

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

COMPLAINT OF THE NATIONAL
ASSOCIATION OF POSTMASTERS OF THE
UNITED STATES, THE LEAGUE OF
POSTMASTERS, MARK STRONG, ROBERT
RAPOZA, MARILYN SHAW, AND MARILYN
HILL

Docket No. C2011-3¹

**OPPOSITION OF THE UNITED STATES POSTAL SERVICE TO
COMPLAINANTS' MOTION TO RENEW COMPLAINT**
(November 14, 2011)

On November 7, 2011, the Complainants in this docket filed a Motion to Renew Complaint, and Request to Submit for Decision on An Expedited Basis, Before December 1, 2011, or in the Alternative to Stay the Postal Service's Final Rule from Going into Effect on December 1, 2011 ("Motion"). In their Motion, complainants (i) "renew" their complaint; (ii) state that the controversy is "fully ripe for adjudication;" (iii) claim that there is no need for a hearing; (iv) urge that the Commission take the matter under submission and render a decision on the legal issues raised in Claims 1 and 2 of the Complaint; and (v) request relief in the form of expedited review of this matter either by issuing a decision prior to December 1, 2011, or, (vi) in the alternative, imposing a stay on implementation of the Postal Service's final rule, published at 76 Fed. Reg. 66184 (October 26, 2011), until such time as a decision can be made in this matter.

Complainants also buttress their argument with claims that "the Postal Service can instantly convert thousands of the current independent post offices

¹ By filing this pleading under this case caption, the Postal Service does not intend to concede that Docket No. C2011-3 is an active docket. The complaint initiating this docket was dismissed, and thus this docket no longer serves as the appropriate designation for Complainants' Motion.

that it is now reviewing for closing into stations and branches without a hearing, and then subsequently close those stations and branches without affording the citizens of those communities appeal to the Postal Regulatory Commission.”

Motion at 3. They further fear that

the Postal Service could conceivably determine that there is but one official Post Office in the country, and thus make every other retail facility a station and branch of that post office. Further, the Postal Service could conclude that those stations and branches were to be managed under the supervision of just one postmaster for all the United States, the Postmaster General of the United States.

Id.

For the reasons set forth below, the Motion should be soundly denied.

The Motion suffers from numerous procedural flaws, jeopardizes the Postal Service’s procedural rights, and is based on unsubstantiated and outlandish fears and premises that are not supported by the underlying rulemaking. To the extent the Motion is not denied, however, the Postal Service renews its Motion to Dismiss in this docket.

Background

The controversy in this action concerns a rulemaking and consultation process with postmasters’ and supervisors’ associations that were conducted by the Postal Service beginning in spring 2011. The rulemaking began with the publication of a proposed rule on March 31, 2011. 76 Fed. Reg. 17,794 (March 31, 2011).² The proposed rule aimed to improve the administration of the Post Office discontinuance process, and expand the application of Post Office discontinuance procedures to other Postal Service-operated retail facilities. The

² Copies of the Federal Register notices in the rulemaking are attached to this pleading.

proposed rule identified six sets of proposed changes, although the resulting two final rules differed in some respects from the proposed rule. The six changes included:

1. Top-Down Process: The proposed rule clarified that Headquarters management could identify candidate offices for study using a “top-down” approach.
2. Factors That Trigger a Discontinuance Study: The proposed rule clarified factors that could be used to identify candidate retail facilities for discontinuance study consistent with applicable law.
3. Process Management: The proposed rule gave effect to improvements in the administration and management of the discontinuance process.
4. Stations/Branches Closings: The proposed rule applied the same notice and comment procedures to classified stations and branches as are applied to Post Offices.
5. Staffing of Post Offices: The proposed rule clarified that Post Offices may be managed by postmasters, as is commonly the case, or by other personnel acting under the supervision of a postmaster. Thus, under the proposed rule, a postmaster could serve in more than one Post Office, or an employee other than a postmaster could be responsible for day-to-day management of a Post Office.
6. Redefinition of “Consolidation”: Under the proposed rule, the conversion of a Post Office into a subordinate classified station or branch would no longer be subject to the notice and comment procedures applied to Post Office closings. The term “consolidation” would only apply when a Postal Service-operated retail facility is converted to a contractor-operated unit.

The Postal Service received hundreds of comments in response to its initial proposed rule, some of which led to changes in the resulting final rules as explained therein.

The proposed rule spawned two published final rules that modified the procedures applicable to changes in the postal retail network. On July 14, 2011, the Postal Service published the first final rule to change Post Office

discontinuance procedures. 76 Fed. Reg. 41413; see also 76 Fed. Reg. 43898 (July 22, 2011) (correcting certain cross-references in the first final rule). That final rule addressed the first four components of the proposed rule, as outlined above: namely, the “top down” process for identifying candidate offices, the factors that trigger a discontinuance study, process management, and procedures for discontinuance of classified stations and branches. The Postal Service advised in the first final rule that it had deferred the two remaining issues, *i.e.*, the staffing of Post Offices and the definition of the term “consolidation,” for further consideration. The first final rule explained that these changes were separated and placed on a slower track because the Postal Service was then in the process of consultation under 39 U.S.C. § 1004(b)-(d) regarding the proposed rule. Therefore, the first final rule did not address the proposed changes and comments received about Post Office staffing and the definition of “consolidation.” See 76 Fed. Reg. at 41,414-16.

Consultations with management associations were accordingly continued on the remaining topics of the proposed rule and concluded in October 2011. On October 26, 2011, the Postal Service published a second final rule in the *Federal Register* amending its regulations in 39 C.F.R. Part 241, effective on December 1, 2011. 76 Fed. Reg. 66,184. The second final rule implemented the two remaining components of the proposed rule, but with additional changes responsive to comments received. The second final rule may be summarized as follows:

Post Offices to Station and Branch Conversions: The conversion of a Post Office to a subordinate station or branch is no longer subject to the notice

and comment procedures applied to Post Office discontinuance actions. Rather, the term “consolidation” applies when any Postal Service-operated retail facility is converted to a contractor-operated unit. This measure is intended to reduce customer confusion, because the conversion of a Post Office to a classified station or branch has no effect on retail services offered to customers. Hence, engaging in a formal process of public feedback is unnecessary for these types of conversions. However, the Postal Service will solicit public feedback if a Post Office, station, or branch is proposed for conversion to a contractor-operated unit, since the contractor may offer a different array of services to the public.

Postmaster to Post Office Ratios: The second rule clarifies that Post Offices may be staffed by postmasters, as is commonly the case, or by other personnel. Thus, a postmaster could serve in more than one Post Office, or an employee other than a postmaster could staff a Post Office. This measure allows for flexibility in staffing decisions, and thereby offers opportunities for cost savings in the future.

See *id.* at 66,185-87. The supplementary information section of the second final rule explains that certain changes were made in response to comments received. Of significance to the pending controversy, the Postal Service clarified that Post Offices would continue to be managed by postmasters, and that even where a Post Office was operated or staffed by non-postmaster personnel, that operation would nevertheless be directed by a postmaster. *Id.* at 66,187. Thus, the language in proposed section 39 CFR 241.3(a) of the proposed rule that read:

A post office may be operated *or managed* by a postmaster or by another type of postal employee[.]³

was changed in the second final rule to read as:

A Post Office may be operated *or staffed* by a postmaster or by another type of postal employee *at the direction of the postmaster, including when the postmaster is not physically present.*⁴

In addition, the language in proposed section 39 CFR 241.3(a)(1)(iii) of the proposed rule that read,

³ 76 Fed. Reg. 17797 (emphasis added).

⁴ 76 Fed. Reg. 66187 (emphasis added).

A change in the *management* of a post office such that it is staffed only part-time by a postmaster, or not staffed at all by a postmaster, but rather by another type of USPS employee, is not a discontinuance action subject to this section[.]⁵

was changed in second final rule to read as follows:

A change in the *staffing* of a Post Office such that it is staffed only part-time by a postmaster, or not staffed at all by a postmaster, but rather by another type of USPS employee, is not a discontinuance action subject to this section.⁶

Finally, the term “consolidate” was further refined in the final rule. In the proposed rule, proposed section 39 CFR 241.3(a)(2) defined consolidation as:

(2) *Consolidation*. The proposed action may include a consolidation of USPS-operated retail facilities. A consolidation arises when a USPS-operated retail facility is replaced with a contractor-operated retail facility.⁷

In the second final rule, the term “consolidation” was clarified to read in section 241.1(a)(2)(iv) as follows:

“Consolidation” means an action that converts a Postal Service-operated retail facility into a contractor-operated retail facility. The resulting contractor-operated retail facility reports to a Postal Service-operated retail facility.⁸

Procedural History of Docket No. C2011-3

On May 23, 2011, NAPUS, the League, and two former postmasters filed a complaint with the Postal Regulatory Commission under 39 U.S.C. § 3662. Complaint Regarding Postal Service Proposed Rule “Post Office Organization and Administration: Establishment, Classification and Discontinuance,” 39 CFR Part 241 (“Complaint”), Docket No. C2011-3. The filing of the Complaint, which

⁵ 76 Fed. Reg. at 17797 (emphasis added).

⁶ 76 Fed. Reg. at 66187 (emphasis added).

⁷ 76 Fed. Reg. at 17799.

⁸ 76 Fed. Reg. at 66187.

predated either of the final rules, challenged certain aspects of the proposed rule, along with discontinuance activity arising in spring 2011. First, Complainants contended that the proposed rules' description of "consolidation" conflicts with 39 U.S.C. § 404(d) and established case law. Second, Complainants argued that the rules' description of the postmaster's role in managing a Post Office is inconsistent with Section 1004(i)(3) and other statutory and case authority. According to Complainants, the Postal Service should have given notice to them under Section 1004 before public disclosure of the proposed rule. Also as part of the second claim, Complainants asserted that unidentified potential replacements for postmasters "do not have the requisite skills, training, or the appropriate experience and directives to manage postal operations or conduct appropriate community relations," and that implementation of this aspect of the rule could "jeopardize compliance with the Sarbanes-Oxley Act." Complaint at 29-30. Finally, the Complaint alleged that the Postal Service was not in compliance with the 39 U.S.C. § 3661 requirement that the Postal Service obtain an advisory opinion from the Commission before implementing a nationwide change in service.

As relief, Complainants sought a temporary stay of the Postal Service's rules, and they encouraged the Postal Service to avoid a Commission-imposed stay by volunteering to delay any activity related to the rulemaking until the Commission ruled on the Complaint. Complainants also requested a declaratory judgment that (1) the Postal Service lacks the authority to reinterpret "consolidation"; (2) the Postal Service lacks the authority to dissociate

"postmaster" from the definition of "Post Office"; and (3) the large-scale proposed closing plan that the organizations purported to exist would be a nationwide change in service that requires an advisory opinion.

On June 13, 2011, the Postal Service filed a motion to dismiss the Complaint.⁹ The Postal Service responded to the allegations of the Complaint, asserting that (1) there was no basis for Commission jurisdiction; (2) the Complaint was not ripe because it did not challenge any final action taken by the Postal Service; (3) the claim regarding an alleged failure to seek an advisory opinion was premature because there was no indication that the Postal Service had declined to request an advisory opinion from the Commission before undertaking changes to the Post Office discontinuance process; (4) Complainants had failed to exhaust their remedies, including opportunities available as part of the consultative process for Postmaster associations; (5) Complainants failed to meet and confer with the Postal Service as required by the Commission complaint procedures; and (6) Complainants failed to state a claim because the second rule changes were within the Postal Service's management authority and did not violate any law.

On August 11, 2011, the Commission dismissed the Complaint. The dismissal reflects events that occurred after the filing of the Complaint and impacted Complainants' allegations. Complainants' third claim alleged a failure to request an advisory opinion. Because the Postal Service filed a request for an advisory opinion in Docket No. N2011-1 on changes in the nature of service affecting retail access, the Commission dismissed this claim as moot.

⁹ United States Postal Service Motion to Dismiss, Docket C2011-3 (June 13, 2011).

Complainants' first and second claims addressed changes included in the second rule but removed from the first final rule published on July 14, 2011. The Commission dismissed these claims without prejudice on grounds of ripeness.

The Commission explained that

[b]ecause claims 1 and 2 of the Complaint are not ripe, the Commission dismisses them without prejudice. If, in the future, the Postal Service implements a final rule that implicates Complainants' interests, they may renew their Complaint.

PRC Order No. 797, Order Dismissing Complaint, Docket No. C2011-3 (August 11, 2011), at 8.

Argument

I. The Motion is Procedurally Defective.

The Postal Service appreciates that Complainants regard the issues in this docket as having been “fully briefed” via the Complaint and the Postal Service’s Motion to Dismiss. Motion at 2. As a general proposition, the Postal Service would likely share Complainants’ desire for speedy resolution of the legal questions in the Motion to Dismiss. See *id.* at 2-3. Unfortunately, Complainants’ request appears to overlook the disparity between the original Complaint and intervening factual developments, which bars mere reinstatement of the original Complaint without further elaboration.

The Motion seeks to “renew” the Complaint filed in this docket. There is, however, no established procedure for “renewal” of a complaint in the form presented by the Complainants. Section 3662(a) of Title 39, United States Code, provides that any person “may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.” The

Commission's Rules of Practice and Procedure prescribe the form of the initiation of a complaint by specifying the "facts and circumstances that give rise to the complaint." 39 C.F.R. § 3030.10(a)(1). In this proceeding, the controversy that underlies the Complaint that Complainants now seek to summarily "renew" concerns the promulgation of a proposed rule.¹⁰ Complainants have not presented a new complaint pleading facts or circumstances about the Postal Service's promulgation of the second final rule, which presumably now forms the basis of the Complainant's complaint. Indeed, the Complaint was dismissed as unripe because it dealt only with a proposed rule. Thus, the Complaint cannot simply be reinstated on the same basis without warranting the same result. If Complainants now wish to argue that their controversy is ripe in light of a final rule, then the operative statute and Commission rules, as well as fairness to other interested parties, demand that Complainants re-articulate and plead a new Complaint in terms of the actual circumstances, not in light of past circumstances that were held not to furnish any sufficient basis for a valid Complaint.¹¹

As a concrete example of a relevant change in circumstances, the second final rule revised language in the proposed rule that might have suggested that non-postmaster personnel would be responsible for management of Post Offices. As noted in the "Background" section above, the second final rule clarified that

¹⁰ Complainants' request likely springs from the Commission's invitation to "renew their Complaint" if and when "the Postal Service implements a final rule that implicates Complainants' interests," as noted in the "Procedural History" section above. Order No. 797 at 8. The Postal Service does not submit that the Commission's instruction was in error *per se*, only that Complainants' overly literal and simplistic response – seeking to restore the defective original Complaint without accounting for the outcome of the then-pending rulemaking – is an ill-advised shortcut that would unnecessarily complicate the matter for all concerned.

¹¹ By suggesting the procedurally correct way to proceed in this instance, the Postal Service does not waive its challenge to the Commission's jurisdiction to consider a newly filed complaint on grounds that it exceeds the scope of complaint jurisdiction under 39 U.S.C. § 3662.

postmasters would remain responsible for management of Post Offices, even at times when Post Offices may be physically staffed by other personnel. The original Complaint, particularly the discussion of how Complainants believe the proposed rule would have violated the Postmaster Equity Act, does not account for this change in the actual final rule (as Complainants may have wanted to argue). Without filing a new Complaint, it is unclear how Complainants wish this or any other aspect of the original Complaint to be understood in light of the final rule, or to what degree Complainants might concede that the purported need for Commission resolution has been resolved or mitigated through the rulemaking itself.

From a procedural perspective, the appropriate way forward is thus for complainants to reformulate and draft a new complaint, offer postal counsel the opportunity to “meet and confer” on the substance of that new instrument, and, failing a settlement upon the conclusion of a meet and confer opportunity, lodge it with the Commission, with a *current* statement of facts and argument that satisfies all of the requirements of 39 C.F.R. § 3030.10(a).¹² Not only would this provide the Commission, the Postal Service, and any other interested parties with the benefit of Complainants’ articulation of their present complaint, as envisioned by the statute and Commission rules, it would also permit such parties to make an informed judgment on any other procedural steps that might

¹² The Postal Service would respectfully submit that this is not a case where waiver of such requirements would serve the interests of justice, as in cases provided by 39 C.F.R. § 3030.10(b). Complainants are represented by eminent members of the postal bar and have proven to be sophisticated and engaged enough concerning the underlying facts and law that they are fully capable of filing a new, more current and relevant pleading. If anything, the interests of justice would support the Commission, the Postal Service, and other interested parties being provided a clear statement of the intended complaint enlightened by current facts.

be required (such as an answer or renewed motion to dismiss and, if the latter, on what current basis). Perhaps when Complainants have placed their Complaint on a clearer and more current footing, the Postal Service may be able to agree with Complainants that the issues are purely legal and whether expedited resolution of a motion to dismiss may be appropriate. Until then, it is difficult to say what exactly is being complained of at this point.

II. A Summary Final Decision on the Complaint Would Void Parties' Procedural Rights.

Complainants' request for an expedited final resolution of their Complaint has implications more troubling than the technical (yet nonetheless substantial) concerns in the preceding section. By claiming that the matter is "now fully ripe for adjudication" and has been "fully briefed," Complainants invite the Commission to conflate the preliminary Motion to Dismiss with a rebuttal brief. Complainants effectively ask the Commission to deny the Postal Service or any other parties an opportunity to answer the merits of the complaint, present evidence and arguments that might illuminate the case or help their cause, or scrutinize the underpinnings for Complainants' own assumptions, claims, and proposed relief. In addition to raising constitutional due process concerns, such a request would violate the governing statute and Commission rules.

