Postal Regulatory Commission
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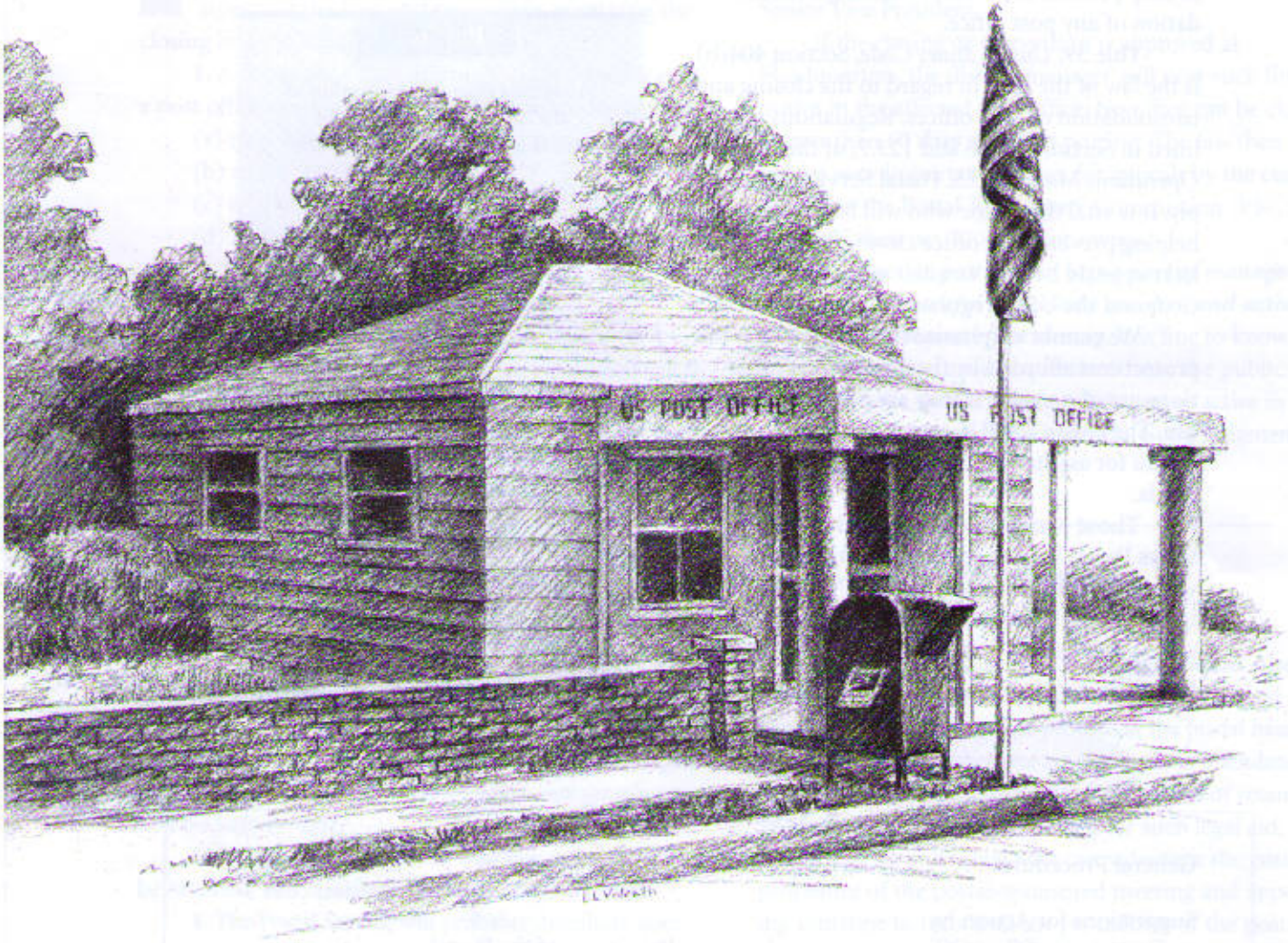
The RED Book



