

## POSTAL SERVICE

### 39 CFR Parts 265 and 266

#### Release of Information, Privacy of Information

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This rule amends the Postal Service regulations on the release of information and privacy of information.

**DATES:** This rule is effective April 29, 2005.

**FOR FURTHER INFORMATION CONTACT:** Jane Eyre at (202) 268–2608.

**SUPPLEMENTARY INFORMATION:** The Postal Service™ has revised and republished all of its Privacy Act systems of records, which changes the titles and numbers of the systems of records and modifies the routine uses related to the release of information. This notice publishes corresponding changes to agency rules related to release of information and exemptions.

#### List of Subjects

##### 39 CFR Part 265

Release of information.

##### 39 CFR Part 266

Privacy of information.

■ For the reasons set forth in the preamble, the Postal Service is amending parts 265 and 266 as follows:

#### PART 265—RELEASE OF INFORMATION

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

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

■ 2. Revise paragraphs (d)(3), (d)(4), (d)(5), and (d)(9) of § 265.6 to read as follows:

##### § 265.6 Availability of records.

\* \* \* \* \*

(d) \* \* \*

(3) *Name and address of postage evidencing user.* The name and address of an authorized user of a postage meter or PC Postage product (postage evidencing systems) printing a specified indicium will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9, provided the user is using the postage meter or PC Postage product for business purposes. The request for this information must be sent to the manager of Postage Technology Management, Postal Service Headquarters. The request must include the original or a photocopy of the envelope or wrapper

on which the postage meter or PC postage indicium in question is printed, and a copy or description of the contents to support that the sender is a business or firm and not an individual. (Lists of authorized users of postage meters or PC Postage products may not be disclosed to members of the public.)

(4) *Post Office boxholder information.* Information from PS Form 1093, *Application for Post Office Box or Caller Service*, will be provided as follows:

(i) Except as provided in paragraph (d)(4)(iii) of this section, the boxholder applicant name and address from PS Form 1093 will be provided only in those circumstances stated in paragraphs (d)(5)(i) through (d)(5)(iii) of this section.

(ii) Except as provided in paragraph (d)(4)(iii) of this section, the names of persons listed as receiving mail, other than the boxholder applicant, will be furnished from PS Form 1093 only in those circumstances stated in paragraphs (d)(5)(i) and (d)(5)(iii) of this section.

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

(5) *Exceptions.* Except as otherwise provided in these regulations, names or addresses of Postal Service customers will be furnished only as follows:

(i) To a federal, state or local government agency upon prior written certification that the information is required for the performance of its duties. The Postal Service requires government agencies to use the format appearing at the end of this section when requesting the verification of a customer's current address or a customer's new mailing address. If the request lacks any of the required information or a proper signature, the postmaster will return the request to the agency, specifying the deficiency in the space marked 'OTHER'. A copy of PS Form 1093 may be provided.

(ii) To a person empowered by law to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*, upon receipt of written information that specifically includes all of the following: (A) A certification that the name or address is needed and will be used solely for service of legal process in connection with actual or prospective litigation; (B) a citation to the statute or regulation that empowers the requester to serve process, if the requester is other than the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*; (C) the names of

all known parties to the litigation; (D) the court in which the case has been or will be commenced; (E) the docket or other identifying number, if one has been issued; and (F) the capacity in which the boxholder is to be served, e.g., defendant or witness. By submitting such information, the requester certifies that it is true. The address of an individual who files with the postmaster a copy of a protective court order will not be disclosed except as provided under paragraphs (d)(5)(i), (d)(5)(iii), or (d)(5)(iv) of this section. A copy of Form 1093 will not be provided.

The Postal Service suggests use of the standard format appearing at the end of this section when requesting information under this paragraph. When using the standard format on the submitter's own letterhead, the standard format must be used in its entirety. The warning statement and certification specifically must be included immediately before the signature block. If the request lacks any of the required information or a proper signature, the postmaster will return it to the requester specifying the deficiency.

**Note:** The term *pro se* means that a party is not represented by an attorney but by himself or herself.

(iii) In compliance with a subpoena or court order, except that change of address or boxholder information which is not otherwise subject to disclosure under these regulations may be disclosed only pursuant to a court order.