Such a procedure would be without precedent in the Commission's complaint practice, and it would be contrary to 39 U.S.C. § 3662's clear command for a two step evaluation of a complaint's substance. Specifically, section 3662(b) provides as follows:

(b) Prompt Response Required.— (1) In general.— The Postal Regulatory Commission shall, within 90 days after receiving a complaint under subsection (a)—

(A) either—

(i) upon a finding that such complaint raises material issues of fact or law, begin proceedings on such complaint; or

(ii) issue an order dismissing the complaint; and

(B) with respect to any action taken under subparagraph (A)(i) or (ii), issue a written statement setting forth the bases of its determination.

Thus, the first step in evaluating a Complaint requires the Commission to find that a complaint raises "material issues of fact or law" or to dismiss the complaint. If a complaint survives a dismissal challenge, the next step is for the Commission to "begin proceedings on such complaint" grounded on a "written statement" explaining its determination. See *also* 39 C.F.R. § 3030.1(b). Then, the Postal Service would need to be afforded an opportunity to answer the complaint under Rule 3030.12(a)-(b).

Complainants cannot seek instant relief on the substance of their complaint as the Motion suggests. The Commission's system of adjudication, if not our very constitutional system of due process, demands that an answering party be given a full and fair opportunity to meet the charges against it. Rather, the Commission must first make findings on material issues of fact or law, and then institute further proceedings. Even if no factual issues require resolution,¹³

¹³ Of course, if the Commission were to determine that the Complaint does present factual issues, then Complainants' present request could raise constitutional due process problems. A motion to dismiss is typically adjudged on a working presumption that the facts alleged in the complaint are true. See *Ashcroft v. Iqbal*, 556 U.S. 662, ___, 129 S. Ct. 1937, 1949-50 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a

such subsequent proceedings could, for instance, include further pleadings on the propriety of the remedies sought, which have not been briefed before the Commission. In sum, the Commission should not be misled into rendering a final disposition of the Complaint based solely on the Motion. The statute compels a two-step process which cannot be circumvented.

III. The Motion is Based on Unsubstantiated and Outlandish Fears and False Assumptions.

Apparently, Complainants' desire to rest on their previous submissions, without explaining how those submissions retain currency after the second final rule, fails to suppress their urge to scare the Commission with unsubstantiated caricatures of that final rule's "slippery slope" consequences. For instance, Complainants cannot resist fantasizing that

the Postal Service could conceivably determine that there is but one official Post Office in the country, and thus make every retail facility a station and branch of that post office. Further, the Postal Service could conclude that those stations and branches were to be managed under the supervision of just one postmaster for all the United States, the Postmaster General of the United States.

Motion at 3.

Such speculations may make for parlor games and political rhetoric, but dreams of Postal Service schemes are no more fodder for a Commission proceeding than the original Complaint, based as it was on a mere proposed rule. The Postal Service has given no indication of any plans to forge a Tolkienian "one Post Office (or postmaster) to rule them all," and it must be

claim to relief that is plausible on its face." (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When final relief is on the line, however, our system of adjudication demands that the complainant bear heavier burdens of persuasion and proof than a mere faith in its portrayal. The constitutional implications simply cannot be assessed, much less ignored, before the Commission determines whether material issues of fact and law exist.

sincerely doubted whether any such notion could realistically grow out of 39 C.F.R. Part 241, as amended.¹⁴ Unless and until Complainants' fears have coalesced into a concrete program by the Postal Service, it would be premature and a poor use of the Commission's, Postal Service's, and other parties' resources to interrogate such phantasms.¹⁵

If such dramatic programs to eliminate postmasters or Post Offices outright should ever arise, it is self-evident that Complainants would have other administrative remedies to exhaust. Specifically, as has been seen in Docket Nos. N2009-1 and N2011-1 (the latter of which rendered a portion of the original Complaint moot), the Postal Service is almost certain to submit any large-scale, centrally devised plan to close Postal Service-operated retail facilities for an advisory opinion under 39 U.S.C. § 3661(b)-(c), regardless of whether those facilities are Post Offices, classified stations, or classified branches.¹⁶ Given the existence of such alternative venues for Complainants and the Postal Service to address the merits of any future schemes like those that Complainants hypothesize, there is little cause for the Commission to cast speculative judgment on situations that may never arise at all or in the manner feared by Complainants.

¹⁴ The notion that the Postal Service would have a single Postmaster is, moreover, contradicted by the draft Handbook PO-101 revisions sent to the Complainant associations on October 24, 2011. Those revisions, which will be published in the *Postal Bulletin* and which will take effect on December 1, 2011, define a Post Office to be "an organizational entity subordinate to a district, and perhaps also an administrative Post Office, managed by a Postmaster" thereby dispelling Complainants' unsubstantiated scare tactics.

¹⁵ Nor is it clear why Complainants' first nightmare in the quote above has any greater substance after the final rules than before them: the rulemaking did not affect the Postal Service's authority to convert a Post Office into a station or branch of another Post Office, only the procedures that would apply to such a conversion.

¹⁶ After all, PRC Docket No. N2009-1 (SBOC) encompassed only stations and branches, while PRC Docket No. N2011-1 encompassed Post Offices, stations, and branches.

It must be emphasized that the rulemaking was not aimed at mass conversion of Post Offices to stations or branches or at some centralization of postmaster status at Headquarters. Rather, the Postal Service removed a self-imposed restriction on its statutory authority to staff Post Offices flexibly, in furtherance of efficient and economical management. If anything, the rulemaking could well result in brick-and-mortar retail facilities being *sustained*, as the Postal Service could adjust staffing and postmaster oversight to achieve better economy of operations.¹⁷ Before the rulemaking, one option to address a persistent postmaster vacancy might have been to consider closure or consolidation of the facility, notwithstanding whether alternative staffing arrangements might have enhanced efficiency, economy, and customer benefits. Nor was the rulemaking aimed at removing appeal rights. Rather, the Postal Service merely aligned its rules to reflect the Commission's and other stakeholders' views about the lack of perceived difference by customers among Post Offices stations and branches. It logically flows from that premise that there should be no reason to undergo special procedures and appeals when one such facility is converted to another.

Finally, there is absolutely no basis whatsoever to Complainants' claim that the Postal Service's ultimate aim in promulgating the second final rule is to convert Post Offices to stations and branches for the purposes of impeding customers' appeal rights to the Commission. The Postal Service has no intention of engaging in such wholesale contrivance and not one fact is cited to support this fantastic claim. There are but a handful of Post Office to station or branch conversion actions pending under Handbook PO-101 regulations currently in

¹⁷ Various parties argue in PRC Docket N2011-1 that the Postal Service should do so.

effect, and those actions are based on the particular circumstances of the field management structure in those localities. Upon implementation of the second final rule, the Postal Service has no intention of engaging in any large-scale expansion of these rare actions for the nefarious purposes that Complainants intimate. To the contrary, the second final rule provides a means for implementing mitigation strategies in lieu of Post Office closings through the use of alternative staffing models, as discussed in the preceding paragraph.

Moreover, the Commission has shown itself quite willing to entertain appeals of the discontinuance of stations and branches, and reaffirmed its claim of jurisdiction over subordinate facilities as recently as last week. See Order No. 958, Order Denying Application for Suspension, Docket No. A2011-90 (November 9, 2011), at 2 n.4 (“The Commission rejects the Postal Service’s argument ... that 39 U.S.C. § 404(d) does not apply to any facility it has designated for administrative purposes as a station or branch.”). While the Postal Service continues to disagree with the Commission’s interpretation of the scope of its jurisdiction under 39 U.S.C. § 404(d), past experience demonstrates that Complainants would not be nearly so bereft of opportunities for Commission review if their wild claims were ever to materialize.

Thus, Complainants’ characterizations of the second final rule’s immediate consequences are overblown and should not be deemed to imbue Complainants’ requests with urgency or added importance. To the extent such concerns are of any potential validity, they would be unripe at this time, and Complainants would

have other administrative remedies to exhaust should their fears ever materialize in some form.

Conclusion

The Complainants' Motion is a procedurally defective shortcut that is based on stale pleadings and buttressed by unsubstantiated and outlandish claims. Complainants cannot cure the Motion's procedural deficiencies without starting afresh. Nor can they avoid the clear statutory, regulatory, and possibly constitutional requirements for fuller briefing, simply because the Postal Service had filed a preliminary Motion to Dismiss. The Postal Service accordingly urges the Commission to reject the Motion firmly. However, to the extent the Commission considers granting the Motion, in whole or in part, the Postal Service accordingly "renews" its Motion to Dismiss in this docket and urges the Commission to reject the relief sought in the Motion on that secondary basis.

Respectfully submitted,

UNITED STATES POSTAL SERVICE
By its attorneys:

Anthony F. Alverno
Chief Counsel, Global Business &
Service Development

Jacob Howley
James M. Mecone
Attorneys

475 L'Enfant Plaza, SW
Washington, DC 20260-1135
(202) 268-8917
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Proposed Rules

Federal Register

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend postal regulations to improve the administration of the Post Office closing and consolidation process. In addition, certain procedures employed for the discontinuance of Post Offices would be applied to the discontinuance of other types of retail facilities operated by Postal Service employees.

DATES: Comments must be received on or before May 2, 2011.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Customer Service Standardization, ATTN: Retail Discontinuance, 475 L'Enfant Plaza SW., Room 6816, Washington, DC 20260-6816. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Postal Service Library, at the above address. Arrangements should be made in advance for inspection by contacting (202) 268-2900.

FOR FURTHER INFORMATION CONTACT: Annette Raney, (202) 268-4307.

SUPPLEMENTARY INFORMATION: The Postal Reorganization Act of 1970 directs the Postal Service to establish and maintain postal facilities "of such character and in such locations that postal patrons throughout the nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services." 39 U.S.C. 403(b)(3). The 1976 amendments to the Postal Reorganization Act (PRA), codified in former section 404(b) of title 39 of the U.S. Code, require that the Postal Service provide adequate notice to customers of its intention to close or consolidate a Post Office™. (The

codified statute was re-designated as 39 U.S.C. 404(d) under the Postal Accountability and Enhancement Act of 2006 (PAEA), Public Law 109-435, section 1010(e), 120 Stat. 3261.) Notice must be given at least 60 days in advance to enable customers to present their views. Section 404(d) further requires that the Postal Service consider specific criteria in making determinations to close or consolidate a post office, including the effects on community and employees, the ability to provide a maximum degree of effective and regular postal services to the affected community, and economic savings. A determination to close or consolidate any Post Office may be appealed to the Postal Regulatory Commission (Commission) within 30 days after such determination is made available to customers. The Commission has up to 120 days to issue a decision if an appeal is filed. Even if no appeal is filed, the Postal Service is prevented from taking action to close or consolidate a post office until 60 days have elapsed since its final determination has been made available to customers.

As part of ongoing efforts to rationalize its retail network, the Postal Service has undertaken a review of its regulations in 39 CFR part 241 to determine how the administration of the closing process can be improved. The Postal Service has identified various amendments to section 241.3 that would further the Plan's objective of improving the closing process. In addition, the Postal Service has determined, as a matter of policy, to apply the same discontinuance procedures to all retail facilities operated by Postal Service employees. These proposed measures are described below.

I. Application of Post Office Discontinuance Procedures to Other Retail Facilities

Section 404(d) of title 39, U.S. Code, applies only to the "closing or consolidation" of "post offices." A Post Office is an organizational unit headed by a postmaster that provides retail and delivery services, and mail processing, to residents and businesses in the ZIP Code areas that comprise that office's exclusive delivery service area. In using the term "Post Office" in its technical sense for well over a century, Congress has recognized the need for postal

officials to establish facilities, including Post Offices, stations, and branches, and also to discontinue them. The authority of Congress "to establish post offices," U.S. Const. art. I, section 8, cl. 7, has been consistently delegated to the Postmaster General since the establishment of the Nation's postal system. See the discussion in *Ware v. United States*, 71 U.S. 617, 630-633 (1866).

Numerous other postal statutes, not directly concerned with the establishment of postal facilities, have also illustrated the distinction between a station or branch and a Post Office. For example, former 39 U.S.C. 3524-3530, which set compensation levels for postmasters and other management employees, clearly show the administrative distinction between a Post Office, supervised by a postmaster, and its subordinate stations and branches, generally under the direction of an officer in charge. Similarly, in extending the protection of criminal statutes to postal facilities and operations, Congress was careful to apply those statutes not only to Post Offices, but to their subordinate service units. *See, e.g.*, 18 U.S.C. 1703, 1708, 1709, 1712, 1721.

Furthermore, Congress was well aware of the longstanding distinction between Post Offices and other types of postal facilities when it enacted 39 U.S.C. 404(d). In proposing the legislation which provided the foundation for current section 404(d), Senator Jennings Randolph expressed his opposition to the "indiscriminate closing of our rural and small town post offices" as well as to the decision "to create branches out of many post offices close to large cities." To curtail such actions, he offered legislation requiring the Postal Service to "substantiate any proposal to change or eliminate independent post offices." *See* 122 Cong. Rec. 6314 (March 11, 1976). In its analysis of the subsequently enacted "Randolph Amendment," the conference report on H.R. 8603 explicitly limited its application to Post Offices: "[T]he managers intend that this provision apply to post offices only and not to other postal facilities." H.R. Rep. No. 94-1444, 94th Cong., 2d Sess. 17 (1976). Thus, as a legal matter, former 39 U.S.C. 404(b) and its modern analogue, 39 U.S.C. 404(d), apply only to Post Offices. *See Wilson v. United States*

Postal Service, 441 F. Supp. 803, 806 (C.D. Cal. 1977); *Knapp v. United States Postal Service*, 449 F. Supp. 158, 161–62 (E.D. Mich. 1978).

As a matter of policy, the Postal Service recognizes that the functional differences among respective types of retail facilities staffed by postal employees may not be readily apparent to its retail customers. The Postal Service is mindful of comments that the Commission has provided to this effect in multiple contexts. Accordingly, many customers expect the same discontinuance procedures to apply for their local station as to the nearest independent Post Office. In the interest of transparency and responsiveness to customer needs, the Postal Service has concluded that it makes sense, as a policy matter, to propose the application of a single set of discontinuance procedures to postal employee-operated retail facilities. Although customers of contractor-operated retail facilities may also experience and expect comparable levels of service to those of postal employee-operated retail facilities, exigencies of contracting relationships make it generally impractical to harmonize their discontinuance procedures with the deliberative timeframe and procedures required for discontinuance of Postal Service-operated facilities.

The Postal Service recognizes that its proposed rule represents a policy change that significantly enhances transparency for its customers. The proposed rule does not, however, change the text or legislative history of 39 U.S.C. 404(d), which indicate Congress's intent that the statute should apply only to independent Post Offices and not to subordinate retail facilities. By proposing the application of uniform procedures to all Postal Service-operated retail facilities, the Postal Service would exceed the procedural requirements of its operating statute in the interests of public transparency and participation.

One consequence of this procedural harmonization is that the distinguishing factor would become the identity of the facility as operated by the Postal Service or a contractor, and not the administrative classification of affected facilities as Post Offices, stations, or branches. The conversion of an independent Post Office to a subordinate Postal Service-operated retail facility would no longer constitute a "consolidation" that triggers discontinuance proceedings, as it does today. The governing statute does not define "close" and "consolidate," nor does it offer any guidance as to the

distinction between the two terms. Postal Service facilities generally offer the same retail services to customers regardless of the facilities' administrative designation. Moreover, by applying the same discontinuance procedures to all Postal Service-operated retail facilities, the proposed rule would erase the effect of administrative designations on applicable discontinuance procedures. Therefore, the Postal Service does not consider it reasonable to continue applying discontinuance procedures to facility re-designations that do not entail any practical effect for customers. These changes would also harmonize with changes regarding administrative oversight of particular offices.

The proposed rule would not be retroactive. Therefore, until such time as any proposed changes are issued in a final rule and take effect, the proposed change in policy is not effective and would not affect the procedures currently in use for discontinuance of Postal Service retail facilities.

II. Procedural Changes

After an extensive review, the Postal Service is in the process of revising and updating its discontinuance procedures. This process significantly improves the internal timeframes, level of coordination, and approvals; it will maintain compliance with the statute and enhances public notice and involvement. The internal procedures for discontinuance actions are detailed in Handbook PO-101, *Post Office Discontinuance Guide*, which is undergoing revision. Certain changes are also required to 39 CFR 241.3 to reflect the new processes. For example, retail facility discontinuances may be prompted not only by local evaluations, but also by nationwide directives from the responsible Headquarters office.

In addition, current regulations require at least a 90-day waiting period after posting of a final determination (if not appealed to the Commission) or after a Commission order upholding the final determination. The statute, however, only requires a 60-day period after posting of the final determination. Accordingly, the proposed rule would make the mandatory waiting period consistent with statutory requirements, although the Postal Service could, at its discretion, defer implementation.

Finally, the proposed rule would give explicit guidance to District Managers as to the circumstances that may justify commencement of a discontinuance study.

III. Analysis of Proposed Changes

Section 241.1(a) and (b) would be updated to state the establishment requirements and classification system for Post Offices in accordance with *Postal Operations Manual* (POM) 123.11. The change in the classification system does not entail any change in how respective retail facilities are rated by revenue units within accounting groups. Subsection 241.1(a) would also clarify that Post Offices may be managed by postmasters, as is commonly the case, or by other designated personnel. The designation of a retail facility as a Post Office, classified station, or classified branch would not depend on whether any responsible personnel is a postmaster.

In keeping with the policy change concerning the scope of discontinuance procedures, the proposed rule would replace all references to "post office" in 39 CFR 241.3 with "USPS-operated retail facility" (or a similar term). A new subparagraph (a)(1)(ii) would be added to define "USPS-operated retail facility" as any Post Office, station, or branch that is operated by Postal Service employees, rather than by contractor personnel. Subparagraph (a)(1)(ii) would also define "contractor-operated retail facility" as any community post office, station, branch, or other facility offering retail postal services that is operated by a contractor, rather than by Postal Service employees.