a NAPUS Action Guide

for preventing the closing or consolidation of your post office

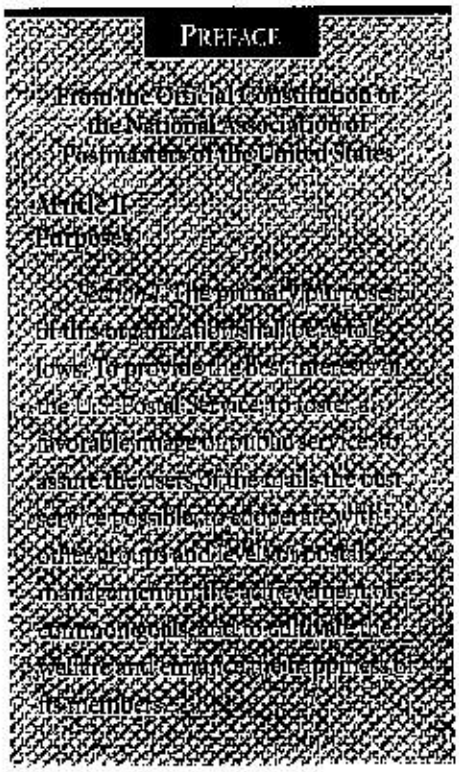
▪ PURPOSE ▪

The purpose of this guide is to provide the information necessary in the event a post office comes under consideration for closing or consolidation. The guide is designed to help prevent the *arbitrary* closing or consolidation of any post office.

Title 39, *United States Code*, Section 404(b), is the law of the land in regard to the closing and consolidation of post offices. Regulations outlined in Sections 123.6 and 123.7, of the *Postal Operations Manual*, U.S. Postal Service, also apply. It is vital that those who will be involved in helping prevent post office closings and, possibly, later appeals, be very familiar with both the *U.S. Code* and the USPS regulations.

We cannot emphasize too strongly that the protections afforded by these laws and regulations are of no value if they are not put to proper use. The entire NAPUS organization is available to you for assistance. Please let us know your needs.

Those who would privatize the United States Postal Service remain our biggest threat with respect to wholesale closings. It is important, therefore, that we be on the alert to possible actions by the USPS to close or consolidate our post offices.



PREFACE

From the Official Constitution of the National Association of Postmasters of the United States

Article II
Purposes

Section 1. The principal purposes of this organization shall be as follows: To promote the interests of the U.S. Postal Service, to foster a favorable image of public service to assure the users of the mails the best service possible, to cooperate with other groups and levels of postal management in the achievement of common goals and to cultivate the welfare and enhance the rights of its members.

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01/08

NATIONAL ASSOCIATION OF POSTMASTERS OF THE UNITED STATES
8 HERBERT STREET, ALEXANDRIA, VA 22305-2600
(703) 683-9027; FAX (703) 683-0923

General Procedures

The following are some of the more important aspects of the laws and regulations governing the closing or consolidation of post offices.

1. A decision to discontinue or suspend services of a post office must address each of the following matters:

(a) responsiveness to community postal needs;
(b) effect on the community;
(c) effect on the employees;
(d) an analysis of the economic savings to the Postal Service;
(e) other factors, and
(f) a summary that explains why the proposed action is necessary (*POM, 123.634, a through f*).

2. The time frame (*POM, 123.612*) calls for a 60-day period for public comment after the release of the proposal to close. After comments are received and the Postal Service decides to proceed, the proposal is sent through channels to the Chief Marketing Officer and Senior Vice President.

If the closing or suspension is approved at Headquarters, the district manager will post such final notice in the affected post office. No office can be closed sooner than 60 days after this posting. The law then provides a very important 30 days for appeals by the customers to the Postal Regulatory Commission (PRC). The PRC then has 120 days for review.

3. An active postmaster, being part of management, must be careful not to take an open and active stand against a post office closing. It is fine to know what to do and to answer questions from the public. It would be quite another thing to become so active in the matter as to put yourself in jeopardy. Good judgment must rule.

Suggestions for Action by Customers of Post Offices

1. Organization of your effort is vital to any cause. This will allow you to share common information and purpose.

2. Circulate a petition to keep the post office open with a postmaster as the local manager (*see sample petition on page 5*—Ed).

3. It should be considered whether an attorney is to be retained, and if so, how the cost will be handled.

4. The Postal Service will probably distribute questionnaires to those affected in the community. The local group should be ready for this and see that the proper replies are made. Replies should address, as appropriate, the five factors as prescribed by law that the Postal Service must follow in making a determination to close or consolidate (*Title 39, United States Code, Section 404(b).*)

5. It is important to schedule a public organizational meeting prior to the postal-sponsored meeting, preferably the same day or night, an hour or so before the postal meeting. This overcomes the difficulty of getting citizens out to two meetings on different days.

Invite retired postmasters of the NAPUS closing prevention committee to the meeting to explain the consequences of the proposed closing, inform the citizens of their rights under law to protest the closing or consolidation and answer any questions that may be asked. Also, this meeting will allow the citizens to appoint several good speakers to make their protests at the postal hearing, thus averting contradictions among those in attendance.

