

### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 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, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T08–0502 to read as follows:

#### § 165.T08–0502 Safety Zone; Ohio River, Mile 607.5 to Mile 608.6.

(a) *Location.* The following area is a safety zone: All waters of the Ohio River from mile 607.5 to mile 608.6.

(b) *Enforcement period.* This safety zone will be enforced from 10:30 p.m. until 11:00 p.m. on July 3, 2016.

(c) *Definitions.* As used in this section, designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port (COTP) Ohio Valley in the enforcement of the safety zone.

(d) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or designated representative via VHF–FM radio channel 16 or phone at 1–800–253–7465.

(3) All persons and vessels shall comply with the instruction of the COTP and designated on-scene personnel.

(e) *Information broadcasts.* The COTP or a designated representative will inform the public through Broadcast

Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate of the enforcement period for each safety zone as well as any changes in the planned and published dates and times of enforcement.

**R.V. Timme,**

*Captain, U.S. Coast Guard, Captain of the Port Ohio Valley.*

[FR Doc. 2016–15571 Filed 6–29–16; 8:45 am]

**BILLING CODE 9110–04–P**

### POSTAL SERVICE

#### 39 CFR Part 233

#### Inspection Service Authority; Civil Monetary Penalty Inflation Adjustment

**AGENCY:** Postal Service.

**ACTION:** Interim final rule.

**SUMMARY:** This rule updates postal regulations to implement inflation adjustments to civil monetary penalties that may be imposed under consumer protection and mailability provisions enforced by the Postal Service pursuant to the Deceptive Mail Prevention and Enforcement Act and the Postal Accountability and Enhancement Act. These adjustments are required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This notice also includes the statutory civil monetary penalties subject to the 2015 Act.

**DATES:** *Effective date:* August 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Steven Sultan, (202) 268–7385.

**SUPPLEMENTARY INFORMATION:** The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Public Law 114–74, 129 Stat. 584, amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101–410, 104 Stat. 890 (28 U.S.C. 2461 note), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Section 3 of the 1990 Act specifically includes the Postal Service in the definition of “agency” subject to its provisions.

The 2015 Act requires the Postal Service to make two types of adjustments to civil penalties that meet the definition of “civil monetary penalty” under the 1990 Act. The Office of Management and Budget has furnished detailed instructions regarding these adjustments in memorandum M–16–06, *Implementation of the Federal Civil*

*Penalties Inflation Adjustment Act Improvements Act of 2016* (February 24, 2016), [www.whitehouse.gov/omb/memoranda/2016/m-16-06](http://www.whitehouse.gov/omb/memoranda/2016/m-16-06).

First, the Postal Service must make an initial “catch-up” adjustment to each of its qualifying civil monetary penalties through an interim final rule by July 1, 2016. The catch-up adjustment is based on the Consumer Price Index (CPI–U) and is calculated for each penalty. The amount of the adjustment is calculated by multiplying the current published penalty amount by an adjustment factor provided by the Office of Management and Budget (OMB). The adjustment factor varies depending on the year a penalty was last adjusted. The new penalty amount must be rounded to the nearest dollar.

Second, the Postal Service must make an annual adjustment for inflation and publish the adjustment in the **Federal Register** by January 15 of each year, beginning in 2017. Each penalty will be adjusted as instructed by OMB based on CPI–U from the most recent October.

The 2015 Act allows the interim final rule and annual inflation adjustments to be published without prior public notice or opportunity for public comment.

#### Adjustments to Postal Service Civil Monetary Penalties

Civil monetary penalties may be assessed for postal offenses under sections 106 and 108 of the Deceptive Mail Prevention and Enforcement Act, Public Law 106–168, 113 Stat. 1811, 1814 (*see*, 39 U.S.C. 3012(a), (c)(1), (d), and 3017(g)(2), (h)(1)(A)); and section 1008 of the Postal Accountability and Enhancement Act, Public Law 109–435, 120 Stat. 3259–3261 (*see*, 39 U.S.C. 3018 (c)(1)(A)). The statutory civil monetary penalties subject to the 2015 Act and the amount of each penalty after the “catch-up” adjustment are as follows:

*39 U.S.C. 3012(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). This section currently imposes a \$50,000 penalty for each mailing less than 50,000 pieces, \$100,000 for each mailing 50,000 to 100,000 pieces, and \$10,000 for each piece above 100,000 up to a penalty of \$2,000,000. These penalties were last adjusted in 2000. Based on the guidance

in OMB memorandum M-16-06, an adjustment multiplier of 1.36689 will be used. The new penalties will be as follows: \$68,345 for each mailing less than 50,000 pieces, \$136,689 for each mailing of 50,000 to 100,000 pieces, and \$13,669 for each piece above 100,000 not to exceed \$2,733,780.