Paragraph (a)(1) would be renumbered as subparagraph (a)(1)(i), and the scope of 39 CFR 241.3 would be defined in that subparagraph as applying to the closure or combination of any Postal Service-operated retail facility or facilities, or the replacement of such a facility with a contractor-operated retail facility. Corresponding changes would be made to paragraph (c)(2) with respect to the scope of a "consolidation" for purposes of 39 CFR 241.3. Subparagraph (a)(1)(iii) would be added to clarify that the reclassification of a Post Office as a Postal Service-operated station or branch, or the replacement of the former with the latter, is not a closing or consolidation subject to 39 CFR 241.3. Subparagraph (a)(1)(iii) would also clarify that discontinuance actions subject to 39 CFR 241.3 do not include staffing changes in the management of a post office such that it is staffed by a postmaster part-time or not at all and by another type of USPS employee during the remaining office hours.

Because the discontinuance procedures in 39 CFR 241.3 would apply beyond the extent legally required by 39 U.S.C. 404(d), paragraph (a)(2) would be renamed simply

“Requirements,” and the reference to 39 U.S.C. 404(d) as the statutory source of such requirements would be deleted.

Paragraph (a)(2), subparagraph (a)(3)(ii), and paragraph (c)(1) would be amended to allow for the possibility that discontinuance actions may result from initiatives or instructions by the responsible Vice President or from District Managers. Although many discontinuance actions will continue to be prompted by local personnel’s assessment of prevailing conditions, this change would reflect the fact that discontinuance actions could also flow from nationwide requirements for retail facilities established by relevant Headquarters offices.

Subparagraph (a)(2)(iv) currently refers to the statutory right of persons served by an affected Post Office to appeal a discontinuance determination to the Commission. Although the Postal Service is proposing to extend the applicability of its post office discontinuance procedures to other types of Postal Service-operated retail facilities, the Postal Service does not have the power to alter the scope of the Commission’s statutory jurisdiction. Therefore, the Postal Service proposes to add a sentence to subparagraph (a)(2)(iv) to clarify that, in cases where customers of an affected Postal Service-operated retail facility other than a post office file an appeal with the Commission, the Postal Service’s Office of General Counsel will determine whether to raise jurisdictional defenses on a case-by-case basis, without waiving any objections as to the Commission’s general lack of jurisdiction over such attempted appeals. In addition, subparagraph (a)(2)(iv) would be amended to incorporate the “mailbox rule” for receipt of appeals by the Commission, in accordance with 39 U.S.C. 404(d)(6).

A new paragraph (a)(4) would be added to clarify the circumstances that may prompt a District Manager, Vice President, or a designee of either to initiate a discontinuance study. Permissible factors include postmaster vacancies, emergency suspensions, workload changes, drops in customer demand, availability of reasonable alternate access to postal services, and other special circumstances. Absent one or more such permissible circumstances, a deciding official of either may not initiate a discontinuance study because restroom facilities or building modifications for the handicapped are required, for reasons of compliance with the Occupational Health and Safety Act of 1970 (29 U.S.C. 651 *et seq.*), or because the retail facility

is a small Post Office operating at a deficit.

The scope of paragraph (b)(4) would be extended to the replacement of any Postal Service-operated retail facility with another type of Postal Service-operated or contractor-operated retail facility.

Paragraph (b)(5) would be deleted, because the Publication that lists discontinued Post Offices referenced in that paragraph is obsolete.

Subparagraph (c)(4)(vii) would be reorganized to more accurately indicate the contents of the proposal notice. Clause (c)(4)(vii)(B) and subparagraph (f)(2)(ii) would be amended to require notice of appeal rights only for proposed discontinuances of post offices, in accordance with the scope of the Commission’s statutory jurisdiction, as described in the analysis of subparagraph (a)(2)(iv) above.

Paragraph (d)(2) and the sample form included therein would be deleted. This form will be available to customers in accordance with these regulations. Current paragraphs (d)(3) and (4) would be renumbered (d)(2) and (3), respectively.

Paragraph (d)(3) (re-designated as (d)(2)) would be amended to clarify that a community meeting should be held unless the responsible Vice President or Area Manager of Delivery Programs Support instructs otherwise.

Subparagraph (d)(4)(v) (re-designated as (d)(3)(v)) would advise that certain personally identifiable information may be redacted from publicly accessible copies of the discontinuance record, in the interest of protecting personal privacy.

Subsection (e)(2)(ii)(A) and (B) would be amended to reflect the fact that discontinuance records are typically transmitted electronically, as well as forwarded in paper form. Therefore, it is more appropriate for the District Manager to certify accuracy of the record being transmitted, rather than to attach a separate certification as to the accuracy of copies.

Subparagraph (g)(1)(i) would be amended to remove the District Manager’s obligation to notify the responsible Vice President of the date of posting.

The timeframe for implementation in the event that a final determination is not appealed, set forth in paragraph (g)(2), would be amended such that implementation can occur anytime after the statutorily required 60-day waiting period that commences the first day after posting of the final determination. Similarly, when the Commission upholds the Postal Service’s final determination under subparagraph

(g)(4)(i), the proposed rule would allow implementation anytime after issuance of the Commission’s Order, so long as the 60-day waiting period after posting of the final determination is also satisfied. The current rule for both instances, that a discontinuance be effective on the first Saturday 90 days after the Commission’s order, is not required by statute. Although the Postal Service may continue to apply a longer time period in some cases, the proposed rule would allow the Postal Service to do otherwise within the statutory framework.

Clause (g)(3)(ii)(B) would be amended to clarify that the Commission’s final order and opinion need only be displayed at the Postal Service-operated retail facility subject to discontinuance for 30 days or until the effective date of the discontinuance, whichever is earlier.

The proposed rule would also make several minor changes to update terms. References to the former “Postal Rate Commission” would be replaced with “Postal Regulatory Commission,” in accordance with the renaming of that entity under Section 604 of the PAEA, Public Law 109–435, 120 Stat. 3241–3242. References to Administrative Support Manual (ASM) 352.6 would be updated to refer to chapter 4 of Handbook AS–353, *Guide to Privacy, the Freedom of Information Act, and Records Management*, to which the ASM’s records request regulations have been transferred. References to former 39 U.S.C. 404(b) would be updated to 39 U.S.C. 404(d). Subparagraph (g)(3)(ii) would assign responsibility to the Postal Service’s Office of the General Counsel, rather than specifically to the former section for Legal Policy and Ratemaking Law. Finally, the position titles of District Manager, Customer Service and Sales, and Vice President, Delivery and Retail, throughout the section would be updated to District Manager and responsible Vice President, respectively.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed amendments to the Code of Federal Regulations.

An appropriate amendment to 39 CFR part 241 to reflect these changes will be published if the proposal is adopted.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

For the reasons set out in this document, the Postal Service proposes to amend 39 CFR part 241 as follows:

**PART 241—RETAIL ORGANIZATION
AND ADMINISTRATION:
ESTABLISHMENT, CLASSIFICATION,
AND DISCONTINUANCE**

1. The authority citation for 39 CFR part 241 is revised to read as follows:

Authority: 39 U.S.C. 101, 401, 404, 410.

2. Revise § 241.1 to read as follows:

§ 241.1 Post offices.

(a) *Establishment.* Post offices are established and maintained at locations deemed necessary to ensure that regular and effective postal services are available to all customers within specified geographic boundaries. A post office may be operated or managed by a postmaster or by another type of postal employee.

(b) *Classification.* As of October 1 of each year, Post Offices are categorized through a cost ascertainment grouping (CAG) process based on allowable postal revenue units for the second proceeding fiscal year as follows:

(1) *CAG A–G.* Post offices having 950 or more revenue units.

(2) *CAG H–J.* Post offices having 190 but less than 950 revenue units.

(3) *CAG K.* Post offices having 36 but less than 190 revenue units.

(4) *CAG L.* Post offices having less than 36 revenue units.

3. Revise § 241.3 to read as follows:

§ 241.3 Discontinuance of USPS-operated retail facilities.

(a) *Introduction—(1) Coverage.* (i) This section establishes the rules governing the Postal Service's consideration of whether an existing retail Post Office, station, or branch should be discontinued. The rules cover any proposal to:

(A) Replace a USPS-operated post office, station, or branch with a contractor-operated retail facility;

(B) Combine a USPS-operated post office, station, or branch with another USPS-operated retail facility, or

(C) Discontinue a USPS-operated post office, station, or branch without providing a replacement facility.

(ii) As used in this section, "USPS-operated retail facility" includes any Postal Service employee-operated post office, station, or branch, but does not include any station, branch, community post office, or other retail facility operated by a contractor. "Contractor-operated retail facility" includes any station, branch, community post office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.

(iii) The conversion of a post office into, or the replacement of a post office with, another type of USPS-operated retail facility is not a discontinuance action subject to this section. A change in the management of a post office such that it is staffed only part-time by a postmaster, or not staffed at all by a postmaster, but rather by another type of USPS employee, is not a discontinuance action subject to this section.

(2) *Requirements.* A District Manager or the responsible Vice President may initiate a study of a USPS-operated facility for possible discontinuance. Any decision to close or consolidate a USPS-operated retail facility may be effected only upon the consideration of certain factors. These include the effect on the community served; the effect on employees of the USPS-operated retail facility; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a USPS-operated retail facility to evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a USPS-operated retail facility must be made in writing and must include findings covering all the required considerations.

(iii) The written determination must be made available to persons served by the USPS-operated retail facility at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by a Post Office subject to discontinuance may appeal the decision to the Postal Regulatory Commission. Where persons regularly served by another type of USPS-operated retail facility subject to discontinuance file an appeal with the Postal Regulatory Commission, the General Counsel reserves the right to assert defenses, including the Commission's lack of jurisdiction over such appeals. For purposes of determining whether an appeal is filed within the 30-day period, receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required to make any determination subject to 39 U.S.C. 404(d)(5) no later than 120 days after receiving the appeal.

(vii) The following table summarizes the notice and appeal periods defined by statute.

BILLING CODE 7710-12-P

Public Notice of Proposal

60-day notice

Public Notice of Final Determination

30 days for filing any appeal

Up to 120 days for appeal
consideration and decision

Wait at least 60 days from first day
after posting final determination
before closing USPS-operated retail
facility

BILLING CODE 7710-12-C

(3) *Additional requirements.* This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading to discontinuance of a particular USPS-operated retail facility are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(4) *Circumstances prompting decision to study*—(i) *Permissible circumstances.* A District Manager, the responsible Vice President, or a designee of either may initiate a study of a USPS-operated retail facility's potential discontinuance based upon circumstances including, but not limited to, the following:

(A) A postmaster vacancy;
(B) Emergency suspension of the USPS-operated retail facility due to cancellation of a lease or rental agreement when no suitable alternate quarters are available in the community, a fire or other natural disaster, severe health or safety hazards, challenge to

the sanctity of the mail, or similar reasons;

(C) Earned workload below the minimum established level for the lowest non-bargaining (EAS) employee grade;

(D) Insufficient customer demand, evidenced by declining or low volume, revenue, revenue units, local business activity, or local population trends;

(E) The availability of reasonable alternate access to postal services for the community served by the USPS-operated retail facility; or

(F) The incorporation of two communities into one or other special circumstances.

(ii) *Impermissible circumstances.* In the absence of any circumstances identified in paragraph (a)(4)(i) of this section, the following do not constitute circumstances that justify initiation of a discontinuance study:

(A) Any claim that the continued operation of a building without handicapped modifications is inconsistent with the Architectural Barriers Act (42 U.S.C. 4151 *et seq.*);

(B) The absence of running water or restroom facilities;

(C) Compliance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*); or

(D) The operation of a small Post Office at a deficit.

(b) *Preservation of community address*—(1) *Policy.* The Postal Service permits the use of a community's separate address to the extent practicable.

(2) *ZIP Code assignment.* The ZIP Code for each address formerly served from the discontinued USPS-operated retail facility should be kept, wherever practical. In some cases, the ZIP Code originally assigned to the discontinued USPS-operated retail facility may be changed if the responsible District Manager receives approval from his or her Vice President, Area Operations, before any proposal to discontinue the USPS-operated retail facility is posted.

(i) In a consolidation, the ZIP Code for the replacement contractor-operated retail facility is the ZIP Code originally assigned to the discontinued facility.

(ii) If the ZIP Code is changed and the parent or gaining USPS-operated retail facility covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) *USPS-operated retail facility's city name in address.* If all the delivery addresses using the city name of the USPS-operated retail facility being discontinued continue to use the same ZIP Code, customers may continue to use the discontinued facility's city name in their addresses, instead of that of the new delivering USPS-operated retail facility.

(4) *Name of facility established by consolidation.* If a USPS-operated retail facility is replaced by a contractor-operated facility, the replacement unit is usually given the same name of the facility that is replaced.

(c) *Initial proposal*—(1) *In general.* If a District Manager believes that the discontinuance of a USPS-operated retail facility within his or her responsibility may be warranted, or if the responsible Vice President believes

that the discontinuance of any USPS-operated retail facility may be warranted, the District Manager:

(i) Must use the standards and procedures in § 241.3(c) and (d).

(ii) Must investigate the situation.

(iii) May propose the USPS-operated retail facility be discontinued.

(2) *Consolidation.* The proposed action may include a consolidation of USPS-operated retail facilities. A consolidation arises when a USPS-operated retail facility is replaced with a contractor-operated retail facility.

(3) *Views of postmasters.* Whether the discontinuance under consideration involves a consolidation or not, the District Manager must discuss the matter with the postmaster (or the officer in charge) of the USPS-operated retail facility considered for discontinuance, and with the postmaster of any other USPS-operated retail facility affected by the change. The District Manager should make sure that these officials submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) *Preparation of written proposal.* The District Manager, or a designee, must gather and preserve for the record all documentation used to assess the proposed change. If the District Manager thinks the proposed action is warranted, he or she, or a designee, must prepare a document titled "Proposal to (Close) (Consolidate) the (Facility Name)." This document must describe, analyze, and justify in sufficient detail to Postal Service management and affected customers the proposed service change. The written proposal must address each of the following matters in separate sections:

(i) *Responsiveness to community postal needs.* It is the policy of the Government, as established by law, that the Postal Service will provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. The proposal should:

(A) Contrast the services available before and after the proposed change;

(B) Describe how the changes respond to the postal needs of the affected customers; and

(C) Highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

(ii) *Effect on community.* The proposal must include an analysis of the effect the proposed discontinuance might have on the community served, and discuss the application of the requirements in § 241.3(b).

(iii) *Effect on employees.* The written proposal must summarize the possible effects of the change on postmasters and other employees of the USPS-operated retail facility considered for discontinuance.

(iv) *Savings.* The proposal must include an analysis of the economic savings to the Postal Service from the proposed action, including the cost or savings expected from each major factor contributing to the overall estimate.

(v) *Other factors.* The proposal should include an analysis of other factors that the District Manager determines are necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(vi) *Summary.* The proposal must include a summary that explains why the proposed action is necessary, and assesses how the factors supporting the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service is paramount.

(vii) *Notice.* The proposal must include the following notices:

(A) *Supporting materials.* "Copies of all materials on which this proposal is based are available for public inspection at (Facility Name) during normal office hours."

(B) *Nature of posting.* "This is a proposal. It is not a final determination to (close) (consolidate) this facility."

(C) *Posting of final determination.* "If a final determination is made to close or consolidate this facility, after public comments on this proposal are received and taken into account, a notice of that final determination will be posted in this facility."

(D) *Appeal rights.* "The final determination will contain instructions on how affected customers may appeal a decision to close or consolidate a post office to the Postal Regulatory Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final determination." The notice in this clause is provided when the USPS-operated retail facility under study is a post office. For purposes of this clause, the date of receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(d) *Notice, public comment, and record*—(1) *Posting proposal and comment notice.* A copy of the written proposal and a signed invitation for comments must be posted prominently in the USPS-operated retail facility under study and in any other affected

USPS-operated retail facility. The invitation for comments must:

(i) Ask interested persons to provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, on the potential effect of the proposed change on postal services and the community.

(ii) State that copies of the proposal with attached optional comment forms are available in the affected USPS-operated retail facilities.

(iii) Provide a name and telephone number to call for information.

(2) *Other steps.* In addition to providing notice and inviting comment, the District Manager must take any other steps necessary to ensure that the persons served by affected USPS-operated retail facilities understand the nature and implications of the proposed action. A community meeting should be held unless otherwise instructed by the responsible Vice President or the Area Manager of Delivery Programs Support.

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the District Manager should encourage persons offering the views or information to provide written comments to preserve them for the record.

(ii) As a factor in making his or her decision, the District Manager may not rely on communications received from anyone unless submitted in writing for the record.

(3) *Record.* The District Manager must keep as part of the record for consideration and review all documentation gathered about the proposed change.

(i) The record must include all information that the District Manager considered, and the decision must stand on the record. No written information or views submitted by customers may be excluded.

(ii) The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

(iii) The record must include a chronological index in which each document contained is identified and numbered as filed.

(iv) As written communications are received in response to the public notice and invitation for comments, they are included in the record.

(v) A complete copy of the record must be available for public inspection during normal office hours at the USPS-operated retail facility proposed for discontinuance or at the USPS-operated retail facility providing alternative service, if the office to be discontinued

was temporarily suspended, beginning no later than the date on which notice is posted and extending through the comment period. When appropriate, certain personally identifiable information, such as individual names or residential addresses, may be redacted from the publicly accessible copy of the record.

(vi) Copies of documents in the record (except the proposal and comment form) are provided on request and on payment of fees as noted in chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management.*

(e) *Consideration of public comments and final local recommendation—(1) Analysis of comments.* The District Manager or a designee must prepare an analysis of the public comments received for consideration and inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each point favorable to the proposal and each point unfavorable to the proposal. The analysis should identify to the extent possible how many comments support each point listed.