Planning should include consideration of retaining an attorney and means for paying for such legal aid, identifying an individual who can videotape the entire procedure of the postal-sponsored meeting and appointing someone to record all the procedures of the postal meeting, as well as recording the names and titles of the postal officials conducting the meeting. Seek out local television and radio coverage of the postal-sponsored meeting and invite your U.S. senators and representative, or their designees, to attend.

6. An amendment to Title 39 went into effect March 6, 1977, requiring a public hearing if an office is scheduled for closing. When public hearings are conducted, see to it that a good group is present and prepared with proper comments and questions. If an attorney has been retained, he or she should attend the meeting.

7. Get the story of the proposed post office closing to the area newspapers, radio and TV stations. Their assistance and understanding can be very helpful.

(continued)

Suggestions for Action by Customers of Post Offices
– continued –

8. Your contacts with senators and representatives are vital in these situations—write, call or personally visit with them.

9. Influential persons in the community and area should contact appropriate Postal Service managers, state legislators, judges, lawyers, ministers, businesspersons and others as necessary.

10. Since many requirements of the law must be met by the Postal Service, a diary of all activities should be kept, with as many specifics as possible. This may be very important to your efforts, should an appeal be made to the Postal Regulatory Commission.

11. An appeal against a proposed closing (*see "Role of the Postal Regualtory Commission," page 15*) should be mailed to the PRC early enough to ensure **it reaches Washington, DC, within 30 days** from the date the Postal Service posted its final determination. The address of the PRC is:

OFFICE OF THE SECRETARY
POSTAL REGULATORY COMMISSION
901 NEW YORK AVENUE NW SUITE 200
WASHINGTON, DC 20268-0001

The Postal Regulatory Commission will also furnish detailed information regarding the filing of briefs.

The National Association of Postmasters of the United States (NAPUS) is headquartered at 8 Herbert Street, Alexandria, VA 22305-2600; (703) 683-9027. NAPUS is prepared to provide helpful information to local citizens, and has a nationwide network of retired postmasters ready and willing to provide assistance. A phone call will bring an immediate response by a retired NAPUS postmaster in your area who can help in this matter.

Remember, only the *customers* of a targeted post office may work to prevent its closing or consolidation. *Active* postmasters and postal employees are *prohibited* from activity in this area. NAPUS will provide all the information on steps you may take, but the final responsibility rests with the local citizens.

■ **Suggested Flyer to issue to customers of a post office targeted for closing or consolidation.**

Attention Postal Customers of (*insert name*) Post Office:

The Postal Service has issued notice that the (*insert name*) Post Office will likely be (*closed or consolidated*) in the next 120 days, pursuant to provisions of the Postal Reorganization Act of 1970 and federal law.

The procedure allows customers a 60-day period from the date of the initial notice to evaluate the proposal and offer comments. Thereafter, the Postal Service has another 60 days in which to make a final determination on the proposal.

Local customers of the (*insert name*) Post Office must take immediate action if the present status of our post office, a U.S. post office operated by career postal employees, is to be retained.

The Postal Service must schedule a public meeting to explain its proposal and to hear comments from postal customers. When this meeting is scheduled, we must be organized to voice our disapproval of any proposal for a contract community post office, rural delivery or consolidation as a branch or station of another post office.

Written protests against the closing or consolidation of our post office should be sent immediately to the district manager, Customer Service and Sales, at (*insert address*).

We also must:

- notify and seek the assistance of our area's news media (newspapers, radio, television) in presenting our side of the story to the public;
- immediately alert our congressional delegation, and state, city and county officials of the proposal, and seek their support in retaining our post office in its present status.
- immediately circulate a petition among all customers of our post office protesting the proposal and supporting the present status of our post office.

By all means, do not accept anything less than the present status of your post office. Do not accept a contract community post office, rural delivery or consolidation with another post office. Once you do, you forfeit any further recourse to the protection offered by the Postal Reorganization Act of 1970.

■ Suggested news article for citizens to supply to local media in a community where a closing or consolidation of a post office is being proposed by the U.S. Postal Service.

The United States Postal Service, in a notice posted in (*insert name*) Post Office and a form letter to customers proposes to (*close or consolidate*) the post office.

This is the first step, under law, that the U.S. Postal Service must take prior to closing or consolidating a post office. This notice must be given 60 days prior to a final decision on the matter to allow time for local customers of the post office to evaluate the proposal and offer comments. This is a stipulation of the Postal Reorganization Act of 1970, and of Title 39, U.S. Code, Section 404(b).