**39 U.S.C. 3012(c)(1)—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. Currently, the amount of this penalty, set in 39 U.S.C. 3012(c)(1), is \$25,000 for each mailing that is less than 50,000 pieces, \$50,000 for each mailing of 50,000 to 100,000 pieces, and an additional \$5,000 for every additional 10,000 pieces above 100,000 not to exceed \$1,000,000. These penalties were last adjusted in 2000. Based on OMB guidance, an adjustment multiplier of 1.36689 will be used. The new penalties will be \$34,172 for each mailing that is less than 50,000 pieces, \$68,345 for each mailing of 50,000 to 100,000 pieces, and an additional \$6,834 for every additional 10,000 pieces above 100,000 not to exceed \$1,366,890.

**39 U.S.C. 3012(d)—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:

- Solicitations making false claims of Federal Government connection or approval;
- Certain solicitations for the purchase of a product or service that may be obtained without cost from the Federal Government;
- Solicitations containing improperly prepared “facsimile checks”; and
- Certain 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). Currently, this penalty is not to exceed \$10,000 for each mailing. The penalty was last adjusted in 2000. Based on OMB guidance, an adjustment multiplier of 1.36689 will be used. The new penalty will be \$13,669.

**39 U.S.C. 3017(g)(2)—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. Currently, this civil penalty may not exceed \$2,000,000 per violation. The penalty was last adjusted in 2000. Based on OMB guidance, an adjustment multiplier of 1.36689 will be used. The new penalty may not exceed \$2,733,780 per violation.

**39 U.S.C. 3017(h)(1)(A)—Reckless mailing of skill contest or sweepstakes matter.**

Currently, 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 in the amount of \$10,000 per violation for each mailing to an individual. The penalty was last adjusted in 2000. Based on OMB guidance, an adjustment multiplier of 1.36689 will be used. The new penalty is \$13,669 per violation.

**39 U.S.C. 3018(c)(1)(A)—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. Currently, this civil penalty is at least \$250, but not more than \$100,000 for each violation. The penalty amounts were last adjusted in 2006. Based on OMB guidance, an adjustment multiplier of 1.17858 will be used. The new penalty is at least \$295, but not more than \$117,858 for each violation.

**List of Subjects in 39 CFR Part 233**

Administrative practice and procedure, Banks, Banking, Credit, Crime, Infants and children, Law enforcement, Penalties, Privacy, Seizures and forfeitures.

For the reasons set out in this document, the Postal Service amends 39 CFR part 233 as follows:

**PART 233—INSPECTION SERVICE AUTHORITY**

- 1. The authority citation for 39 CFR part 233 is revised to read as follows:

**Authority:** 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005, 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; Pub. L. 104–208, 110 Stat. 3009–378; Pub. L. 106–168, 113 Stat. 1806; Pub. L. 114–74, 129 Stat. 584.

- 2. Revise § 233.12 to read as follows:

**§ 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: \$68,345 for each mailing less than 50,000 pieces, \$136,689 for each mailing of 50,000 to \$100,000 pieces, and \$13,669 for each piece above 100,000 not to exceed \$2,733,780.

(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: \$34,172 for each mailing that is less than 50,000 pieces, \$68,345 for each mailing of 50,000 to 100,000 pieces, and an additional \$6,834 for every additional 10,000 pieces above 100,000 not to exceed \$1,366,890.

(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 \$13,669 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 \$2,733,780 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 \$13,669 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 \$295, but not more than \$117,858 for each violation.

**Stanley F. Mires,**

*Attorney, Federal Compliance.*

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## POSTAL REGULATORY COMMISSION

### 39 CFR Parts 3000, 3001, and 3008

[Docket No. RM2016–4; Order No. 3379]

#### Ex Parte Communications

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is issuing a set of final rules amending existing Commission rules related to ex parte communications. The final rules are consistent with the recommended approach to agency treatment of ex parte communications. Relative to the proposed rules, some rules were restructured based on comments received, others were modified to alleviate confusion.