(2) *Re-evaluation of proposal.* After completing the analysis, the District Manager must review the proposal and re-evaluate all the tentative conclusions previously made in light of additional customer information and views in the record.

(i) *Discontinuance not warranted.* If the District Manager decides against the proposed discontinuance, he or she must post, in the USPS-operated retail facility considered for discontinuance, a notice stating that the proposed closing or consolidation is not warranted.

(ii) *Discontinuance warranted.* If the District Manager decides that the proposed discontinuance is justified, the appropriate sections of the proposal must be revised, taking into account the comments received from the public. After making necessary revisions, the District Manager must:

(A) Transmit the revised proposal and the entire record to the responsible Vice President.

(B) Certify that all documents in the record are originals or true and correct copies.

(f) *Postal Service decision.—(1) In general.* The responsible Vice President or a designee must review the proposal of the District Manager and decide on the merits of the proposal. This review and the decision must be based on and supported by the record developed by the District Manager. The responsible Vice President can instruct the District Manager to provide more information to

supplement the record. Each instruction and the response must be added to the record. The decision on the proposal of the District Manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth in this paragraph (f).

(2) *Approval.* The responsible Vice President or a designee may approve the proposed discontinuance, with or without further revisions. If approved without further revision, the term “Final Determination” is substituted for “Proposal” in the title. A copy of the Final Determination must be provided to the District Manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(d).

(i) *Supporting materials.* The Final Determination must include the following notice: “Copies of all materials on which this Final Determination is based are available for public inspection at the (Facility Name) during normal office hours.”

(ii) *Appeal rights.* If the USPS-operated retail facility subject to discontinuance is a post office, the Final Determination must include the following notice: “This Final Determination to (close) (consolidate) the (Facility Name) may be appealed by any person served by that office to the Postal Regulatory Commission. Any appeal must be received by the Commission within 30 days of the date this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Regulatory Commission, or the parties to the appeal, must be made available for public inspection at the (Facility Name) during normal office hours.”

(3) *Disapproval.* The responsible Vice President or a designee may disapprove the proposed discontinuance and return it and the record to the District Manager with written reasons for disapproval. The District Manager or a designee must post a notice in each affected USPS-operated retail facility that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The responsible Vice President or a designee may return the proposal of the District Manager with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the responsible Vice President must be placed on file in the Postal Service Headquarters library.

(g) *Implementation of final determination*—(1) *Notice of final determination to discontinue USPS-operated retail facility.* The District Manager must:

(i) Provide notice of the Final Determination by posting a copy prominently in the USPS-operated retail facilities likely to be serving the affected customers. The date of posting must be noted on the first page of the posted copy as follows: “Date of posting.”

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each USPS-operated retail facility where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management.*

(2) *Implementation of determinations not appealed.* If no appeal is filed, the official closing date of the office must be published in the *Postal Bulletin* and effective, at the earliest, 60 days after the first day that Final Determination was posted. A District Manager may request a different date for official discontinuance in the Retail Change Announcement document submitted to the responsible Vice President or a designee. However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(3) *Actions during appeal*—(i) *Implementation of discontinuance.* If an appeal is filed, only the responsible Vice President may direct a discontinuance before disposition of the appeal. However, the USPS-operated retail facility may not be permanently discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(ii) *Display of appeal documents.* The Office of General Counsel must provide the District Manager with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The District Manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the USPS-operated retail facility to be discontinued. If the operation of that USPS-operated retail facility has been suspended, the District Manager must ensure that copies are displayed in the USPS-operated retail facilities likely to be serving the affected customers.

(B) All documents except the Postal Regulatory Commission’s final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed at the USPS-operated retail facility to be discontinued for 30 days or until the effective date of the discontinuance, whichever is earlier. The final order and opinion must be displayed for 30 days in the USPS-operated retail facilities likely to be serving the affected customers.

(4) *Actions following appeal decision*—(i) *Determination affirmed.* If the Commission dismisses the appeal or affirms the Postal Service’s determination, the official closing date of the office must be published in the *Postal Bulletin*, effective anytime after the Commission renders its opinion, if not previously implemented under § 241.3(g)(3)(i). However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required under § 241.3(g)(1).

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the responsible Vice President must direct that either:

(A) Notice be provided under paragraph (f)(3) of this section that the proposed discontinuance is determined not to be warranted or

(B) The matter be returned to an appropriate stage under this section for further consideration following such instructions as the responsible Vice President may provide.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 2011-7555 Filed 3-28-11; 4:15 pm]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2010-1058, FRL-9288-5]

Approval and Promulgation of Implementation Plans; New York Reasonable Further Progress Plans, Emissions Inventories, Contingency Measures and Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on portions of a proposed State Implementation Plan revision submitted

by New York that are intended to meet several Clean Air Act requirements for attaining the 0.08 part per million 8-hour ozone national ambient air quality standards. EPA is proposing to approve: the 2002 base year emission inventory and the projection year emissions, the motor vehicle emissions budgets used for planning purposes, the reasonable further progress plan, and the contingency measures as they relate to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas.

DATES: Comments must be received on or before May 2, 2011.

ADDRESSES: Submit your comments, identified by Docket Number EPA-R02-OAR-2010-1058, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

- *E-mail:* Werner.Raymond@epa.gov.

- *Fax:* 212-637-3901.

- *Mail:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

- *Hand Delivery:* Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA-R02-OAR-2010-1058. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment

units, apartment style receptacles, mailrooms, or clusters of roadside receptacles.

3. Locations where circumstances not within the control of the Postal Service prevent extension of carrier delivery, such as town ordinances, private roads, gated communities, unimproved or poorly maintained roadways, or unsafe conditions.

4. Locations served by a delivery receptacle that a customer chooses to locate along a carrier's line of travel and to which the Postal Service makes delivery.

c. A customer must pay the applicable fee for each PO Box requested in addition to the initial free Group E PO Box.

d. The online application tools described in 4.3.1b cannot be used for free PO Box service.

* * * * *

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 2011-17389 Filed 7-13-11; 8:45 am]

BILLING CODE 7710-12-P

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending 39 CFR part 241 to improve the administration of the Post Office closing and consolidation process. In addition, certain procedures employed for the discontinuance of Post Offices are applied to the discontinuance of other types of retail facilities operated by Postal Service employees.

DATES: *Effective date:* July 14, 2011.

FOR FURTHER INFORMATION CONTACT: Jim Boldt, (202) 268-6799.

SUPPLEMENTARY INFORMATION:

On March 31, 2011, the Postal Service published a proposed rule in the **Federal Register** (76 FR 17794) to improve the process for discontinuing Post Offices and other Postal Service-operated retail facilities. The proposed rule also reflected the Postal Service's determination, as a matter of policy, to apply the same discontinuance procedures to all retail facilities operated by Postal Service employees. The Postal Service requested comments

on the proposed rule. Analysis of the various comments received appears below.

The Postal Service is currently in the process of consultation under 39 U.S.C. 1004(b)-(d) about certain aspects of the proposed rule. Therefore, the relevant proposed changes and comments relative to those proposed changes are not included in this final rule, but may be addressed in a subsequent final rule. Under 39 U.S.C. 1004(b)-(d), the Postal Service is obliged to consult with certain supervisory and other managerial organizations about the planning and development of pay policies and schedules, fringe benefit programs, and other programs related to supervisory and other managerial employees. (The Postal Service understands "other programs" to constitute those concerning employment, of a piece with the other enumerated subjects of consultation, and not programs concerning facilities or the operating network more generally, which may have an indirect effect on employees.) Because the subject matter of this final rule does not itself comprise any program subject to 39 U.S.C. 1004(b)-(d), the Postal Service considers it to fall outside the scope of those provisions. Nevertheless, the Postal Service has taken into account comments by supervisory and other managerial organizations, as it has comments by other members of the public.

As explained in the proposed rule, this final rule is not retroactive. Therefore, any change in policy or regulations does not affect the procedures applicable to discontinuance processes initiated before the effective date of this final rule, when previous regulations may have been in effect.

The Postal Service is exempt from the notice requirements of the Administrative Procedure Act (5 U.S.C. 553(d)) regarding final rules by 39 U.S.C. 410(a). Moreover, the chief substance of this final rule is to extend to Postal Service-operated stations and branches the notice and comment procedures applicable to the discontinuance of Post Offices, thereby relieving restrictions that had previously been placed on public participation in the discontinuance process for stations and branches.

I. Response to Comments Received

The Postal Service received approximately 257 comments in response to the proposed rule. Commenters included 34 Members of Congress, the Postal Regulatory Commission ("Commission" or "PRC"), five state legislators, three postmasters'

and postal supervisors' organizations, one postal lessors' organization and various of its members, one mailing industry stakeholder, and numerous other postal customers. Although some comments were favorable about certain aspects of the proposed rule, almost all of the comments expressed concerns about various aspects of the proposed rule. Below we discuss the comments and our response to each.

A. Closure of Post Offices and Other Retail Facilities

1. Procedural Safeguards

The overwhelming majority of comments urged the Postal Service not to close Post Offices (as well as, presumably, stations and branches), especially in small and rural communities. These commenters stated that cost savings would be low, that there would be undue hardship on some customers, and other matters. Many expressed concern about a specific postal retail facility. Additionally, many appeared to believe that the proposed rule would eliminate procedures and make it easier to close retail facilities, including for reasons prohibited by statute. *See, e.g.,* 39 U.S.C. 101(b) ("No small post office shall be closed solely for operating at a deficit[.]"). To the contrary, the Postal Service has long been and remains focused on the need for customers in less populated locales to have regular and effective access to delivery and retail services, thereby helping to bind all customers and the nation together through written correspondence.

These comments seem to overlook the actual scope of the changes. This rulemaking does not reduce or abolish any transparency attained through, for example, public notice, public input, and consideration of all comments received before any Post Office may be discontinued. In fact, transparency will be enhanced. Nor does the rulemaking change any of the criteria for discontinuing a Post Office, which are set forth in the statute and include consideration of cost savings, the effects on employees and the community, and the prohibition on closing small Post Offices solely for financial reasons. It should be noted that the statutes in question apply only to the justifications for actually discontinuing a facility; they do not restrict Postal Service discretion to evaluate its retail network and identify specific facilities for formal study.

To highlight the distinction between initiation of a preliminary feasibility study and the development of an official proposal, the Postal Service is adding

language to 39 CFR 241.3(a)(4)(i) that specifies circumstances justifying a responsible Vice-President's decision to initiate a feasibility study, as specified elsewhere in 39 CFR 241.3(a)(4). At the same time, this language does not provide that officer an official decision-making role in any resulting discontinuance proposal.

An initial feasibility study need not lead to evaluation for potential discontinuance. If it does, the public will receive expanded opportunity for comment as the Postal Service considers all of the requisite factors en route to any final determination, just as it has in the past. Although this rulemaking expands the range of factors that can justify a discontinuance study, any formal discontinuance decisions must still be based upon the same considerations as before. Opportunity for public participation will actually increase, because the Postal Service will ensure broad public awareness by sending written notice in the form of a "Dear Customer" letter and questionnaire to all delivery points in the ZIP Code area served by the facility being studied.

As described in the proposed rule, the rulemaking will actually expand application of the most rigorous process for discontinuance of Postal Service-operated retail facilities beyond independent Post Offices. While Congress applied the criteria in 39 U.S.C. 101(b) and 404(d) only to independent Post Offices, and not to stations or branches, the Postal Service is making that same process applicable to the discontinuance of *all* Postal Service-operated retail facilities, thereby encompassing subordinate stations and branches. Contrary to many commenters' perception that the rulemaking would remove "due process" protections for stations and branches, the rulemaking will actually increase scrutiny and transparency for such facilities by using the process previously applicable only to independent Post Offices.

2. Role of Economic Indicators

While some commenters express concern about the possible evaluation by the Postal Service of discontinuance candidates using economic indicators like population or volume trends, applicable law (39 U.S.C. 404(d)) already requires that the Postal Service consider economic savings in any final determination to discontinue a Post Office. Of course, population and volume trends may also inform evaluation of likely impact on the community, which is another

mandatory criterion for evaluation in the discontinuance process.

To be sure, Postal Service plans to close or consolidate Post Offices must be consistent with the statutory requirement in 39 U.S.C. 101(b) that "[n]o small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities." As a result, a proposed discontinuance of a small Post Office may not proceed to a final determination if the sole reason is that the facility operates at a loss. Consistent with this statutory prohibition, the Postal Service provided in proposed 39 CFR 241.3(a)(4)(ii)(D) that no initial feasibility study of a small Post Office may commence, absent other permissible criteria, if the sole justification is that the office operates at a deficit. This provision is maintained in the final rule.

Many comments offer general support for the continued existence of rural Post Offices; the Postal Service itself remains committed to serving customers in all areas, including rural ones, and Post Offices constitute one key tool for doing so. The primary customer need, however, is *access to postal services* to the extent consistent with reasonable economies of postal operations, which is possible today without using rural Post Offices alone. 39 U.S.C. 403(b)(3). By no means are Post Offices the sole conduit for access to postal services. The best example, well known to customers served by non-city delivery, consists of carriers themselves, who can and do provide retail services. The Postal Service recognizes that it may not close small Post Offices solely for operating at a deficit, just as it recognizes that access options continue to expand for all customers. Alternative channels for access to retail services continue their growth in all areas; wherever retail traffic in Post Offices drops below minimal levels, it follows that customers must be obtaining the access they need without utilizing Post Offices. The Postal Service accordingly maintains its focus upon providing all customers the access they require, whether it be via Post Offices or the available alternatives.

3. Discontinuance of Specific Facilities

Many commenters articulated concerns about particular retail facilities, thus reflecting a misunderstanding of the instant rulemaking's scope. Such comments are either premature or misdirected; they may become germane when the subject facilities are studied, or should be

directed to those conducting studies affecting the subject facilities. This rulemaking concerns only nationwide criteria and procedures, not specific facilities. If and when a particular facility is evaluated in a discontinuance study, the public will have full notice and opportunity to provide input, as under the previous regulations.

B. Redefinition of "Consolidation" and Appeal Rights

Several commenters expressed concern about the proposed rule's reinterpretation of "consolidation," such that the term would no longer apply to the conversion of an independent Post Office into a Postal Service-operated station or branch. In particular, these commenters claim that this approach, combined with the fact that 39 U.S.C. 404(d)(5) does not confer appeal rights for closings or consolidations of stations and branches, could result in an effective denial of appeal rights if the Postal Service were to convert a Post Office into a station or branch and then proceed to close or consolidate the facility.

1. Definition of "Consolidation"

The Postal Service is currently in the process of consultation under 39 U.S.C. 1004(b)-(d) about the proposed reinterpretation of "consolidation," among other aspects of the proposed rule. Therefore, the Postal Service is deferring the relevant changes for the time being. Comments on this aspect of the proposed rule will be taken into consideration and may be addressed in a subsequent final rule.

2. Appeal Rights and Notice Thereof

The Commission recommended that the Postal Service provide notice of appeal rights when proposing or determining to discontinue a station or branch. This Commission noted that the Postal Service proposed to apply procedures to facilities beyond the statutory scope of applicability and suggested that the Postal Service could similarly extend appeal rights.

With respect to notice of appeal rights concerning stations and branches, the Postal Service does not believe that the authority exists to extend the Commission's grant of jurisdiction in 39 U.S.C. 404(d)(5) to the closure or consolidation of a station or branch. This is true regardless of how "consolidation" is interpreted. This rulemaking does not and can not alter the scope of the Commission's jurisdiction, so it does not change when the public is entitled to notice of appeal rights. At the same time, it should be emphasized that this rulemaking does

not affect interested persons' extant opportunity to seek any administrative appeal. The Postal Service recognizes in the proposed rule that the Commission and other stakeholders interpret 39 U.S.C. 404(d)(5) differently. Notwithstanding the actual limits of statutory jurisdiction, discontinuances of stations and branches have been appealed to the Commission, and the Commission has entertained those appeals as though they concerned independent Post Offices subject to 39 U.S.C. 404(d)(5). *E.g.*, PRC Docket Nos. A2011-4 (University Station, Eugene, OR 97403), A2011-5 (Penobscot Station, Detroit, MI 48231); *see also* SBOC Opinion at 66 ("The Commission already believes it is required to accept such appeals.").

This rulemaking does not change Postal Service regulations as to whether discontinuances of stations or branches may be appealed, nor does it add measures to preclude such appeals from being filed. While the Postal Service maintains that the Commission does not have appeal jurisdiction over stations and branches under current law, the rulemaking does introduce an explicit recognition that the Postal Service may, in its discretion, decline to challenge the Commission's jurisdiction in certain (or even, if it chooses, all) cases, which contrasts with its previous practice of asserting jurisdictional defenses in all cases. Accordingly, to the extent that commenters believe they would lose the practical ability to seek accountability of station and branch discontinuances through appeal (or through the Postal Service's awareness of the prospect of appeal) to the Commission, such criticisms are overstated.

One commenter stated a belief that the proposed rule would make the discontinuance process more "administrative" by empowering the Commission to modify the Postal Service's final determination. In actuality, however, these aspects of the proposed rule have not changed from prior regulations. Moreover, the nature of the Commission's appeal jurisdiction and the general administrative nature of the discontinuance process were established by Congress in the Postal Reorganization Act Amendments of 1976 (Pub. L. 94-421), the Postal Service's regulations merely track this language.

Finally, one commenter agreed with the Postal Service's analysis of 39 U.S.C. 404(d)(5), but objected to the proposed rule's ultimate framing of the matter in terms of a right to object or not to object to the Commission's assertion of jurisdiction. While the commenter's views are understood and appreciated,

it is axiomatic that a party may decline to assert valid jurisdictional defenses in specific cases, without prejudicing its assertion of the same objections in other cases or contexts. To recognize Postal Service counsel's discretion over litigation strategy does not diminish the validity of the general principle that the Commission is without legal authority to entertain purported appeals of station and branch discontinuances.