Postal officials are required by law to schedule a public meeting with customers of any post office proposed for closing or consolidation. Locally, this meeting is scheduled for (*insert date and time*) at (*insert location*). Written comments may also be submitted to the local district office of the U.S. Postal Service, located at (*insert address*).

Local citizens served by the (*insert name*) Post Office should seriously consider the consequences of the U.S. Postal Service's proposal and be prepared to voice their concerns at the (*insert date*) meeting. Only the citizens of the community may take action to prevent the closing or consolidation of their post office, and prevent service from being transferred to a contract community post office or station and/or rural or cluster box delivery.

To preserve their post office as it now exists—a regulat United States post office operated by career postal employees—local citizens must speak up now.

In addition to the 60-day period provided by law for customer comments, the law also provides appeal rights for local citizens if the final decision is in favor of closing or consolidation. The appeal from local citizens must be in the hands of the Postal Regulatory Commission in Washington, D.C, within 30 days after the U.S. Postal Service's written determination for closing or consolidation.

Local citizens should take notice that once the (*insert name*) Post Office has been closed or contracted out, there is very little possibility of it ever returning to its present status.

■ Sample petition to be signed by all customers of the post office targeted for closing or consolidation.

(*insert name*)
DISTRICT MANAGER,
CUSTOMER SERVICE AND SALES
UNITED STATES POSTAL SERVICE
(*insert city, state, ZIP Code*)

We, the citizens and customers of the (*insert name*) Post Office hereby protest any change in the present status of our post office.

It is our desire to retain our post office at its present status—a United States post office operated by a postmaster and career postal employees.

We have many concerns, among them the sanctity of the mail and the inconvenience your proposal presents to us in delivering and sending the mail, particularly accountable mail. We are especially concerned over what effect your proposed action would have regarding the purchase of postal money orders. We are also well aware of the documented abuses possible through a contract mail station.

The Postal Reorganization Act of 1970 calls for providing a maximum degree of effective and regular postal service to rural areas, communities and small towns where post offices are not financially self-sustaining.

We do not feel your proposals meet these criteria.

Sincerely,
Customers of the (*insert name*) Post Office:

(*Leave ample space for customers of the post office to sign their names and provide their mailing addresses. They should also write the date they sign the petition. Be certain that you keep a duplicate copy of the petition.*)

■ **SUGGESTED LETTER TO CONGRESSIONAL DELEGATION TO BE SENT IMMEDIATELY UPON RECEIPT OF THE FIRST NOTICE OF ANY PROPOSED CLOSING OR CONSOLIDATION.**

(insert date)

SENATOR (*insert name*)
SENATE OFFICE BUILDING
WASHINGTON, DC 20510-0001

or

REPRESENTATIVE (*insert name*)
HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-0001

Dear Senator (or Representative) (*insert name*):

The U.S. Postal Service has served notice to the customers of the (*insert name*) Post Office of a proposal to (*close or consolidate*) the post office. It is doing so under provisions of the Postal Reorganization Act of 1970 and federal law, and over our objections.

Under provisions of the act, the Postal Service is obligated to provide a maximum degree of effective and regular postal service to rural areas, communities and small towns where post offices are not self-sustaining. The Postal Service's proposed action will not serve the best interests of our postal customers.

(If the proposal is for a contract community post office, use the following:)

The Postal Service is proposing a contract community post office to replace our present regular post office. We have concerns regarding the sanctity of the mail under this situation. Also, contract post offices may be sub-leased and operated by unqualified clerks who have never taken a postal exam for the post office.

Once a contract post office replaces a regular post office, we are no longer protected by provisions of the Postal Reorganization Act. Termination of the contract by either party for cause leaves us at the mercy of the Postal Service. The Postal Service is free to provide whatever type of service it deems advisable, with no recourse available to us.

(If the proposal is for rural or cluster box delivery, use the following:)

The Postal Service has made a decision to close our post office and provide us with rural delivery. We do not feel we will be getting the maximum service the Postal Reorganization Act calls for with this type of service. Inconvenience in purchasing stamps and money orders, and in sending accountable mail, such as a certified letter, are among the problems we foresee. The same holds true for the receipt of accountable mail.

Invariably, we will be left with a pick-up notice that will require a (*insert distance*)-mile trip to the post office at the neighboring town for pickup. We also have concerns regarding the sanctity of the mail with non-career carriers and the loss of identity for our community.

(If the proposal is for consolidation with a neighboring post office, use the following:)

The Postal Service is proposing the consolidation of our post office with the (*insert name*) Post Office. Postal officials point to this as a money-saving move, a contention that we dispute. We protest the loss of our postmaster and community identity. Someone will still have to staff the office if it's consolidated with the (*insert name*) Post Office. There are no savings in this situation.