(iv) To a law enforcement agency, for oral requests made through the Inspection Service, but only after the Inspection Service has confirmed that the information is needed in the course of a criminal investigation. (All other requests from law enforcement agencies should be submitted in writing to the postmaster as in paragraph (d)(5)(i) of this section.)

\* \* \* \* \*

(9) *Private mailbox information.*

Information from PS Form 1583, *Application for Delivery of Mail Through Agent*, will be provided as follows:

(i) Except as provided in paragraph (d)(9)(iii) of this section, information from PS Form 1583 will be provided only in the circumstance stated in paragraph (d)(5)(iii) of this section.

(ii) To the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed to the public from PS Form 1583.

(iii) Information concerning an individual who has filed a protective court order with the postmaster will not be disclosed except pursuant to the order of a court of competent jurisdiction.

\* \* \* \* \*

## PART 266—PRIVACY OF INFORMATION

■ 3. The authority citation for part 266 continues to read as follows:

**Authority:** 39 U.S.C. 401; 5 U.S.C. 552a.

■ 4. Section 266.9 is revised to read as follows:

### § 266.9 Exemptions.

(a) Subsections 552a(j) and (k) of 5 U.S.C. 552a empower the Postmaster General to exempt systems of records meeting certain criteria from various other subsections of 5 U.S.C. 552a. With respect to systems of records so exempted, nothing in this part shall require compliance with provisions hereof implementing any subsections of 5 U.S.C. 552a from which those systems have been exempted.

(b) Paragraph (b)(1) of this section contains a summary of provisions of 5 U.S.C. 552a for which exemption is claimed for some systems of records pursuant to, and to the extent permitted by, subsections 552a(j) and (k) of 5 U.S.C. 552a. Paragraphs (b)(2) through (5) of this section identify the exempted systems of records, the exemptions applied to each, and the reasons for the exemptions:

(1) *Explanation of provisions under 5 U.S.C. 552a for which an exemption is claimed in the systems discussed below.*

(i) Subsection (c)(3) requires an agency to make available to the individual named in the records an accounting of each disclosure of records.

(ii) Subsection (c)(4) requires an agency to inform any person or other agency to which a record has been disclosed of any correction or notation of dispute the agency has made to the record in accordance with 5 U.S.C. 552a(d).

(iii) Subsections (d)(1) through (4) require an agency to permit an individual to gain access to records about the individual, to request amendment of such records, to request a review of an agency decision not to amend such records, and to provide a statement of disagreement about a disputed record to be filed and disclosed with the disputed record.

(iv) Subsection (e)(1) requires an agency to maintain in its records only such information about an individual

that is relevant and necessary to accomplish a purpose required by statute or executive order of the President.

(v) Subsection (e)(2) requires an agency to collect information to the greatest extent practicable directly from the subject individual when the information may result in adverse determinations about an individual's rights, benefits, and privileges under federal programs.

(vi) Subsection (e)(3) requires an agency to inform each person whom it asks to supply information of the authority under which the information is sought, the purposes for which the information will be used, the routine uses that may be made of the information, whether disclosure is mandatory or voluntary, and the effects of not providing the information.

(vii) Subsection (e)(4)(G) and (H) requires an agency to publish a **Federal Register** notice of its procedures whereby an individual can be notified upon request whether the system of records contains information about the individual, how to gain access to any record about the individual contained in the system, and how to contest its content.

(viii) Subsection (e)(5) requires an agency to maintain its records with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in making any determination about the individual.

(ix) Subsection (e)(8) requires an agency to make reasonable efforts to serve notice on an individual when any record on such individual is made available to any person under compulsory legal process when such process becomes a matter of public record.

(x) Subsection (f) requires an agency to establish procedures whereby an individual can be notified upon request if any system of records named by the individual contains a record pertaining to the individual, obtain access to the record, and request amendment.

(xi) Subsection (g) provides for civil remedies if an agency fails to comply with the access and amendment provisions of subsections (d)(1) and (d)(3), and with other provisions of 5 U.S.C. 552a, or any rule promulgated thereunder, in such a way as to have an adverse effect on an individual.