C. Community Meetings

Several commenters took issue with proposed 39 CFR 241.3(d)(2), which provides that a community meeting is required unless otherwise instructed by the responsible Vice President or the Area Manager, Delivery Programs Support. These commenters expressed the belief that this would undermine a current standard of allowing public input through community meetings in all cases.

Previous Postal Service regulations, however, have not required a community meeting for every Post Office discontinuance. The most recent version of 39 CFR 241.3(d)(3) listed "meeting with community groups" as exemplifying options available if deemed "necessary" to a larger transparency effort. Moreover, sections 243 and 721 of Handbook PO-101, *Post Office Discontinuance Guide*, have provided only that community meetings are one option for public input, alongside questionnaires and other methods. The new regulations accordingly impel community meetings more forcefully than before, because community meetings will be required absent instructions to the contrary from senior management. In practice, it is expected that community meetings would be offered unless some exceptional circumstance (such as a community's demise) makes a meeting an impractical tool for gathering customer input. The final rule includes an additional clarification limiting exceptions from the community meeting requirement.

D. Role of Vice President

Several commenters also recommended against the proposed approach whereby a feasibility study could be initiated by a responsible Vice President, as well as by a District Manager. These commenters advised that a national-level Vice President is less likely than a District Manager to have an appropriately nuanced understanding of community-specific conditions.

To clarify, the Vice President's role in proposed 39 CFR 241.3(a)(2) and (a)(4) is to trigger an exploration of possible

discontinuance. Thereafter, the District Manager oversees the follow-up investigation and determines whether to proceed with a formal proposal to discontinue the facility. As noted above, the final rule includes additional language in 39 CFR 241.3(a)(4)(i) to clarify the distinction between the initial feasibility study, which a responsible Vice President or a District Manager may initiate, and the formal proposal, for which a Vice President is not responsible.

Concern about the Vice President's role may have been driven by the inclusion of an erroneous reference to a Vice President's discretion in 39 CFR § 241.3(c)(1), which might have suggested that the Vice President could directly determine whether to post a proposal, independent from the District Manager. This error has been corrected in the final rule.

The District Manager evaluates public comments on the proposal and decides whether to forward a recommended final determination to the responsible Vice President for ultimate review and decision. As such, the local knowledge vested in district postal personnel becomes a strength of the foundation for any decision to pursue discontinuance of a retail facility. As such, a Vice President's role at this latter stage extends only to a final check on a District Manager's recommendation that a discontinuance move forward.

Thus, the proposed rule and final rule recognize the importance of the District Manager's assessment of local conditions. Under the final rule, the District Manager accordingly retains significant discretion to take account of local conditions before deciding whether to proceed with a proposal or final determination to discontinue a facility.

E. Staffing of Post Offices

Many commenters expressed the view that the Postmaster Equity Act, Public Law 108-86 (2003), precludes the proposed change to 39 CFR 241.1, such that, in their view, a Post Office may not be operated or managed by anyone but a postmaster. As codified in 39 U.S.C. 1004(i)(3), the Postmaster Equity Act defines a "postmaster" as "an individual who is the manager in charge of the operations of a post office, with or without the assistance of subordinate managers or supervisors." The Postal Service is currently in the process of consultation under 39 U.S.C. 1004(b)-(d) about this aspect of the proposed rule. Therefore, the Postal Service is deferring the relevant changes for the time being. Comments on this aspect of the proposed rule will be taken into

consideration and may be addressed in a subsequent final rule.

One commenter opined that a previous rule change required a postmaster to reside in the delivery area of the Post Office in which he or she served, and that the Postal Service's regulations should revert to that rule. It is true that local residence was a former requirement for postmaster eligibility, but this requirement did not derive from Postal Service regulations. Rather, it existed in a statute that Congress repealed when the Postal Reorganization Act established the current merit-based system for postmaster appointments. See Public Law 86-682, 74 Stat. 578, 710 (1960) (formerly codified at 39 U.S.C. 3312) (repealed 1970). The Postal Service does not intend to revisit such a policy in light of the Congressional repeal of the pertinent statute, so the commenter's proposed change is not included in this final rule.

F. Alternatives to Discontinuance

One commenter requested that the Postal Service include in 39 CFR 241.3 a provision to allow for the possibility that, where the financial viability of a retail facility is a factor in a discontinuance study, the local government can offer to make up the projected shortfall as a means for preserving retail service at the facility. This suggestion is already accounted for in existing discontinuance processes and practice, wherein communities have ample opportunity to offer views and alternatives that might address justifications for a specific discontinuance. The Postal Service takes that input into account as it determines whether a proposal is warranted. It is plausible that an agreement by a municipality or agency to incur certain costs or burdens can be decisive and lead the Postal Service to forgo a discontinuance study. Contractor-operated retail facilities or other arrangements are also possible. Because current practice and the proposed rule already address these concerns, no further revision to the final rule appears warranted.

Another commenter advised that customers should be ensured alternative access channels before the Postal Service proceeds with discontinuance. The Postal Service believes its processes adequately meet this concern. Under the proposed rule, the availability and use of alternative access channels would help inform local officials regarding the necessity for a fully staffed postal facility. Today, retail services are available to customers through a variety of channels beyond traditional brick-

and-mortar facilities, such as the <http://www.usps.com> Web site, Automated Postal Centers, non-city delivery carriers, stamp consignment locations such as grocery stores, and Stamps by Mail, Fax, and Phone.

Moreover, before the Postal Service can reach any final determination on a proposed discontinuance, 39 U.S.C. 404(d) requires the Postal Service to consider (among other things) the effect on the community and the statutory policy of providing a maximum degree of effective and regular postal services to rural areas, communities, and small towns where Post Offices are not self-sustaining. In virtually all cases, this means careful consideration of the utility provided by alternative access channels, including services available through letter carriers, particularly as this tends to be a focus of customer input. Therefore, the commenter and other customers may rest assured that the continued availability of retail services will remain a key point of consideration whenever the Postal Service studies a community's needs.

G. Redaction of Personally Identifiable Information

One commenter voiced suspicion that the Postal Service would impermissibly edit or conceal information in publicly available documents under cover of the proposed provision that would allow for redaction of personally identifiable information. Another commenter characterized this change as inappropriate because submitters of public comments to a public administrative record do not have a privacy interest in their identities.

Rather than being a substantive change that the Postal Service could somehow exploit to willfully edit an administrative record, the proposed provision merely updates 39 CFR 241.3 to reflect other statutes and regulations that authorize, on a discretionary basis, the withholding of personally identifiable information from public disclosure. See 39 U.S.C. 410(c)(1). Limited redaction, performed on a discretionary, as-needed basis to protect customers' personally identifiable information in the discontinuance and other contexts, is well-established and has been uncontroversial before the Commission. See, e.g., United States Postal Service Notice of Filing and Application for Non-Public Status, PRC Docket No. A2011-1, January 6, 2011; Order Affirming Final Determination, PRC Docket No. A2011-1, February 15, 2011, at 3 n.7 (acknowledging the Postal Service's filing of administrative record with redactions of, among other things, personally identifiable information).

However, the Postal Service is mindful of the limited purpose of this important privacy protection.

H. Notice to Customers Served by Suspended Facility

One commenter suggested that customers formerly served by a suspended retail facility should be notified of discontinuance-related actions by mail, not just by posting at other retail facilities. The Postal Service intends to mail notice and a questionnaire to customers formerly served by a Postal Service-operated retail facility whose operations have undergone an emergency suspension to the same extent that it would have if the facility were not suspended. Because this intention may not have been sufficiently clear, the Postal Service incorporates the commenter's suggestion with clarifying language in new paragraph 241.3(a)(4)(iii).

I. Inapplicability of Procedures to Contractor-Operated Facilities

One commenter notes that, in at least one case, postal customers were informed that a contractor-operated Community Post Office (CPO) would provide many of the same services as a Postal Service-operated retail facility, except for some services such as permit mailing acceptance. The commenter then advises that the same discontinuance procedures should apply to contractor-operated retail facilities, particularly in locations where a CPO may be the only postal retail facility.

Another commenter opined that services provided by a contractor-operated retail facility can, in certain cases, be equivalent to or better than services provided by a Post Office or other Postal Service-operated retail facility. As a result of more flexible office hours or parking, for example, contractor-operated retail facilities may offer more ready access to essential postal services and thereby a handier method to ensure compliance with 39 U.S.C. 403(b)(3). Hence, the commenter concludes that distinctions based on the identity of the retail facility operator might not have universal validity.

The Postal Service acknowledged in the proposed rule that customers of contractor-operated retail facilities may experience and expect comparable (or better) levels of service relative to those at Postal Service-operated retail facilities. However, the Postal Service also explained that exigencies of contracting relationships make it generally impractical to harmonize their discontinuance procedures with the deliberative timeframe and procedures

required for discontinuance of Postal Service-operated facilities. For example, management's ability to negotiate reasonable terms for the operation of a contract unit, or to require satisfactory contract performance, would be harmed if parties were permitted to appeal those discontinuances for alleged procedural defects. Postal management's right of termination of a CPO operator's contract would be impaired, particularly in communities in which the CPO operator is the only person capable of operating a CPO. This would cause unnecessary delay prior to termination, and thereby force the Postal Service to continue a contract where sound business judgment and effective oversight would require otherwise.

CPO operators would also gain substantial bargaining leverage against the Postal Service, if the Postal Service's ability to change the contractual provision of postal services in the affected community were subject to the lengthy and costly discontinuance study, if not also litigation. Moreover, assuming a formal discontinuance study were required, the CPO operator might demand additional compensation for participating in the study. If a study were not conducted because replacement services would not provide the maximum degree of regular and effective service, a CPO operator might also gain a significant bargaining advantage for negotiating a price increase.

As noted throughout this rulemaking, the legislative history and text of 39 U.S.C. 404(d) limit that statute's scope to independent Post Offices. The Postal Service does not currently believe that it would be prudent to apply the same procedures, as a policy matter, to contractor-operated retail facilities. This policy distinction does not cast a value judgment on the quality of service available from contractor-operated retail facilities or on whether such facilities may be suitable replacements for Postal Service-operated retail facilities.

J. Status of Postmasters Affected by Facility Type Conversion

Two commenters asked whether a postmaster of an independent Post Office would become a station or branch manager where the Post Office is converted into another Postal Service-operated retail facility type, or whether the Postal Service would use such conversions to eliminate postmaster positions. Facility-specific staffing is outside the scope of this rulemaking and is subject to local management discretion, as guided by any applicable laws, regulations, policies and agreements.

K. Emergency Suspensions

One commenter recommended that, where a discontinuance study is related to expiration or cancellation of a lease without suitable alternative quarters in the community, the Postal Service should initiate the discontinuance study sufficiently in advance of the lease's end date to allow the lessor and customers an opportunity to explore alternatives and provide input. Alternatively, the commenter suggested that the retail facility in question could be kept open as long as necessary to gather information in a discontinuance study. The Postal Service agrees with the general thrust of this comment and includes a new paragraph 241.3(a)(4)(iii) in the final rule to encourage local management accordingly. This new provision is framed as guidance to be followed wherever possible, rather than a universal requirement, because a single solution can never be made to fit every challenge or suspension.

One commenter asserted numerous allegations about the Postal Service's handling of emergency suspensions: Disregard for existing rules, manipulation of lease renewal and termination processes, and maintenance of facilities in suspended status without undergoing a formal discontinuance. Allegations of failure to comply with regulations are beyond the scope of this rulemaking. The improved process for discontinuance actions provided in this final rule may, however, address the timely and final disposition of many suspended offices and diminish pressure to seek solutions outside current policy.

One commenter also noted that the emergency suspension form in Handbook PO-101, *Post Office Discontinuance Guide*, currently does not include a line item indicating that Postal Service management actually considered alternative access channels. The Postal Service is issuing a revised version of Handbook PO-101 that will, among other things, direct identification of available alternative access channels when conducting any emergency suspension and notification of customers about their availability. Additional tools may also be brought to bear on this set of issues.

L. Comment Periods and Waiting Periods

One commenter objected to the change from a 90-day waiting period to a 60-day waiting period after posting of the final determination. This commenter opined that the change would diminish the public's opportunity to provide input. The pertinent change to 39 CFR

251.3(g)(2) concerns the period between posting by the Postal Service of its final determination and when operational discontinuance takes effect (barring an appeal to the Commission). At that point, two rounds of public input on a possible discontinuance, and responses to each, will already have been undertaken before the Postal Service reached a final decision. Therefore, the need for additional public input does not affect, and is unrelated to, the length of time the final determination is posted or the duration before final action. This change by the Postal Service merely harmonizes the waiting period with the 60-day statutory posting requirement established by Congress in 39 U.S.C. 404(d)(4).

Three other commenters asked more generally that the Postal Service reverse proposed changes believed to shorten time periods for comment. Aside from the revision of the final determination posting period discussed above (which does not concern comment periods), the Postal Service has not proposed any adjustment to comment periods in 39 CFR 241.3. Nor is it evident that the existing 60-day comment period on discontinuance proposals, which has been in effect for decades, provides insufficient opportunity for public participation as envisioned by 39 U.S.C. 404(d). See 39 U.S.C. 404(d)(1) ("The Postal Service, prior to making a determination * * * as to the necessity for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation[.]"). While the proposed rule and final rule are aimed at enhancing opportunities for public input, there does not appear to be a need to expand comment periods at this time.

Finally, one commenter stated a belief that the 30-day period for appeals of Post Office discontinuances is too short and should be extended to a 60-day period. Congress has provided that a final determination to discontinue a Post Office can be appealed only within 30 days after the final determination is made available. 39 U.S.C. 404(d)(5). The Postal Service does not have the power to change a jurisdictional limitation set by Congress.

M. Relocations

One commenter urged the Postal Service to end relocations of retail facilities, which the commenter advised could result in curtailed services to customers near the original location. Relocations of existing facilities that do not result in an actual closure or

consolidation are not subject to 39 U.S.C. 404(d). The Postal Service regulations for relocations are at 39 CFR 241.4, and they include requirements for public outreach and input comparable to those applicable to discontinuance actions. Accordingly, the Postal Service finds that its relocation regulations are beyond the scope of this rulemaking.

N. Effect of Discontinuances on Overall Service Network

Two postal supervisors' organizations cautioned that extensive closures of Post Offices could result in gaps and delays in service and could erode public confidence in the Postal Service generally. In offering this advice, the commenters assume that the intent of the rulemaking is to usher in sweeping closures of small and rural Post Offices.

The rulemaking establishes and updates procedures and considerations for discontinuance of all Postal Service-operated retail facilities, not just small and rural Post Offices. The Postal Service does not believe that the proposed rule's innovations, such as allowing an initial feasibility study to commence on the basis of volume trends or upon the identification of a facility by a Headquarters Vice President, necessarily target small or rural Post Offices. A large or medium-sized urban Post Office can be equally subject to declining volume or population trends that warrant reconsideration of its role in the postal retail network.

Even if the Postal Service were, in the future, to develop a program to study the discontinuance of large numbers of retail facilities that had the potential to effect a nationwide or substantially nationwide change in service, the Postal Service would intend to seek an advisory opinion from the Commission under 39 U.S.C. 3661(b)–(c). Parties would have a full opportunity to raise their concerns and assess the impact of such a program on service levels and public confidence at that time. Unless and until such a program is developed and presented to the Commission, however, such concerns are speculative and premature. In the meantime, impact on service is necessarily taken into account in each discontinuance study.

O. Procedural Recommendations

In its comments, the Commission incorporated by reference all of the detailed recommendations in its SBOC Opinion, while highlighting certain of them. The Commission's recommendations have indeed had a major influence on the Postal Service's larger effort to revise its discontinuance

procedures, of which this rulemaking is a part. Most of the resulting changes will be reflected in a corresponding revision to Handbook PO–101, which contains detailed internal regulations; the Postal Service does not necessarily consider 39 CFR part 241 to be a suitable repository for such extensive and fine-grained rules. As a more specific response to the Commission's comments, the Postal Service provides the following summation:

Commission recommendation: The Postal Service should mail actual notice to all potential retail customers in the vicinity of a facility under consideration for discontinuance, in addition to P.O. Box customers and customers that receive carrier delivery service based out of the facility.

Postal Service response: In consonance with the Commission's recommendation, the Postal Service is adding a new 39 CFR 241.3(a)(4)(iii) to broaden customer notice that the feasibility of a possible discontinuance is being explored. The rule requires that customer notices and questionnaires be mailed to all delivery addresses physically located in the ZIP Code of the retail facility under study, as well as any delivery addresses served by the studied facility for allied delivery services such as mail pick-up. For those retail customers who might visit the studied facility, notices and questionnaires will continue to be available in the facility lobby. Local management will also have the discretion to provide notice via local media outlets, where appropriate.

Commission recommendation: Notice should be posted at nearby retail facilities, not just the facility subject to potential discontinuance.

Postal Service response: Under the revised Handbook PO–101, the proposal and final determination will be posted at the retail facility under study, the retail facility proposed to serve as the supervising facility, and any facility likely to serve a significant number of customers of the retail facility under study.

Commission recommendation: Questionnaire forms should be posted online for customers to download and print.

Postal Service response: The Postal Service is exploring the feasibility of various electronic access tools for public input.

Commission recommendation: Discontinuance study notices or proposal notices should contain information about distance to nearby retail facilities, their hours, alternative access channels, and how to request curbside delivery.

Postal Service response: Information of this sort will become a standard feature of initial feasibility study notices and proposal notices. The Postal Service recently introduced online tools, to which affected customers will be directed, that provide more detailed information about alternate access channels in the vicinity of a customer's location.

Commission recommendation: The methodology for evaluating cost savings should be revised to address personnel costs not eliminated, revenue leakage, and costs inherent to the facility's discontinuance (e.g., equipment disposal).