A higher-level clerk in charge will command as much in salary as our postmaster. With our own postmaster, we have someone to hear our problems, and take our complaints and compliments, rather than our being referred to an individual at the (*insert name*) Post Office.

(Use the following closing paragraph in all instances:)

We appreciate your consideration of our position and encourage you or a representative to attend a public meeting the Postal Service has scheduled for our community on *(insert date and time)* at (*insert place*). We appreciate any support you can give us in our fight to retain our post office in the same status as now exists—a U.S. post office operated by a postmaster and career postal employees.

Thank you.

Sincerely,

(*Secure signatures of as many postal customers as possible in the community*—Ed.)

■ **Suggested letter to Postal Regulatory Commission once Postal Service serves notice that a final decision has been made to close or consolidate a post office. (Must be in the hands of the commission not later than 30 days after the decision has been posted by the Postal Service.)**

(insert date)

POSTAL REGULATORY COMMISSION
901 NEW YORK AVENUE NW SUITE 200
WASHINGTON, DC 20268-0001

The Postal Service has informed us of a decision to (*close or consolidate*) our post office by (*insert date*). This action is being taken after meeting the provisions of the Postal Reorganization Act of 1970, and over our protestations.

We, the customers of the (*insert name*) Post Office, vigorously protest this action, in view of the provision in the Postal Reorganization Act that calls for the Postal Service to provide a maximum degree of effective and regular postal service to rural areas, communities and small towns where the post office is not self-sustaining.

(If the decision is to close and offer rural delivery, use the following:)

The Postal Service's decision to close our post office and provide rural delivery service raises questions concerning the sanctity of the mail and the risks involved in the handling of mail by non-career employees. We also foresee inconveniences in purchasing money orders and stamps, and sending accountable mail. We have the same concerns regarding the receipt of accountable mail, such as certified letters, registered letters and CODs.

(If the decision is to contract through a community post office, use the following:)

The Postal Service's decision to convert our post office to a contract community post office raises questions concerning the sanctity of the mail and the risks involved in the handling of mail by non-career employees. We also know that the lessee can sub-lease the contract and hire substandard help, and that the contract can be terminated with cause by either party.

We know that, once we are deprived of our present post office, we no longer come under the protection of the Postal Reorganization Act and are at the mercy of the Postal Service.

(Should the decision be to consolidate with a neighboring post office, use the following:)

The Postal Service's decision to consolidate our post office with the (insert name) Post Office is being done over our objections. This will mean the loss of our identity as a community. We will not have a postmaster to whom we can take our problems, complaints and compliments. We will be directed to a distant postmaster in the home office of our station.

We cannot see any savings to the Postal Service under this arrangement. The clerk in charge of the station will be earning as much as our postmaster and, more than likely, will not be a resident of our community.

(Use this last paragraph in all cases listed above:)

We feel that, as citizens of the United States, we are entitled to the same efficient postal service provided to our counterparts in urban areas. The Postal Reorganization Act is explicit in pointing this out. We petition you, as members of the Postal Regulatory Commission, to respectfully consider our protest and order the Postal Service to give additional considerations to our service needs.

Respectfully,

(Secure signatures of as many postal customers as possible in the community—Ed.)

Provisions of the Postal Reorganization Act Concerning Post Office Closings and Consolidations

Title 39, United States Code, §404, Specific Powers

(a) Without limitation of the generality of its powers, the Postal Service shall have the following specific powers, among others:

(1) to provide for the collection, handling, transportation, delivery, forwarding, returning and holding of mail, and for the disposition of undeliverable mail;

(2) to prescribe, in accordance with this title, the amount of postage and the manner in which it is to be paid;

(3) to determine the need for post offices, postal and training facilities and equipment, and to provide such offices, facilities and equipment, as it determines are needed;

(4) to provide and sell postage stamps and other stamped paper, cards and envelopes, and to provide such other evidences of payment of postage and fees as may be necessary or desirable;

(5) to provide philatelic services;

(6) to provide, establish, change or abolish special nonpostal or similar services;

(7) to investigate postal offenses and civil matters relating to the Postal Service;

(8) to offer and pay rewards for information and services in connection with violations of the postal laws, and, unless a different disposal is expressly prescribed, to pay one-half of all penalties and forfeitures imposed for violations of law affecting the Postal Service, its revenues or property to the person informing for the same, and to pay the other one-half into the Postal Service Fund, and

(9) to authorize the issuance of a substitute check for a lost, stolen or destroyed check of the Postal Service.