**DATES:** *Effective* August 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory History

81 FR 1931, January 14, 2016.

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## I. Introduction

In this Order, the Commission adopts final rules concerning ex parte communications. The final rules adopted by this Order amend existing Commission rules and remove obsolete rules no longer applicable under the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006). The final rules are located at 39 CFR part 3008. Existing rules located at §§ 3000.735–501, 502, 3001.5(o), and 3001.7 are amended to reflect the revised location of the ex parte communications rules. Existing rules located at 39 CFR part 3000 are renumbered for consistency with **Federal Register** guidance.

The rules as adopted incorporate suggestions offered by commenters that restructure some rules as proposed, but do not materially affect their substance. The initial approach taken by the Commission was to codify only what were considered mandatory ex parte communications requirements in the Code of Federal Regulations (CFR) applicable to a limited set of Commission docket types. The Commission also proposed to issue a more comprehensive policy document to include ex parte communications requirements for other possible docket types.<sup>1</sup> The Commission understands comments suggesting the proposed approach would cause confusion concerning when the mandatory rules apply versus when the policy applies. The Commission has adopted modified rules to alleviate this confusion by making the rules inclusive of all proceeding types before the Commission with specific exceptions. This is a change in form, but not substance.<sup>2</sup>

The change in structure also is intended to clarify that the Commission in most instances will effectively take a permit-but-disclose approach to ex parte communications, which was suggested by many of the commenters. However, given the opportunities the Commission provides to participants to avoid ex parte communications issues altogether, the rules do not encourage ex parte communications as the norm.<sup>3</sup> The proposed changes in structure also are intended to clarify that penalties for violating ex parte communication rules

<sup>1</sup> The opportunity to comment on both the rules and the policy were provided in Order No. 3005. Notice of Proposed Rulemaking Regarding Ex Parte Communications, January 8, 2016 (Order No. 3005).

<sup>2</sup> The Commission's internal policy is revised to reflect the changes in the final rules and will be made available on the Commission's Web site.

<sup>3</sup> For example, participants generally have sufficient opportunities to make their views known by filing documents on the Commission's Web site during the course of a proceeding.

only apply to very limited proceeding types.

## II. Background

On January 8, 2016, the Commission issued Order No. 3005, introducing a proposed revision and reorganization of its rules concerning ex parte communications. *See* Order No. 3005. Order No. 3005 explained that the current rules concerning ex parte communications are located at §§ 3000.735–501, 502, and 3001.7. *See id.* The Commission identified a need to revise the existing rules for several reasons. The existing rules contained significant redundancy between the requirements of § 3000.735–501 and the requirements of § 3001.7. Furthermore, the existing rules made it difficult to identify who qualified as Commission “decision-making personnel” without referring to unrelated sections of the CFR.

The existing rules also referred to rate and classification cases under 39 U.S.C. 3624, which were eliminated under the PAEA. Finally, the existing rules lacked guidance for Commission personnel on how to treat ex parte communications falling outside the scope of the specific docket types mentioned.

The operative statute requires the Commission to restrict ex parte communications only in matters where the Commission must provide an opportunity for a hearing on the record pursuant to 5 U.S.C. 556 through 557. Under the PAEA, the Commission is only required to provide an opportunity for a hearing in matters regarding a change in the nature of postal services pursuant to 39 U.S.C. 3633. In addition to nature of service matters, Commission regulations historically have extended restrictions on ex parte communications to post office appeal cases pursuant to 39 U.S.C. 404(d)(5) and (6) and complaint cases pursuant to 39 U.S.C. 3662. The Commission considers the restriction appropriate because of the potential impact ex parte communications might have on participants and their associated rights in those types of proceedings. *See* Order No. 3005 at 2–3.

In addition to the above three types of proceedings—nature of service, post office closings, and complaints—many other types of proceedings come before the Commission. Accordingly, the Commission attached as a library reference to Order No. 3005 a new proposed internal policy on the treatment of ex parte communications applicable to all cases. For consistency with prevailing principles regarding agency treatment of ex parte