Postal Service response: The cost savings methodology used by management will be upgraded. The Postal Service is still examining the feasibility of including net labor cost savings and equipment disposal costs. The inclusion of these factors could be implemented without further change in the regulations at issue in this rulemaking. Although the Commission's input on these factors has been helpful, situation-dependent and speculative factors like revenue leakage are difficult to quantify.

Commission recommendation: The Postal Service should provide more information in its public notices about the analysis that management will use to evaluate discontinuance criteria.

Postal Service response: Because of the mixed qualitative and quantitative nature of local management's evaluation, it is difficult to determine how much analytical detail can reasonably be provided in a written notice while retaining the reader's interest and attention. However, the Postal Service's standard community meeting presentation materials will include a list of factors that local management will analyze, such as current office needs, proximity to other retail facilities and alternate access locations, lease terms and real estate market conditions, retail revenue, community input, impact on customers and the community, effect on employees, cost savings, environmental impact, and the long-term needs of the Postal Service. It should be noted that, as explained above, community meetings should be held in virtually all instances.

Commission recommendation: Discontinuance processes should be coordinated with evaluation of replacement retail options, and the availability of replacement retail options should be an express factor in discontinuance studies.

Postal Service response: Consideration of replacement retail and

other alternate access channels will be expressly incorporated in the processes set forth in Handbook PO–101.

Commission recommendation: Management should use uniform information-gathering and analysis tools.

Postal Service response: The discontinuance study process will be standardized through use of new electronic tools.

Commission recommendation: Community needs should be evaluated separately from “other needs.”

Postal Service response: The final rule maintains the requirements in 39 CFR 241.3(c)(4)(i), (ii), and (v) for separate consideration of community needs, the effect on the community, and other factors. These distinct requirements will be reflected in the updated instructions in Handbook PO–101 as well. The updated customer questionnaire will solicit input on specific community factors, such as concentrations of senior citizens and proximity to bus stops.

Commission recommendation: Management should be instructed to conduct outreach with local elected officials, military and educational installation representatives, and community development organizations.

Postal Service response: The standard communications package provided to management will contain specific outreach materials for local elected officials. Other groups will receive notice in their capacity as local retail and delivery customers.

II. Explanation of Changes From Proposed Rule

The final rule includes the following changes to the proposed rule.

As explained in the preceding sections, certain issues are currently subject to consultation under 39 U.S.C. 1004(b)–(d) and further consideration by the Postal Service. These include the types of personnel that may be responsible for operations in a Post Office, and the definition of consolidation as not pertaining to personnel changes or to reclassification of Post Offices as other types of Postal Service-operated retail facilities. Therefore, the second sentence of 39 CFR 241.1(a) and the entirety of 39 CFR 241.3(a)(1)(iii), as proposed or modified, are not included in the final rule at this time. Other provisions pertinent to consolidations will, for the time being, remain as they were under previous regulations, with modifications only to reflect the inclusion of Postal Service-to-contractor conversions in the meaning of “consolidation.” The initially proposed modifications, or modifications thereto, may be included

in the regulations upon the conclusion of the ongoing deliberations, in which case the Postal Service will issue a further final rule. Until then, the Postal Service will continue applying existing discontinuance procedures according to 39 CFR 241.3. A new clause 241.3(a)(1)(i)(D) is added to reflect this interim state of affairs.

Consistent with disclaimers in the proposed rule and this final rule, a new paragraph 241.3(a)(1)(iii) is added to clarify that the revised regulations are mandatory only for discontinuance actions commenced on or after the regulations’ effective date. The previous regulations shall continue to apply to discontinuance actions initiated earlier, unless management directs utilization of the new rules.

For reference, a new paragraph 241.3(a)(2) is added to provide definitions of “USPS-operated retail facility,” “contractor-operated retail facility,” “closing,” “consolidation,” and “discontinuance.” “USPS-operated retail facility” and “contractor-operated retail facility” are defined as in the proposed rule. “Closing” and “discontinuance” are defined in accordance with the definitions in the most recent version of Handbook PO–101; these definitions do not represent a substantive change from previous regulations. “Consolidation” incorporates the meaning under both the previous regulations (conversion of a Post Office into a Classified Station or Classified Branch) and the proposed rule (conversion of a USPS-operated retail facility into a contractor-operated retail facility). The remaining paragraphs in subsection 241.3(a) are renumbered accordingly.

The introductory language to paragraph 241.3(a)(4) (renumbered as (a)(5)) has been reorganized and revised to clarify that the initial feasibility study constitutes a distinct phase preliminary to any development of a written proposal. The justification for initiating a feasibility study, and the Vice-President’s discretion to direct such action, therefore pertain only to the initial phase. Other references throughout 39 CFR 241.3 have been changed to “initial feasibility study,” where appropriate, in order to clarify the intended scope of the relevant provision.

The phrase “severe safety and health hazards” in proposed clause 241.3(a)(4)(i)(B) (renumbered as (a)(5)(i)(B)) has been restated as “irreparable damage when no suitable alternate quarters are available in the community,” in order to avoid potentially conflicting implications under § 241.3(a)(5)(ii).

Section 241.3(a)(4)(ii) (renumbered as § 241.3(a)(5)(ii)) has been revised somewhat to express more clearly the distinction between the circumstances in clauses (A) through (C), none of which can justify an initial feasibility study, and those in clause (D), which can justify an initial feasibility study but only in the presence of one or more of the permissible circumstances listed in § 241.3(a)(5)(i). This distinction tracks that in the governing statute. *Compare* 39 U.S.C. 404(d)(2)(B) (barring the Postal Service from considering compliance with any provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) in making a determination to discontinue a Post Office), *with* 39 U.S.C. 101(b) (providing that no small post office may be closed *solely* for operating at a deficit).

A new § 241.3(a)(5)(iii) has been added to specify how customers will receive notice and questionnaires for the initial feasibility study. Notice and questionnaires will be provided to retail customers at the Postal Service-operated retail facility under study, as well as by mail to customers in the five-digit ZIP Code delivery area of the facility and to certain other customers. In addition, local management may determine whether notification through media outlets is appropriate.

A new § 241.3(a)(5)(iv) has been added with guidance to the effect that when an initial feasibility study is to be initiated due to an emergency suspension (for example, when it is anticipated that a lease or rental agreement will be cancelled with no suitable alternate quarters available in the community), responsible personnel should, wherever possible, initiate the discontinuance process sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account prior to the suspension taking effect. If necessary to continue gathering information, responsible personnel should also seek to extend operations for the necessary duration, to the extent possible. Paragraph 241.3(a)(5)(iv) also clarifies that customers formerly served by a Postal Service-operated retail facility in suspension status should receive the same level of notice throughout the discontinuance process, including notice by mail, as they would have if the facility were not in suspension status.

Paragraph 241.3(b)(4) has been revised to acknowledge that a contractor-operated retail facility can, but need not necessarily, retain the name of the pre-consolidation Postal Service-operated retail facility, if appropriate. For example, some

contractor-operated retail facilities may be integrated into the contractor's business establishment, and the nature of the contract and level of service provided to customers might not be consistent with a separate name for the postal retail facility.

Paragraph 241.3(c)(1) has been amended to delete the reference to the responsible Vice President as having discretion to initiate a discontinuance proposal. This phrase had been erroneously included in the proposed rule.

Paragraph 241.3(c)(3) has been revised such that postmasters and officers in charge must be invited to submit comments, rather than indicating that they must do so. The previous phrasing gave rise to confusion as to whether such personnel have the option of avoiding submission of comments.

Paragraph 241.3(d)(1) has been revised to specify in greater detail the Postal Service-operated retail facilities at which the proposal and comment notice must be posted, and to require additional copies of the proposal and comment notice to be given to customers upon request. The description of the comment notice, which had also been in paragraph 241.3(d)(1), has been moved to a new paragraph 241.3(d)(2), and the succeeding paragraphs have been renumbered accordingly.

Paragraph 241.3(d)(2) (renumbered as (d)(3)) has been revised to clarify that a community meeting should be forgone only when exceptional circumstances make a community meeting infeasible, such as where the community no longer exists because of a natural disaster or because residents have moved elsewhere. The revised paragraph also explains that the purpose of the community meeting is to provide public outreach and to gain public input, and that it should occur during the comment period after a proposal has been posted. Finally, one class of personnel authorized to make exceptions to the community meeting requirement is changed from the Manager, Delivery Programs Support, to the applicable Vice President, Area Operations.

In the interest of consistency and clarity, references to locations where materials are to be posted in § 241.3(d)(3)(v) (renumbered as (d)(4)(v)), (e)(2)(i), (f)(3), (g)(1)(i), (g)(1)(ii)(A), and (g)(1)(ii)(B) have been revised to refer back to the locations now specified in § 241.3(d)(1).

References throughout the proposed rule to "responsible Vice President" have been changed to "responsible Headquarters Vice President," in order

to avoid confusion with Vice Presidents, Area Operations.

The Postal Service has determined that the changes described herein are necessary to standardize and clarify the procedures of Part 241 with regard to the discontinuance of USPS-operated retail facilities and to eliminate potential confusion regarding the policies governing these matters. Accordingly, the Postal Service has determined that this final rule should take effect upon publication. The Postal Service hereby adopts the following changes to 39 CFR part 241.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

Accordingly, 39 CFR Part 241 is amended as follows:

PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

- 1. The authority citation for 39 CFR Part 241 is revised to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

- 2. Revise § 241.1 to read as follows:

§ 241.1 Post offices.

(a) *Establishment.* Post offices are established and maintained at locations deemed necessary to ensure that regular and effective postal services are available to all customers within specified geographic boundaries.

(b) *Classification.* As of October 1 of each year, Post Offices are categorized through a cost ascertainment grouping (CAG) process based on allowable postal revenue units for the second preceding fiscal year as follows:

- (1) *CAG A–G.* Post offices having 950 or more revenue units.
- (2) *CAG H–J.* Post offices having 190 but less than 950 revenue units.
- (3) *CAG K.* Post offices having 36 but less than 190 revenue units.
- (4) *CAG L.* Post offices having less than 36 revenue units.

- 3. Revise § 241.3 to read as follows:

§ 241.3 Discontinuance of USPS-operated retail facilities.

(a) *Introduction—(1) Coverage.* (i) This section establishes the rules governing the Postal Service's consideration of whether an existing retail Post Office, station, or branch should be discontinued. The rules cover any proposal to:

(A) Replace a USPS-operated post office, station, or branch with a contractor-operated retail facility;

(B) Consolidate a USPS-operated post office, station, or branch by combining it with another USPS-operated retail facility; or

(C) Discontinue a USPS-operated post office, station, or branch without providing a replacement facility.

(ii) The regulations in this section are mandatory only with respect to discontinuance actions for which initial feasibility studies have been initiated on or after July 14, 2011. Unless otherwise provided by responsible personnel, the rules under section 241.3 as in effect prior to July 14, 2011 shall apply to discontinuance actions for which initial feasibility studies have been initiated prior to July 14, 2011.

(2) *Definitions.* As used in this section, the following terms have the following meanings:

(i) "*USPS-operated retail facility*" includes any Postal Service employee-operated post office, station, or branch, but does not include any station, branch, community post office, or other retail facility operated by a contractor.

(ii) "*Contractor-operated retail facility*" includes any station, branch, community post office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.

(iii) "*Closing*" means an action in which Post Office operations are permanently discontinued without providing a replacement facility in the community.

(iv) "*Consolidation*" means either an action that converts a Postal Service-operated retail facility into a contractor-operated retail facility, or an action that converts an independent Post Office into a Classified Station or Classified Branch. A resulting contractor-operated retail facility reports to a Postal Service-operated retail facility; a resulting Classified Station or Classified Branch reports to an administrative Post Office.

(v) "*Discontinuance*" means either a closure or a consolidation.

(3) *Requirements.* A District Manager or the responsible Headquarters Vice President, or a designee of either, may initiate a feasibility study of a USPS-operated facility for possible discontinuance. Any decision to close or consolidate a USPS-operated retail facility may be effected only upon the consideration of certain factors. These include the effect on the community served; the effect on employees of the USPS-operated retail facility; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities,

and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a USPS-operated retail facility to evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a USPS-operated retail facility must be made in writing and must include findings covering all the required considerations.

(iii) The written determination must be made available to persons served by the USPS-operated retail facility at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by a Post Office subject to discontinuance may appeal the decision to the Postal Regulatory Commission. Where persons regularly served by another type of USPS-operated retail facility subject to discontinuance file an appeal with the Postal Regulatory Commission, the General Counsel reserves the right to assert defenses, including the Commission's lack of jurisdiction over such appeals. For purposes of

determining whether an appeal is filed within the 30-day period, receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required to make any determination subject to 39 U.S.C. 404(d)(5) no later than 120 days after receiving the appeal.

(vii) The following table summarizes the notice and appeal periods defined by statute.

PUBLIC NOTICE OF PROPOSAL

60-day notice

PUBLIC NOTICE OF FINAL DETERMINATION

30 days for filing any appeal
 Up to 120 days for appeal consideration and decision

Wait at least 60 days from first day after posting final determination before closing or consolidating USPS-operated retail facility.

(4) *Additional requirements.* This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading to discontinuance of a particular USPS-operated retail facility are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(5) *Initial feasibility study.* A District Manager, the responsible Headquarters Vice President, or a designee of either may initiate a feasibility study of a USPS-operated retail facility's potential discontinuance, in order to assist the District Manager in determining whether to proceed with a written proposal to discontinue the facility.

(i) *Permissible circumstances.* The initial feasibility study may be based upon circumstances including, but not limited to, the following:

(A) A postmaster vacancy;

(B) Emergency suspension of the USPS-operated retail facility due to cancellation of a lease or rental agreement when no suitable alternate quarters are available in the community, a fire or natural disaster, irreparable damage when no suitable alternate quarters are available in the community,

challenge to the sanctity of the mail, or similar reasons;

(C) Earned workload below the minimum established level for the lowest non-bargaining (EAS) employee grade;

(D) Insufficient customer demand, evidenced by declining or low volume, revenue, revenue units, local business activity, or local population trends;

(E) The availability of reasonable alternate access to postal services for the community served by the USPS-operated retail facility; or

(F) The incorporation of two communities into one or other special circumstances.

(ii) *Impermissible circumstances.* The following circumstances may not be used to justify initiation of an initial feasibility study:

(A) Any claim that the continued operation of a building without handicapped modifications is inconsistent with the Architectural Barriers Act (42 U.S.C. 4151 et seq.);

(B) The absence of running water or restroom facilities;

(C) Compliance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); or

(D) In the absence of any circumstances identified in paragraph (a)(5)(i) of this section, the operation of a small Post Office at a deficit.

(iii) *Notice to customers.* Local management must provide notification and questionnaires to customers at the

USPS-operated retail facility under study. Local management may determine whether notification is appropriate through media outlets. In addition, the following customers that receive delivery service from the USPS-operated retail facility must receive notification and questionnaires by mail:

(A) Post Office Box customers at the USPS-operated retail facility under study;

(B) Customers whose delivery carrier is stationed out of the USPS-operated retail facility under study;

(C) Customers in the delivery area of the same ZIP Code as the retail facility under study, regardless of whether the delivery carriers for those customers are stationed out of the retail facility under study or out of a nearby facility; and

(D) Customers whom the retail facility under study serves for allied delivery services such as mail pick-up.

(iv) *Initial feasibility study due to emergency suspension.* Wherever possible when an initial feasibility study is to be initiated under § 241.3(a)(4)(i)(B) (for example, when it is anticipated that a lease or rental agreement will be cancelled with no suitable alternate quarters available in the community), responsible personnel should initiate the initial feasibility study sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account. If public input cannot be

sought sufficiently in advance of the end date of the lease or rental agreement, responsible personnel should endeavor, to the extent possible, to continue operation of the USPS-operated retail facility for the duration necessary to gather public input and make a more fully informed decision on whether to proceed with a discontinuance proposal. Customers formerly served by the suspended facility should receive notice under paragraph (a)(4)(iii) of this section, including by mail, to the same extent that they would have if the facility were not in suspended status at the time of the initial feasibility study, proposal, or final determination.

(b) *Preservation of community address*—(1) *Policy*. The Postal Service permits the use of a community's separate address to the extent practicable.

(2) *ZIP Code assignment*. The ZIP Code for each address formerly served from the discontinued USPS-operated retail facility should be kept, wherever practical. In some cases, the ZIP Code originally assigned to the discontinued USPS-operated retail facility may be changed if the responsible District Manager receives approval from his or her Vice President, Area Operations, before any proposal to discontinue the USPS-operated retail facility is posted.

(i) In a consolidation, the ZIP Code for the replacement contractor-operated retail facility, classified station, or classified branch is the ZIP Code originally assigned to the discontinued facility.

(ii) If the ZIP Code is changed and the parent or gaining USPS-operated retail facility covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) *USPS-operated retail facility's city name in address*. If all the delivery addresses using the city name of the USPS-operated retail facility being discontinued continue to use the same ZIP Code, customers may continue to use the discontinued facility's city name in their addresses, instead of that of the new delivering USPS-operated retail facility.

(4) *Name of facility established by consolidation*. If a post office is to be consolidated with one or more other post offices by establishing in its place a classified station or classified branch affiliated with another post office, the replacement unit is usually given the same name of the facility that is replaced. If a USPS-operated retail facility is to be consolidated by establishing in its place a contractor-operated retail facility, the replacement unit can be given the same name of the

facility that is replaced, if appropriate in light of the nature of the contract and level of service provided.

(c) *Initial proposal*—(1) *In general*. If a District Manager believes that the discontinuance of a USPS-operated retail facility within his or her responsibility may be warranted, the District Manager:

(i) Must use the standards and procedures in § 241.3(c) and (d).

(ii) Must investigate the situation.

(iii) May propose the USPS-operated retail facility be discontinued.