(b)(1) The Postal Service, prior to making a determination under subsection (a)(3) of this section 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 to persons served by such post office to ensure that such persons will have an opportunity to present their views.

(2) The Postal Service, in making a determination whether or not to close or consolidate a post office, shall consider—

(A) the effect of such closing or consolidation on the community served by such post office;

(B) ***the effect of such closing or consolidation on employees of the Postal Service employed at such office*** (*bold italics ours*—Ed.);

(C) whether such closing or consolidation is consistent with the policy of the government, as stated in Section 101(b) of this title, ***that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities and small towns where post offices are not self-sustaining*** (*bold italics ours*—Ed.);

(D) the economic savings to the Postal Service resulting from such closing or consolidation, and

(E) such other factors as the Postal Service determines are necessary.

(3) Any determination of the Postal Service to close or consolidate a post office shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made under paragraph (2) of this subsection. Such determination and findings shall be made available to persons served by such post office.

(4) The Postal Service shall take no action to close or consolidate a post office until 60 days after its written determination is made available to persons served by such post office.

(5) A determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Regulatory Commission within 30 days after such determination is made available to such person under paragraph (3). The Commission shall review such determination on the basis of the record before the Postal Service in the making of such determination. The Commission shall make a determination based upon such review no later than 120 days after receiving any appeal under this paragraph. The Commission shall set aside any determination, findings and conclusions found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;

(B) without observance of procedure required by law, or

(C) unsupported by substantial evidence on the record.

The Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration, but the Commission may not modify the determination of the Postal Service. The Commission may suspend the effectiveness of the determination of the Postal Service until the final disposition of the appeal. The provisions of Section 556, Section 557, and Chapter 7 of Title 5 shall not apply to any review carried out by the Commission under this paragraph.

Postal Service Procedures for Discontinuing a Post Office

Postal Operations Manual (POM), July 1995

123.6 Discontinuance of Post Offices

123.61 Introduction

123.611 *Coverage*

This section establishes the rules governing the Postal Service's consideration of whether an existing post office should be discontinued. The rules cover any proposal to replace a post office with a community post office, station or branch by consolidation with another post office and any proposal to discontinue a post office without providing a replacement facility.

123.612 *Legal Requirements*

Under 39 United States Code (U.S.C.) 404(b), any decision to close or consolidate a post office must be based on certain criteria. These include the effect on the community served; the effect on employees of the post office; ***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*** (*bold italics ours*—Ed.); the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply:

a. The public must be given 60 days' notice of a proposed action to enable the persons served by a post office to evaluate the proposal and provide comments.

b. After public comments are received and taken into account, any final determination to close or consolidate a post office must be made in writing and must include findings covering all the required considerations.

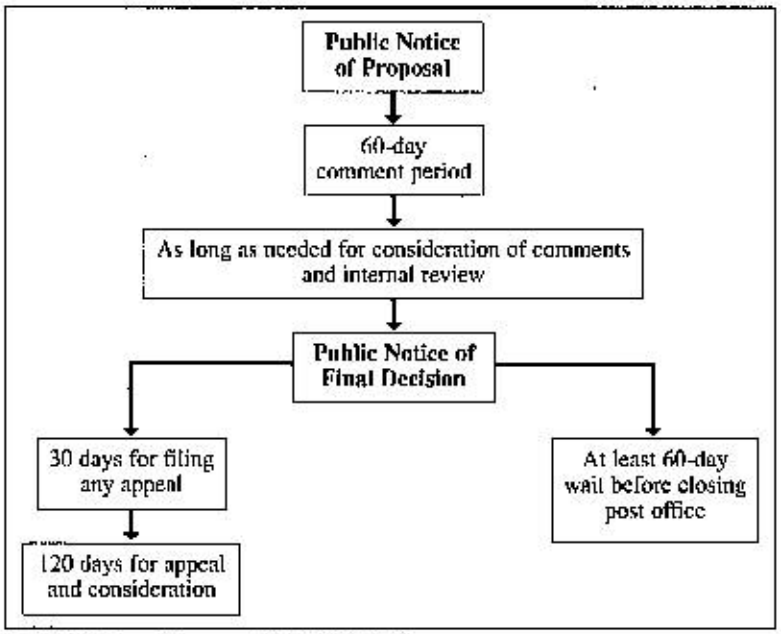
c. The written determination must be made available to persons served by the post office at least 60 days before the discontinuance takes effect.

d. Within the first 30 days after the written determination is made available, any person regularly served by the affected post office may appeal the decision to the Postal Regulatory Commission.

e. The Commission may affirm the Postal Service determination or return the matter for further consideration, but may not modify the determination.

f. The Commission is required by 39 U.S.C. 404(b)(5) to make a determination on the appeal no later than 120 days after receiving the appeal.

g. A summary table of the notice and appeal periods under the statute for these regulations is in Exhibit 123.612.