(xii) Subsection (m) requires an agency to cause the requirements of 5 U.S.C. 552a to be applied to a contractor operating a system of records to accomplish an agency function.

(2) Pursuant to subsection 552a(j)(2), *Emergency Management Records, USPS*

*500.300; Inspection Service Investigative File System, USPS 700.000; Mail Cover Program Records, USPS 700.100; and Inspector General Investigative Records, USPS 700.300,* are exempt from subsections 552a (c)(3), (c)(4), (d)(1)–(4), (e)(1)–(3), (e)(4) (G) and (H), (e)(5), (e)(8), (f), (g), and (m) because the systems contain information pertaining to the enforcement of criminal laws. The reasons for exemption follow:

(i) Disclosure to the record subject pursuant to subsections (c)(3), (c)(4), or (d)(1)–(4) could:

(A) Alert subjects that they are targets of an investigation or mail cover by the Postal Inspection Service or an investigation by the Office of Inspector General;

(B) Alert subjects of the nature and scope of the investigation and of evidence obtained;

(C) Enable the subject of an investigation to avoid detection or apprehension;

(D) Subject confidential sources, witnesses, and law enforcement personnel to harassment or intimidation if their identities were released to the target of an investigation;

(E) Constitute unwarranted invasions of the personal privacy of third parties who are involved in a certain investigation;

(F) Intimidate potential witnesses and cause them to be reluctant to offer information;

(G) Lead to the improper influencing of witnesses, the destruction or alteration of evidence yet to be discovered, the fabrication of testimony, or the compromising of classified material; and

(H) Seriously impede or compromise law enforcement, mail cover, or background investigations that might involve law enforcement aspects as a result of the above.

(ii) Application of subsections (e)(1) and (e)(5) is impractical because the relevance, necessity, or correctness of specific information might be established only after considerable analysis and as the investigation progresses. As to relevance (subsection (e)(1)), effective law enforcement requires the keeping of information not relevant to a specific Postal Inspection Service investigation or Office of Inspector General investigation. Such information may be kept to provide leads for appropriate law enforcement and to establish patterns of activity that might relate to the jurisdiction of the Office of Inspector General, Postal Inspection Service, and/or other agencies. As to accuracy (subsection (e)(5)), the correctness of records

sometimes can be established only in a court of law.

(iii) Application of subsections (e)(2) and (e)(3) would require collection of information directly from the subject of a potential or ongoing investigation. The subject would be put on alert that he or she is a target of an investigation by the Office of Inspector General, or an investigation or mail cover by the Postal Inspection Service, enabling avoidance of detection or apprehension, thereby seriously compromising law enforcement, mail cover, or background investigations involving law enforcement aspects. Moreover, in certain circumstances the subject of an investigation is not required to provide information to investigators, and information must be collected from other sources.

(iv) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(v) Application of subsection (e)(8) could prematurely reveal an ongoing criminal investigation to the subject of the investigation.

(vi) The provisions of subsection (g) do not apply because exemption from the provisions of subsection (d) renders the provisions on suits to enforce subsection (d) inapplicable.

(vii) If one of these systems of records is operated in whole or in part by a contractor, the exemptions claimed herein shall remain applicable to it (subsection (m)).

(3) Pursuant to subsection 552a(k)(2), *Labor Relations Records, USPS 200.000*; *Emergency Management Records, USPS 500.300*; *Inspection Service Investigative File System, USPS 700.000*; *Mail Cover Program Records, USPS 700.100*; *Inspector General Investigative Records, USPS 700.300*; and *Financial Transactions, USPS 860.000*, are exempt from certain subsections of 5 U.S.C. 552a because the systems contain investigatory material compiled for law enforcement purposes other than material within the scope of subsection 552a(j)(2).

(i) *Emergency Management Records, USPS 500.300*; *Inspection Service Investigative File System, USPS 700.000*; *Mail Cover Program Records, USPS 700.100*; and *Inspector General Investigative Records, USPS 700.300*, are exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4)(G) and (H), and (f) for the same reasons as stated in paragraph (b)(2) of this section.

(ii) *Labor Relations Records, USPS 200.000*, is exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Application of the requirements at subsections (d)(1)–(4) would cause disruption of enforcement of the laws relating to equal employment opportunity (EEO). It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(B) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply for the same reasons described in paragraph (b)(2)(iv) of this section.