(2) *Consolidation*. The proposed action may include a consolidation by replacement of a USPS-operated retail facility with a contractor-operated retail facility. The proposed action may also include a consolidation by replacement of a post office with a classified station or classified branch if:

(i) The communities served by two or more post offices are being merged into a single incorporated village, town, or city; or

(ii) A replacement facility is necessary for regular and effective service to the area served by the post office considered for discontinuance.

(3) *Views of postmasters*. Whether the discontinuance under consideration involves a consolidation or not, the District Manager must discuss the matter with the postmaster (or the officer in charge) of the USPS-operated retail facility considered for discontinuance, and with the postmaster of any other USPS-operated retail facility affected by the change. The District Manager should make sure that these officials are invited to submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) *Preparation of written proposal*. The District Manager, or a designee, must gather and preserve for the record all documentation used to assess the proposed change. If the District Manager thinks the proposed action is warranted, he or she, or a designee, must prepare a document titled "Proposal to (Close) (Consolidate) the (Facility Name)." This document must describe, analyze, and justify in sufficient detail to Postal Service management and affected customers the proposed service change. The written proposal must address each of the following matters in separate sections:

(i) *Responsiveness to community postal needs*. It is the policy of the Government, as established by law, that the Postal Service will provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where

post offices are not self-sustaining. The proposal should:

(A) Contrast the services available before and after the proposed change;

(B) Describe how the changes respond to the postal needs of the affected customers; and

(C) Highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

(ii) *Effect on community*. The proposal must include an analysis of the effect the proposed discontinuance might have on the community served, and discuss the application of the requirements in § 241.3(b).

(iii) *Effect on employees*. The written proposal must summarize the possible effects of the change on postmasters and other employees of the USPS-operated retail facility considered for discontinuance.

(iv) *Savings*. The proposal must include an analysis of the economic savings to the Postal Service from the proposed action, including the cost or savings expected from each major factor contributing to the overall estimate.

(v) *Other factors*. The proposal should include an analysis of other factors that the District Manager determines are necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(vi) *Summary*. The proposal must include a summary that explains why the proposed action is necessary, and assesses how the factors supporting the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service is paramount.

(vii) *Notice*. The proposal must include the following notices:

(A) *Supporting materials*. "Copies of all materials on which this proposal is based are available for public inspection at (Facility Name) during normal office hours."

(B) *Nature of posting*. "This is a proposal. It is not a final determination to (close) (consolidate) this facility."

(C) *Posting of final determination*. "If a final determination is made to close or consolidate this facility, after public comments on this proposal are received and taken into account, a notice of that final determination will be posted in this facility."

(D) *Appeal rights*. "The final determination will contain instructions on how affected customers may appeal a decision to close or consolidate a post office to the Postal Regulatory Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final

determination.” The notice in this clause is provided when the USPS-operated retail facility under study is a post office. For purposes of this clause, the date of receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(d) *Notice, public comment, and record*—(1) *Posting proposal and comment notice.* A copy of the written proposal and a signed invitation for comments must be posted prominently, with additional copies to be given to customers upon request, in the following locations:

(i) The USPS-operated retail facility under study, unless service at the facility has been suspended;

(ii) The USPS-operated retail facility proposed to serve as the supervising facility;

(iii) Any USPS-operated retail facility likely to serve a significant number of customers of the USPS-operated retail facility under study; and

(iv) If service at the facility under study has been suspended, any USPS-operated retail facility providing alternative service for former customers of the facility under study.

(2) *Contents of comment notice.* The invitation for comments must:

(i) Ask interested persons to provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, on the potential effect of the proposed change on postal services and the community.

(ii) State that copies of the proposal with attached optional comment forms are available in the affected USPS-operated retail facilities.

(iii) Provide a name and telephone number to call for information.

(3) *Other steps.* In addition to providing notice and inviting comment, the District Manager must take any other steps necessary to ensure that the persons served by affected USPS-operated retail facilities understand the nature and implications of the proposed action. A community meeting must be held to provide outreach and gain public input after the proposal is posted, unless otherwise instructed by the responsible Headquarters Vice President or the applicable Vice President, Area Operations. Authorization to forgo a community meeting should issue only where exceptional circumstances make a community meeting infeasible, such as where the community no longer exists because of a natural disaster or because residents have moved elsewhere.

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the District Manager should encourage persons offering the views or information to provide written comments to preserve them for the record.

(ii) As a factor in making his or her decision, the District Manager may not rely on communications received from anyone unless submitted in writing for the record.

(4) *Record.* The District Manager must keep, as part of the record for consideration and review, all documentation gathered about the proposed change.

(i) The record must include all information that the District Manager considered, and the decision must stand on the record. No written information or views submitted by customers may be excluded.

(ii) The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

(iii) The record must include a chronological index in which each document contained is identified and numbered as filed.

(iv) As written communications are received in response to the public notice and invitation for comments, they are included in the record.

(v) A complete copy of the record must be available for public inspection during normal office hours at the USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, beginning no later than the date on which notice is posted and extending through the posting period. When appropriate, certain personally identifiable information, such as individual names or residential addresses, may be redacted from the publicly accessible copy of the record.

(vi) Copies of documents in the record (except the proposal and comment form) are provided on request and on payment of fees as noted in chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management.*

(e) *Consideration of public comments and final local recommendation*—(1) *Analysis of comments.* The District Manager or a designee must prepare an analysis of the public comments received for consideration and inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each point favorable to the proposal and each point unfavorable to the proposal. The analysis should identify to the extent

possible how many comments support each point listed.

(2) *Re-evaluation of proposal.* After completing the analysis, the District Manager must review the proposal and re-evaluate all the tentative conclusions previously made in light of additional customer information and views in the record.

(i) *Discontinuance not warranted.* If the District Manager decides against the proposed discontinuance, he or she must post, in the USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, a notice stating that the proposed closing or consolidation is not warranted.

(ii) *Discontinuance warranted.* If the District Manager decides that the proposed discontinuance is justified, the appropriate sections of the proposal must be revised, taking into account the comments received from the public. After making necessary revisions, the District Manager must:

(A) Transmit the revised proposal and the entire record to the responsible Headquarters Vice President.

(B) Certify that all documents in the record are originals or true and correct copies.

(f) *Postal Service decision*—(1) *In general.* The responsible Headquarters Vice President or a designee must review the proposal of the District Manager and decide on the merits of the proposal. This review and the decision must be based on and supported by the record developed by the District Manager. The responsible Headquarters Vice President can instruct the District Manager to provide more information to supplement the record. Each instruction and the response must be added to the record. The decision on the proposal of the District Manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth in this paragraph (f).

(2) *Approval.* The responsible Headquarters Vice President or a designee may approve the proposed discontinuance, with or without further revisions. If approved without further revision, the term “Final Determination” is substituted for “Proposal” in the title. A copy of the Final Determination must be provided to the District Manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(d).

(i) *Supporting materials.* The Final Determination must include the following notice: “Copies of all materials on which this Final Determination is based are available for

public inspection at the (Facility Name) during normal office hours.”

(ii) *Appeal rights.* If the USPS-operated retail facility subject to discontinuance is a post office, the Final Determination must include the following notice: “Pursuant to Public Law 94-421 (1976), this Final Determination to (close) (consolidate) the (Facility Name) may be appealed by any person served by that office to the Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268-0001. Any appeal must be received by the Commission within 30 days of the first day this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Regulatory Commission, or the parties to the appeal, must be made available for public inspection at the (Facility Name) during normal office hours.”

(3) *Disapproval.* The responsible Headquarters Vice President or a designee may disapprove the proposed discontinuance and return it and the record to the District Manager with written reasons for disapproval. The District Manager or a designee must post, in each affected USPS-operated retail facility where the proposal was posted under paragraph (d)(1) of this section, a notice that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The responsible Headquarters Vice President or a designee may return the proposal of the District Manager with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the responsible Headquarters Vice President must be placed on file in the Postal Service Headquarters library.

(g) *Implementation of final determination—(1) Notice of final determination to discontinue USPS-operated retail facility.* The District Manager must:

(i) Provide notice of the Final Determination by posting a copy prominently in the USPS-operated retail facilities in each affected USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, including the USPS-operated retail facilities likely to be serving the affected customers. The date of posting must be noted on the first page of the posted copy as follows: “Date of posting.”

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each USPS-operated retail facility where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management.*

(2) *Implementation of determinations not appealed.* If no appeal is filed, the official closing date of the office must be published in the *Postal Bulletin* and effective, at the earliest, 60 days after the first day that Final Determination was posted. A District Manager may request a different date for official discontinuance in the Retail Change Announcement document submitted to the responsible Headquarters Vice President or a designee. However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(3) *Actions during appeal—(i) Implementation of discontinuance.* If an appeal is filed, only the responsible Headquarters Vice President may direct a discontinuance before disposition of the appeal. However, the USPS-operated retail facility may not be permanently discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(ii) *Display of appeal documents.* The Office of General Counsel must provide the District Manager with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The District Manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the USPS-operated retail facilities where the Final Determination was posted under paragraph (g)(1)(i) of this section. If the operation of that USPS-operated retail facility has been suspended, the District Manager must ensure that copies are displayed in the USPS-operated retail facilities likely to be serving the affected customers.

(B) All documents except the Postal Regulatory Commission’s final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed at the USPS-operated retail facility to be discontinued for 30 days or until the effective date of the discontinuance, whichever is earlier. The final order and opinion must be

displayed for 30 days in all other USPS-operated retail facilities where the Final Determination was posted under paragraph (g)(1)(i) of this section.

(4) *Actions following appeal decision*

—(i) *Determination affirmed.* If the Commission dismisses the appeal or affirms the Postal Service’s determination, the official closing date of the office must be published in the *Postal Bulletin*, effective anytime after the Commission renders its opinion, if not previously implemented under § 241.3(g)(3)(i). However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required under § 241.3(g)(1).

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the responsible Headquarters Vice President must direct that either:

(A) Notice be provided under paragraph (f)(3) of this section that the proposed discontinuance is determined not to be warranted or

(B) The matter be returned to an appropriate stage under this section for further consideration following such instructions as the responsible Headquarters Vice President may provide.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011-17529 Filed 7-13-11; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2010-1083; FRL-9434-7]

Finding of Substantial Inadequacy of Implementation Plan; Call for Iowa State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to the Environmental Protection Agency’s (EPA) authority in the Clean Air Act (CAA or Act), section 110(k)(5), to call for plan revisions, EPA is making a finding that the Iowa State Implementation Plan (SIP) is substantially inadequate to maintain the 2006 24-hour National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM_{2.5}) in Muscatine County, Iowa. The specific SIP deficiencies needing revision are described below. EPA is also finalizing

■ 2. Add 165.T09–0573 to read as follows:

§ 165.T09–0573 Safety zone; Kathleen Whelan Wedding Fireworks, Lake St. Clair, Grosse Pointe Farms, MI.

(a) *Location.* The safety zone will encompass all U. S. navigable waters on Lake St. Clair within a 600 foot radius of position 42°23'5" N, 082°53'37" W, location off shore of Grosse Pointe Farms, MI. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective and Enforcement Period.* This rule is effective and will be enforced from 9:30 p.m. through 10 p.m. on July 23, 2011.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so.

(5) Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: July 12, 2011.

J.E. Ogden,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 2011–18595 Filed 7–21–11; 8:45 am]

BILLING CODE 9110–04–P

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance; Correction

AGENCY: Postal Service.

ACTION: Final rule; correction.

SUMMARY: On July 14, 2011, the Postal Service published an amendment to the rules concerning the establishment, classification, and discontinuance of post offices. That rule contained certain incorrect internal cross-references, which are corrected by this further rulemaking.

DATES: *Effective Date:* July 22, 2011.

FOR FURTHER INFORMATION CONTACT: Jim Boldt, (202) 268–6799.

SUPPLEMENTARY INFORMATION: The Postal Service published a final rule in the **Federal Register** on July 14, 2011 (76 FR 41413), amending the retail facility discontinuance regulations in 39 CFR part 241. In sections I.H (*Notice to Customers Served by Suspended Facility*) (76 FR 41416), I.K (*Emergency Suspensions*) (76 FR 41417), and I.O (*Procedural Recommendations*) (76 FR 41418) of the **SUPPLEMENTARY INFORMATION** in the preamble, the Postal Service erroneously cited 39 CFR 241.3(a)(4)(iii), which should have referred, in sections I.H and I.K, to subparagraph 241.3(a)(5)(iv) and, in section I.O, to subparagraph 241.3(a)(5)(iii).

In addition, subparagraph 241.3(a)(5)(iv) of the regulations contained in the final rule (76 FR 41421–22) contained erroneous cross-references to clause 241.3(a)(4)(i)(B) and subparagraph 241.3(a)(4)(iii), which should have referred to the respective provisions of paragraph 241.3(a)(5) instead. This final rule corrects the errors in 39 CFR 241.3(a)(5)(iv).

The Postal Service hereby adopts the following changes to 39 CFR part 241.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

Accordingly, 39 CFR part 241 is amended as follows:

PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

■ 1. The authority citation for 39 CFR part 241 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

§ 241.3 [Corrected]

■ 2. In 39 CFR 241.3:

■ a. In the first sentence of paragraph (a)(5)(iv), remove “241.3(a)(4)(i)(B)” and add “241.3(a)(5)(i)(B)” in its place.

■ b. In the third sentence of paragraph (a)(5)(iv), remove “241.3(a)(4)(iii)” and add “241.3(a)(5)(iii)” in its place.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 2011–18481 Filed 7–21–11; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0302; FRL–9442–2]

Approval and Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 8-Hour Ozone National Ambient Air Quality Standard; Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving and conditionally approving the State Implementation Plan (SIP) submission from the State of Utah to demonstrate that the SIP meets the requirements of sections 110(a)(1) and (2) of the Clean Air Act (CAA) for the National Ambient Air Quality Standard (NAAQS) promulgated for ozone on July 18, 1997. Section 110(a)(1) of the CAA requires that each state, after a new or revised NAAQS is promulgated, review their SIPs to ensure that they meet the requirements of the “infrastructure elements” of section 110(a)(2). The State of Utah submitted two certifications, dated December 3, 2007, and December 21, 2009, that its SIP met these requirements for the 1997 ozone NAAQS. The December 3, 2007 certification was determined to be complete on March 27, 2008 (73 FR 16205).

DATES: *Effective Date:* This final rule is effective August 22, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0302. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard

Dated: October 18, 2011.

Waverly W. Gregory, Jr.,

*Bridge Program Manager, By direction of the
Commander, Fifth Coast Guard District.*

[FR Doc. 2011-27721 Filed 10-25-11; 8:45 am]

BILLING CODE 9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-0972]

Drawbridge Operation Regulation; Nanticoke, Seaford, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation
from regulations.

SUMMARY: The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the SR 13 Bridge across the Nanticoke River, mile 39.6, at Seaford, DE. The deviation is necessary to accommodate the cleaning and painting of the bridge. This deviation allows the bridge to remain in the closed position throughout the month of November to facilitate the maintenance work.

DATES: This deviation is effective from 12:01 a.m. on November 1, 2011 to 11:59 on November 30, 2011.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG-2011-0972 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0972 in the "Keyword" box and then clicking "Search". They are also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lindsey Middleton, Bridge Management Specialist, Coast Guard; telephone 757-398-6629, e-mail Lindsey.R.Middleton@uscg.mil. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION: Marinis Bros. Inc., on behalf of Delaware Department of Transportation (DelDOT), has requested a temporary deviation from the current operating regulation of

the SR 13 Bridge across the Nanticoke River, mile 39.6, at Seaford, DE. The requested deviation is to accommodate painting and cleaning of the bridge. The vertical clearance of this single-leaf bascule bridge is three feet at mean high water (MHW) in the closed position and unlimited in the open position. During this deviation period, the vertical clearance will be limited to one foot at MHW due to the scaffolding that will be used for the maintenance of the bridge. The bridge will remain in the closed position for the entire month. In critical situations the bridge will be able to open if at least 24 hours of notice is given. There are no alternate routes available to vessels.

The current operating schedule for the bridge is set out in 33 CFR 117.243(b). According to that schedule, during the month of November the bridge shall open on signal, except that from 6 p.m. to 8 a.m. Monday through Friday and 3:30 p.m. through 7:30 a.m. Saturday and Sunday, if at least four hours notice is given.

Logs from November 2010 have shown that there were 20 openings for the entire month. Sixteen of those openings were on November 13th and 14th. The openings were due to a Bass Fishing Tournament; however, the tournament is not scheduled for this year minimizing the amount of anticipated openings. The majority of vessel traffic utilizing this waterway is recreational boaters. There is one mariner that requests most of the bridge openings throughout the winter months. Marinis Bros., Inc. has coordinated with this mariner. DelDOT has coordinated with the town concerning the month long bridge closure as well. The Coast Guard will inform all other users of the waterway through our Local and Broadcast Notices to Mariners so that mariners can arrange their transits to minimize any impact caused by the temporary deviation. The Coast Guard will also require the bridge owner to post signs on either side of the bridge notifying mariners of the temporary regulation change.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 12, 2011.

Waverly W. Gregory, Jr.,

Bridge Program Manager, Fifth Coast Guard District.

[FR Doc. 2011-27722 Filed 10-25-11; 8:45 am]

BILLING CODE 9110-04-P

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations to improve the administration of the Post Office closing and consolidation process. This final rule adopts changes to Postal Service regulations pertaining to the definition of "consolidation" and the staffing of Post Offices.

DATES: *Effective Date:* December 1, 2011.

FOR FURTHER INFORMATION CONTACT: Jim Boldt, (202) 268-6799.

SUPPLEMENTARY INFORMATION: On March 31, 2011, the Postal Service published a proposed rule in the **Federal Register** (76 FR 17794) to improve the process for discontinuing Post Offices and other Postal Service-operated retail facilities. The proposed rule also included various proposals to apply certain discontinuance procedures to all retail facilities operated by Postal Service employees. The Postal Service requested comments on the proposed rule.