Public Notice of Proposal Exhibit 123.612

123.613 *Additional Requirements*

Section 123.6 includes the following:

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

b. Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading a district manager, Customer Service and Sales, to propose the discontinuance of a particular post office are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

123.62 Preservation of Community Address

123.621 *Policy*

The Postal Service permits the use of a community's separate address to the extent practicable.

123.622 *ZIP Code Assignment*

The ZIP Code for each address formerly served from the discontinued post office should be the ZIP Code of the facility providing replacement service to that address. In some cases, the ZIP Code originally assigned to the discontinued post office may be kept, if the responsible district manager, Customer Service and Sales, submits a request with justification to Address Management, Postal Service Headquarters, before the proposal to discontinue the post office is posted.

a. In a consolidation, the ZIP Code for the replacement community post office, station or branch is either the ZIP Code originally assigned to the discontinued post office, or the ZIP Code of the replacement facility's

parent post office, whichever provides the most expeditious distribution and delivery of mail addressed to the customers of the replacement facility.

b. If the ZIP Code is changed and the parent post office covers several ZIP Codes, the ZIP Code must be that of the delivery area in which the facility is located.

123.623 ***Post Office Name in Address***

If all the delivery addresses using the name of the post office to be discontinued are assigned the same ZIP Code, customers may continue to use the discontinued post office name in their addresses instead of the new delivering post office name.

123.624 ***Name of Facility Established by Consolidation***

If a post office to be discontinued is consolidated with one or more post offices by establishing in its place a community post office, classified or contract station, or branch affiliated with another post office involved in the consolidation, the replacement unit is given the same name as the discontinued post office.

123.625 ***List of Discontinued Post Offices***

Publication 65, *National Five-Digit ZIP Code and Post Office Directory*, lists all post offices discontinued after March 14, 1977, for mailing address purposes only if they are used in addresses. The ZIP Codes listed for discontinued offices are those assigned under 123.622.

123.63 INITIAL PROPOSAL

123.631 ***General***

If a district manager, Customer Service and Sales, believes that the discontinuance of a post office within his or her responsibility may be warranted, the manager must take the following steps:

a. Use the standards and procedures in 123.63 and 123.64.

b. Investigate the situation.

c. Propose the post office be discontinued.

123.632 ***Consolidation***

The proposed action may include a consolidation of post offices to substitute a community post office or a classified or contract station or branch for the discontinued post office if either of the following conditions apply:

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

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

123.633 ***Views of Postmasters***

Whether the discontinuance under consideration involves a consolidation or not, the district manager, Customer Service and Sales, must discuss the matter with the postmaster (or the officer in charge) of the post office considered for discontinuance and with the postmaster of any other post office affected by the change. The manager should make sure these officials submit written comments and suggestions as part of the record when the proposal is reviewed.

123.634 ***Preparation of Written Proposal***

The district manager, Customer Service and Sales, must gather and preserve for the record all documentation used to assess the proposed change. If the manager thinks the proposed action is warranted, he or she must prepare a document titled Proposal to (Close) (Consolidate) the (Name) Post Office. 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:

a. *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*** (*bold italics ours*—Ed.). The proposal should contrast the services available before and after the proposed change; describe how the changes respond to the postal needs of the affected customers, and highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

b. *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 123.62.

c. *Effect on Employees.* The written proposal must summarize the possible effects of the change on the postmaster, supervisors and other employees of the post office considered for discontinuance. (The district manager, Customer Service and Sales, must suggest measures to comply with personnel regulations related to post office discontinuance and consolidation.)

d. *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.

e. *Other factors.* The proposal should include an analysis of other factors that the district manager, Customer Service and Sales, determines necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(***Very often, the USPS fails to meet its obligation with respect to listing unfavorable factors, such as alternative sites or available structures within the community, or the willingness of the facility owner to make required modifications***—Ed.)

f. *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.

g. *Notice.* The proposal must include the following notice: THIS IS A PROPOSAL. IT IS NOT A FINAL DETERMINATION TO (CLOSE) (CONSOLIDATE) THIS POST OFFICE.

(1) If a final determination is made to close or consolidate this post office, after public comments on this proposal are received and taken into account, a notice of that final determination must be posted in the post office to be closed.