(iii) *Financial Transactions, USPS 860.000*, is exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Disclosure to the record subject pursuant to subsections (c)(3) and (d)(1)–(4) would violate the non-notification provision of the Bank Secrecy Act, 31 U.S.C. 5318(g)(2), under which the Postal Service is prohibited from notifying a transaction participant that a suspicious transaction report has been made. In addition, the access provisions of subsections (c)(3) and (d)(1)–(4) would alert individuals that they have been identified as suspects or possible subjects of investigation and thus seriously hinder the law enforcement purposes underlying the suspicious transaction reports.

(B) This system is in compliance with subsection (e)(1) because maintenance of the records is required by law. Strict application of the relevance and necessity requirements of subsection (e)(1) to suspicious transactions would be impractical, however, because the relevance or necessity of specific information can often be established only after considerable analysis and as an investigation progresses.

(C) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(4) Pursuant to subsection 552a(k)(5), *Recruiting, Examining, and Placement Records, USPS 100.100*; *Labor Relations Records, USPS 200.000*; *Inspection Service Investigative File System, USPS 700.000*; and *Inspector General Investigative Records, USPS 700.300* are exempt from certain subsections of 5 U.S.C. 552a because the systems contain investigatory material compiled for the purpose of determining suitability,

eligibility, or qualifications for employment, contracts, or access to classified information.

(i) *Recruiting, Examining, and Placement Records, USPS 100.100*, is exempt from subsections 552a(d)(1)–(4) and (e)(1) for the following reasons:

(A) During its investigation and evaluation of an applicant for a position, the Postal Service contacts individuals who, without an assurance of anonymity, would refuse to provide information concerning the subject of the investigation. If a record subject were given access pursuant to subsection (d)(1)–(4), the promised confidentiality would be breached and the confidential source would be identified. The result would be restriction of the free flow of information vital to a determination of an individual's qualifications and suitability for appointment to or continued occupancy of his or her position.

(B) In collecting information for investigative and evaluative purposes, it is impossible to determine in advance what information might be of assistance in determining the qualifications and suitability of an individual for appointment. Information that seems irrelevant, when linked with other information, can sometimes provide a composite picture of an individual that assists in determining whether that individual should be appointed to or retained in a position. For this reason, exemption from subsection (e)(1) is claimed.

(C) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

(ii) *Labor Relations Records, USPS 200.000*, is exempt from subsections 552a(d)(1)–(4), (e)(4)(G) and (H), and (f) for the following reasons:

(A) Application of the provisions at subsection (d)(1)–(4) would reveal to the EEO complainant the identity of individuals who supplied information under a promise of anonymity. It is essential to the integrity of the EEO complaint system that information collected in the investigative process not be prematurely disclosed and that witnesses be free from restraint, interference, coercion, or reprisal.

(B) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification,

access, and contest procedures because access is appropriate in some cases.

(iii) *Inspection Service Investigative File System, USPS 700.000; and Inspector General Investigative Records, USPS 700.300*, are exempt from subsections 552a(c)(3), (d)(1)–(4), (e)(1), (e)(4) (G) and (H), and (f) for the same reasons as stated in paragraph (b)(2) of this section.

(5) Pursuant to subsection 552a(k)(6), *Employee Development and Training Records, USPS 100.300; Personnel Research Records, 100.600; and Emergency Management Records, USPS 500.300* are exempt from subsections

552a(d)(1)–(4), (e)(4)(G) and (H), and (f) because the systems contain testing or examination material the disclosure of which would compromise the objectivity or fairness of the material. The reasons for exemption follow:

(i) These systems contain questions and answers to standard testing materials, the disclosure of which would compromise the fairness of the future use of these materials. It is not feasible to develop entirely new examinations after each administration as would be necessary if questions or answers were available for inspection

and copying. Consequently, exemption from subsection (d) is claimed.

(ii) The requirements of subsections (e)(4)(G) and (H), and (f) do not apply because this system is exempt from the provisions of subsection (d). Nevertheless, the Postal Service has published notice of its notification, access, and contest procedures because access is appropriate in some cases.

**Neva Watson,**

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