On July 13, 2011, the Postal Service published an initial final rule (76 FR 41413), with minor corrections published on July 21, 2011 (76 FR 43898). That final rule responded to comments and made numerous changes from the proposed rule, resulting in revised regulations that took effect on July 14, 2011. In the final rule, the Postal Service noted that certain aspects of the proposed rule were subject to then-ongoing consultations under 39 U.S.C. 1004(b)-(d). As a result, the first final rule implemented only changes to 39 CFR part 241 that were not subject to ongoing consultations. 76 FR 41413. The Postal Service advised that changes subject to consultation—namely, those concerning the definition of "consolidation" and the staffing of Post Offices—were being deferred and could be addressed in a subsequent final rule. *Id.* at 41414-15.

At this time, the consultations referenced in the first final rule have run their course, and the Postal Service is prepared to issue the remaining proposed changes, with minor modifications as explained in section III below. Analysis of the pertinent comments received appears below. With the changes described herein, the final rule will take effect upon the publication of corresponding changes in

the *Postal Bulletin*, scheduled for December 1, 2011.

I. Response to Comments Received

As recounted in the first final rule (76 FR 41413), the Postal Service received approximately 257 comments in response to the proposed rule. Commenters included 34 Members of Congress, the Postal Regulatory Commission (“Commission” or “PRC”), five state legislators, three postmasters’ and postal supervisors’ organizations, one postal lessors’ organization and various of its members, one mailing industry stakeholder, and numerous other postal customers. Although some comments were favorable about certain aspects of the proposed rule, almost all of the comments expressed concerns about various aspects of the proposed rule. Below we discuss the comments pertinent to this final rule and our response to each.

A. Definition of “Consolidation”

Several commenters expressed concern about the proposed rule’s interpretation of “consolidation,” such that the term would no longer apply to the conversion of a Post Office into a Postal Service-operated station or branch. In particular, these commenters claim that this approach, combined with the fact that 39 U.S.C. 404(d)(5) does not confer appeal rights for closings or consolidations of stations and branches, could result in an effective denial of appeal rights if the Postal Service were to convert a Post Office into a station or branch and then proceed to close or consolidate the facility. Comments about appeal rights were discussed in the first final rule (76 FR 41414–15).

Overall, this rulemaking expands the circumstances in which full-blown discontinuance studies are used; hence, it increases the overall transparency of discontinuance decisions affecting Postal Service-operated retail facilities. Previously, stations and branches studied for discontinuance were studied in a faster, less intensive process. See PRC, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches (“SBOC Opinion”), Docket No. N2009–1, March 10, 2010, at 48–57, 61–65 (exploring differences between the discontinuance processes for Post Offices and for stations and branches).

Contrary to longstanding arguments by the Postal Service resting on much of the legislative history and case law on which some of the comments rely, the Commission, labor organizations, and others have asserted that customers perceive no functional difference between a Post Office and a classified

station or classified branch. See, e.g., SBOC Opinion at 52, 64; Comments of American Postal Workers Union, AFL–CIO, Eugene Area Local No. 679, PRC Docket No. A2011–4, January 21, 2011, at 1–3. While the Postal Service continues to disagree with the proponents of this view as to whether that lack of perceived difference has legal relevance, the Postal Service acknowledges the practical vitality of the observation. As a result, it is difficult to understand what concrete purpose would be furthered by continuing to apply discontinuance procedures to the conversion of one Postal Service-operated retail facility type to another, when customers will not see any significant difference in service. In contrast, customers are more likely to experience or perceive an impact from the replacement of a Postal Service-operated retail facility with a contractor-operated retail facility.

“Consolidation,” in its former sense of changing a Post Office into a station or branch of another Post Office, has rarely been applied over the last 20 years. From the perspective of postal customers, a conversion between Postal Service-operated retail facility types has only minimal impact, as few customers are aware of the distinction between different types of retail units.

Unlike classified stations and branches, contractor-operated retail facilities can be closed without being subject to the discontinuance process. Relationships established through a contract have alternative mechanisms for termination or other changes. The continuation of contractor-operated facilities is much more dependent on the contractor’s willingness to furnish services under contract for a reasonable fee. Contractor-operated units may accordingly experience less predictability in their continuation. Hence, it is more important that customers and other stakeholders have an opportunity to provide input when a Postal Service-operated retail facility is converted into a contractor-operated retail facility than when a conversion results in Postal Service-operated classified station or branch. The latter are not subject to the greater unpredictability of a contractor-operator, and so customers are unlikely to perceive a significant difference in service when a Post Office is converted into a Postal Service-operated classified station or branch.

Two postmaster organizations submitted a legal opinion to the effect that the proposed approach to “consolidation” runs counter to a consistent definition provided by legislative history, courts, and the Postal

Service itself. This legal analysis appears to overlook the fact that most of the authorities on which it relies, some of which date back to the 1970s, were premised on Postal Service regulations in effect at the time and did not speak to whether the Postal Service was somehow precluded from changing those regulations. That the Postal Service’s previous interpretation of “consolidation” was found to be reasonable does not mean that that interpretation is the only reasonable and valid one. See *Citizens for the Hopkins Post Office v. United States Postal Serv.*, 830 F. Supp. 296, 299 (D.S.C. 1993) (“This court finds the definition of ‘consolidation’ advanced by the Postal Service [in its then-current regulations] to be one which is reasonable[.]” (emphasis added)).¹

The United States Supreme Court has long held that an “initial agency interpretation [of a statute] is not instantly carved in stone” and that any agency “must consider varying interpretations and the wisdom of its policy on a continuing basis.” *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863–64 (1984). This is the case even where a revised interpretation “represents a sharp break with prior interpretations.” *Id.* at 862. Because the plain language of the statute is silent and ambiguous as to the intended definition of “consolidation,” and because the Postal Service is charged with implementing 39 U.S.C. 404(d), the Postal Service is free to revise its interpretation of the statute so long as its interpretation is reasonable. See *id.* at 842–43; *Rust v. Sullivan*, 500 U.S. 173, 186–87 (1991); see also *Citizens for the Hopkins Post Office*, 830 F. Supp. at 298–99 (“The term ‘consolidation’ as used in § 404(b) [now 404(d)] is not defined in the statute. Consequently, this court will begin with the principle that the construction placed on a statute by the agency charged with administering it is entitled to considerable deference and should be upheld if reasonable.”). In the proposed rule and elsewhere in this final rule, the Postal Service has explained why it is reasonable to revise its interpretation of “consolidation” in order to give sensible and feasible effect to larger regulatory

¹ The author of the legal opinion appears to have misquoted this sentence of the *Citizens for the Hopkins Post Office* opinion as referring to “the [sic] one which is reasonable.” This error may help to explain why the author reads the opinion as supporting the author’s conclusion that the Postal Service’s historical interpretation of “consolidation” is the *only* permissible one, rather than one of multiple interpretive possibilities. The actual quotation supports the latter view.

changes that will increase transparency and public participation.

The same legal opinion cited a pleading filed by the Postal Service in an ongoing federal action to support its view that the instant rulemaking somehow undoes an indelible aspect of postal law. The legal opinion fails to note that the subject matter of the litigation and the quoted pleading itself concern Postal Service regulations in effect at the time. They do not prejudice the Postal Service's authority or discretion to revise those regulations at a later time. An agency is entitled to defend its actions based on its legal interpretation and regulations in effect at the applicable time, rather than on prior or subsequent policies and regulations. As the Postal Service noted in its proposed rule and first final rule, and reiterates here, this rulemaking is not retroactive and does not affect any actions taken by the Postal Service under previous regulations. See generally, *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988) (holding that agency regulations are not retroactive except as specifically authorized by Congress).

In sum, the proposed reinterpretation of "consolidation" is within the Postal Service's authority to administer the statutory scheme. The Postal Service is adopting a new interpretation of the existing statutory term, while continuing to apply the discontinuance procedures established by Congress to consolidations as distinct from closings. The proposed interpretation is reasonable in its own right and goes a long way toward closing the gap between respective Postal Service and Commission positions. It also fits into the larger framework of changes to orient discontinuance processes more appropriately around customer expectations—as the Commission and others have recommended for years—and to increase public transparency and participation.

B. Staffing of Post Offices

Many commenters expressed the view that the Postmaster Equity Act, Public Law 108–86 (2003), precludes the proposed change to 39 CFR 241.1 such that a Post Office may be staffed by non-postmaster personnel. As codified in 39 U.S.C. 1004(i)(3), the Postmaster Equity Act defines a "postmaster" as "an individual who is the manager in charge of the operations of a post office, with or without the assistance of subordinate managers or supervisors."

The Postmaster Equity Act serves the purpose of requiring consultation by the Postal Service with groups representing middle management tiers regarding,

among other things, pay policies and schedules. It was not intended to—and unambiguously did not—modify the Postal Service's authority to determine the staffing and scope of its retail facility network. See 39 U.S.C. 403(b)(1), 403(b)(3), 404(a)(3), 1001(e)(4)–(5). Congress was explicit in framing Section 1004(i)'s definitions as applicable only "for purposes of this section." 39 U.S.C. 1004(i). Cf. *United States v. Cons. Life Ins. Co.*, 430 U.S. 725, 769 (1977) (White, J., dissenting) (finding a definition under section 801(c)(2) and (3) of the Internal Revenue Code of 1954 to be inapplicable to rules for taxing the income of life insurance companies from modified coinsured contracts under section 820 of the Internal Revenue Code of 1954, because the definition was applicable only "for purposes of * * * subsection 801(a)"); *Thomas v. U.S. Bank Nat'l Ass'n*, 575 F.3d 794, 798 (8th Cir. 2009) (construing preemption language "for purposes of this section" in 12 U.S.C. 1831d(a) as meaning that "conflicting state constitutions or statutes are not preempted for every and all purposes, but only for purposes of 'this section'"). Congress could have applied Section 1004(i)'s definitions to title 39 more broadly or even to section 404(d) in particular, but it did not do so. Therefore, the limited context of the Postmaster Equity Act is inapposite to this rulemaking.

Even if the Postmaster Equity Act had some import in this context, the proposed rule would not be inconsistent with the definition of a "postmaster" therein. The Postmaster Equity Act does not require that each postmaster manage only one Post Office or that every Post Office be individually staffed by a postmaster. Indeed, in many cities, postmasters are responsible for a main Post Office and several classified stations and branches, which the Commission has repeatedly described as having no functional difference from customers' perspectives from Post Offices. The Postal Service is confident that rural postmasters would be similarly capable of overseeing operations at more than one retail facility.

Decisions about the staffing of Post Offices are within the Postal Service's general authority to manage Post Offices and staff appointments under the Postal Reorganization Act provisions cited above. The proposed rule is consistent with the definition of a postmaster under the Postmaster Equity Act, exercises appropriate and reasonable rule-making authority under the Postal Reorganization Act, and streamlines postal operations in order to reduce

costs and enhance value. Therefore, it is a reasonable exercise of the Postal Service's authority to administer its statutory objectives, and it is not inconsistent with title 39 of the U.S. Code.

One commenter was concerned that, as a result of the same change, the presence of Post Offices staffed by non-postmaster personnel would make it easier for the Postal Service to close those facilities. It is unclear how such an effect would flow from mere staffing arrangements, however. The same requirements, criteria, and procedures apply to all Post Offices, regardless of how they are staffed. As explained in the proposed rule, those same requirements, criteria, and procedures are now applied, as a matter of policy, to Postal Service-operated stations and branches, which are not staffed by postmasters today. If anything, this change could lead to the continued operation of Post Offices that otherwise would be discontinued, due to the Postal Service's ability to staff them in a more flexible and economical fashion.

Another commenter viewed the proposed change to 39 CFR 241.1 as inconsistent with Employee and Labor Relations Manual (ELM) 113.3, which the commenter believed to correspond to 39 U.S.C. 1004(i)(3). ELM 113.3(k) reflects the Postal Service's previous practice of requiring a postmaster at all Post Offices. As explained above, 39 U.S.C. 1004(i)(3) defines a "postmaster" in association with a Post Office, but does not require that a Post Office be associated with a postmaster staffing each Post Office in all cases. Hence, the Postal Service is not precluded by statute from taking a different approach. The Postal Service plans to update ELM 113.3(k) to reflect the change to 39 CFR 241.1.

A postal supervisors' organization raised concerns that the replacement of Executive and Administrative Schedule (EAS) employees with bargaining-unit employees, and/or postmasters with clerks-in-charge, would increase workload, deprive communities of access to knowledgeable management personnel, and not offer significant cost savings in light of current pay ceilings. The Postal Service has not yet determined to take any such specific action in furtherance of these changes to the overarching regulations. Any particular staffing decision would presumably take account of workload, community needs, and cost savings. In this rulemaking, the Postal Service only removes, as a general matter, a self-imposed restriction on its discretion to make such decisions in instances where

more flexible staffing may be the most rational option.

II. Explanation of Changes From Proposed Rule

The final rule includes the following additional changes to the proposed rule.

Paragraph 241.1(a) has been revised to clarify that the operation or staffing of a Post Office by non-postmaster personnel must be at the direction of the postmaster, and that it may include times when the postmaster is not physically present. While the proposed rule referred to whether a Post Office was “operated or managed” by non-postmaster personnel, the phrase “operated or staffed” better reflects the intended meaning that a postmaster would continue to manage operations at the Post Office, albeit possibly without personally operating or staffing it on a continuous basis.

A sentence is added to paragraph 241.3(a)(1)(ii) (redesignated as 241.3(a)(1)(iii)) to clarify that these regulations will no longer apply to discontinuance actions pending as of December 1, 2011, that pertain to the conversion of a Post Office to another type of USPS-operated facility.

The definition of “consolidation” in paragraph 241.3(a)(2)(iv) is revised to restrict the term’s definition to instances where a Postal Service-operated retail facility is replaced with a contractor-operated retail facility that reports to a Postal Service-operated retail facility. Consistent with the proposed rule, the term no longer encompasses situations where a Post Office is replaced with a Classified Station or Classified Branch.

Paragraph 241.3(b)(4) is revised to indicate the possibility that a consolidated facility’s name, or a similar name, can be used by the succeeding facility, rather than suggesting an expectation that the former name will be maintained, thereby allowing for the range of contract- and service-specific circumstances that can affect such a determination.

The Postal Service hereby adopts the following changes to 39 CFR part 241.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

Accordingly, 39 CFR part 241 is amended as follows:

PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

■ 1. The authority citation for 39 CFR part 241 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

■ 2. In § 241.1, paragraph (a) is revised to read as follows:

§ 241.1 Post offices.

(a) *Establishment.* Post Offices are established and maintained at locations deemed necessary to ensure that regular and effective postal services are available to all customers within specified geographic boundaries. A Post Office may be operated or staffed by a postmaster or by another type of postal employee at the direction of the postmaster, including when the postmaster is not physically present.

* * * * *

■ 3. In § 241.3:

- a. Paragraph (a)(1)(i)(B) is revised;
- b. Paragraph (a)(1)(ii) is redesignated as paragraph (a)(1)(iii), and new paragraph (a)(1)(ii) is added;
- c. Newly redesignated paragraph (a)(1)(iii) is revised;
- d. Paragraph (a)(2)(iv) is revised;
- e. Paragraph (b)(2)(i) is revised;
- f. Paragraph (b)(4) is revised; and
- g. Paragraph (c)(2) is revised.

The revisions and additions read as follows:

§ 241.3 Discontinuance of USPS-operated retail facilities.

- (a) * * *
- (1) * * *
- (i) * * *

(B) Combine a USPS-operated Post Office, station, or branch with another USPS-operated retail facility, or

(ii) The conversion of a Post Office into, or the replacement of a Post Office with, another type of USPS-operated retail facility is not a discontinuance action subject to this section. A change in the staffing of a Post Office such that it is staffed only part-time by a postmaster, or not staffed at all by a postmaster, but rather by another type of USPS employee, is not a discontinuance action subject to this section.

(iii) The regulations in this section are mandatory only with respect to discontinuance actions for which initial feasibility studies have been initiated on or after July 14, 2011. Unless otherwise provided by responsible personnel, the rules under § 241.3 as in effect prior to July 14, 2011 shall apply to discontinuance actions for which initial feasibility studies have been initiated prior to July 14, 2011. Discontinuance actions pending as of December 1, 2011, that pertain to the conversion of a Post Office to another type of USPS-operated facility are no longer subject to these regulations.

- (2) * * *

(iv) “Consolidation” means an action that converts a Postal Service-operated retail facility into a contractor-operated retail facility. The resulting contractor-operated retail facility reports to a Postal Service-operated retail facility.

* * * * *

(b) * * *

(2) * * *

(i) In a consolidation, the ZIP Code for the replacement contractor-operated retail facility is the ZIP Code originally assigned to the discontinued facility.

* * * * *

(4) *Name of facility established by consolidation.* If a USPS-operated retail facility is consolidated by establishing in its place a contractor-operated facility, the replacement unit can be given the same name of the facility that is replaced, if appropriate in light of the nature of the contract and level of service provided.

(c) * * *

(2) *Consolidation.* The proposed action may include a consolidation of USPS-operated retail facilities. A consolidation arises when a USPS-operated retail facility is replaced with a contractor-operated retail facility.

* * * * *

Stanley F. Mires,

Attorney, Legal Policy and Legislative Advice.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2009–0538; FRL–8891–3]

Bacteriophage of *Clavibacter michiganensis* Subspecies *michiganensis*; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of lytic bacteriophage of *Clavibacter michiganensis* subspecies *michiganensis* produced in *Clavibacter michiganensis* subspecies *michiganensis* in or on tomato when applied as a bactericide in accordance with good agricultural practices. On behalf of OmniLytics, Inc., Interregional Research Project Number 4 (IR–4) submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) requesting an exemption from