testimony.

(iv) A subpoena for testimony or for the production of documents from a postal employee within the Inspection Service concerning official matters shall be served in accordance with the applicable rules of civil procedure, and a copy of the subpoena should be sent to the appropriate Regional Chief Postal Inspector.

(v) Any postal employee within the Inspection Service who is served with a demand shall promptly inform the appropriate Regional Chief Postal Inspector of the nature of the documents or information sought, and all relevant facts and circumstances.

(6) *Authorization of testimony or production of documents.* (i) The Regional Chief Postal Inspector, after consulting with the Chief Field Counsel, may determine whether requested testimony or the production of documents will be authorized.

(ii) Before authorizing the requested testimony or the production of documents, the Regional Chief Postal Inspector shall consider the following factors:

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

(B) Relevant legal standards for disclosure of nonpublic information and documents;

(C) Inspection Service rules and the public interest;

(D) Conservation of employee time; and

(E) Prevention of expenditures of government resources for private purposes.

(iii) On behalf of the Inspection Service, the Chief Field Counsel may consult or negotiate with the party seeking the testimony or documents, or that party's counsel, to refine and limit the demand so that compliance is less burdensome, or obtain information necessary to make the determination described in paragraph (c)(6)(i) of this section. If the party seeking the testimony or documents, or the party's counsel, fails to cooperate in good faith to enable the Chief Field Counsel to make an informed recommendation to the Regional Chief Postal Inspector, such failure may be presented as a basis for an objection to the court or other body conducting the proceeding.

(iv) Permission to testify will, in all cases, be limited to the information set forth in the affidavit or statement as described in paragraphs (c)(5) (ii) and (iii) of this section or to such portions thereof as the Regional Chief Postal Inspector determines are not subject to objection.

(v) If the Regional Chief Postal Inspector authorizes the testimony of an employee, arrangements should be made for the taking of testimony by those methods which will least disrupt the employee's official duties. Testimony may, for example, be provided by affidavits, answers to interrogatories, written depositions, or depositions transcribed, recorded, or preserved by any other means allowable by law.

(vi) Absent written authorization from the Regional Chief Postal Inspector, the employee shall respectfully decline to produce the requested documents, to testify, or otherwise to disclose requested information.

(vii) If authorization is denied or not received by the return date, the employee, together with counsel, where appropriate, shall appear at the stated time and place, produce a copy of this section, and respectfully decline to testify or produce any documents on the basis of these regulations.

(viii) The employee will appear unless the Chief Field Counsel has advised that an appearance would be inappropriate, as in cases where the subpoena was not validly issued or served, where the subpoena has been withdrawn, where the discovery has been stayed, or where the Postal Service will present a legal objection to furnishing the requested information or testimony.

(7) *Postal liability.* This section is intended to provide instructions to postal employees within the Inspection Service, and does not create any right or benefit, substantive or procedural, enforceable by any party against the Postal Service.

(8) *Fees.* (i) Unless determined by 28 U.S.C. 1821, or any other applicable statute, the costs of providing testimony, including transcripts, will be borne by the party requesting the testimony. Unless limited by statute, such costs shall also include reimbursement to the Postal Service for the usual and ordinary expenses attendant upon the employee's absence from his or her official duties in connection with the case or matter, including the employee's salary and applicable overhead charges, and any necessary travel expenses.

(ii) The Inspection Service is further authorized to charge reasonable fees to parties demanding documents or information. Such fees, calculated to reimburse the Postal Service for the cost of responding to a demand, may include the costs of time expended by Inspection Service employees to process and respond to the demand, attorney time for reviewing the demand and for relegated legal work in connection with the demand, and expenses generated by equipment used to search for, produce, and copy the requested information. Such fees will be assessed at the rates and in the manner specified in § 265.8.

(iii) This provision does not affect the rights and procedures governing public access to official documents pursuant to the Freedom of Information Act or the Privacy Act.

PART 273—ADMINISTRATION OF PROGRAM FRAUD CIVIL REMEDIES ACT

12. The authority citation for part 273 continues to read as follows:

Authority: 31 U.S.C. chapter 38; 39 U.S.C. 401.

§ 273.2 [Amended]

13. In § 273.2(a)(1), remove the word "of" and insert in its place "for."

14. In § 273.2(e), introductory text, insert the word "to" between the words "reason" and "know."

15. In § 273.2(e)(2), remove the word "of" after the word "claim" and insert the word "or" in its place.

16. In § 273.2(g), remove the word "refer" and insert the word "refers" in its place.

§ 273.3 [Amended]

17. In § 273.3(a)(5), last sentence, remove the word "subtained" and insert the word "sustained" in its place.

§ 273.5 [Amended]

18. In § 273.5(b)(1), insert the words "under this authority" after the word "Official" the second time it appears and before the word "shall."

19. In § 273.5(b)(2), in the third sentence, remove the word "under" the second time it appears.

20. In § 273.5(c), introductory text, remove the word "reporting" and insert the word "report" in its place.

§ 273.8 [Amended]

21. In § 273.8(a)(4), remove the word "or" the first time it appears and insert "an" in its place.

PART 959—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO THE PRIVATE EXPRESS STATUTES

22. The authority citation for part 959 continues to read as follows:

Authority: 39 U.S.C. 204, 401; 39 CFR 224.1(c)(6)(ii)(D).

§ 959.18 [Amended]

23. In § 959.18 add the following sentence at the end thereof: "This does not affect the authority of the Chief Postal Inspector to issue subpoenas for the production of documents or information pursuant to § 233.1(c) of this chapter."

Stanley F. Mires,

Assistant General Counsel, Legislative Division.

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