(2) The final determination must contain instructions on how affected customers may appeal that decision to the Postal Regulatory Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final determination.

123.64 NOTICE, PUBLIC COMMENT, AND RECORD

123.641 *Posting Proposal and Comment Notice*

A copy of the written proposal and a signed invitation for comments must be posted prominently in each affected post office. The invitation for comments must do the following:

a. 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.

b. State that copies of the proposal with attached optional comment forms are available in the affected post offices.

c. Provide a name and telephone number to call for information.

123.642 *Proposal and Comment Notice*

Exhibit 123.642 is a sample format that may be used for the proposal and comment notice (*see page 13*).

123.643 *Other Steps*

In addition to providing notice and inviting comment, the district manager, Customer Service and Sales, must take any other steps necessary to ensure that the persons served by the post office affected understand the nature and implications of the proposed action (e.g., meeting with community groups and following up on comments received that seem to be based on incorrect assumptions or information).

a. If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the district manager, Customer Service and Sales, should encourage persons offering the views or information to provide written comments to preserve them for the record.

b. As a factor in making his or her decision, the district manager, Customer Service and Sales, may not rely on communications received from anyone, unless submitted in writing for the record.

(***No active postmaster should play any role in the investigation of a post office for closing or consolidation; neither should an active postmaster be a participant in any decision to close a post office***—Ed.)

123.644 *Record*

The district manager, Customer Service and Sales, must keep as part of the record for his or her consideration and for review by the Chief Marketing Officer and Senior Vice President all the documentation gathered about the proposed change.

a. The record must include all information that the district manager, Customer Service and Sales, considered, and the decision must stand on the record. No information or views submitted by customers may be excluded.

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

c. The record must include a chronological index in which each document is identified and numbered as filed.

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

e. A complete copy of the record must be available for public inspection during normal office hours at the post office proposed for discontinuance or at the post office providing alternative service, if the office to be discontinued was temporarily suspended under 123.7, Emergency Suspension of Service, beginning no later than the date on which notice is posted and extending through the comment period.

f. Copies of documents in the record (except the proposal and comment form) are provided on request and upon payment of fees as listed in *ASM* 352.6.

123.65 CONSIDERATION OF PUBLIC COMMENTS AND FINAL LOCAL RECOMMENDATION

123.651 *Analysis of Comments*

After waiting not less than 60 days after notice is posted under 123.641, the district manager, Customer Service and Sales, 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.

123.652 *Reevaluation of Proposal*

After completing the analysis, the district manager, Customer Service

and Sales, must review the proposal and re-evaluate all the previously made tentative conclusions in light of any additional customer information and views in the record.

a. *Discontinuance Not Warranted.* If the district manager, Customer Service and Sales, decides against the proposed discontinuance, he or she must post, in the post office considered for discontinuance, a notice stating that the proposed closing or consolidation is not warranted.

b. *Discontinuance Warranted.* If the district manager, Customer Service and Sales, 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 manager must take the following steps:

(1) Forward the revised proposal and the entire record to the Chief Marketing Officer and Senior Vice President for final review.

(2) Attach a certificate that all documents in the record are originals or true and correct copies.

123.66 POSTAL SERVICE DECISION

123.661 *General*

The Chief Marketing Officer and Senior Vice President or a designee must review the proposal of the district manager, Customer Service and Sales. This review and the decision on the proposal must be based on and supported by the record developed by the district manager. The senior vice president can instruct the district manager to provide more information to supplement the record. Each such 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 below.

123.662 *Approval*

The Chief Marketing Officer and Senior Vice President or a designee may approve the proposal of the district manager, Customer Service and Sales, with or without further revisions. If approved, 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(b). The Final Determination must include the following notices:

a. *Supporting Materials.* "Copies of all materials on which this Final Determination is based are available for public inspection at the (name) Post Office during normal office hours."

b. *Appeal Rights.* "This Final Determination to (close) (consolidate) the (name) Post Office 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 (name) Post Office during normal office hours."

123.663 *Disapproval*

The Chief Marketing Officer and Senior Vice President or a designee may disapprove the proposal of the district manager, Customer Service and Sales, and return it and the record to the manager with written reasons for disapproval. The manager must post a notice in each office cited in 123.6 that the proposed closing or consolidation is determined not warranted.

123.664 *Return for Further Action*

The Chief Marketing Officer and Senior Vice President or a designee may return the proposal of the district manager, Customer Service and Sales, 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.

123.665 *Public File*

Copies of each Final Determination and each disapproval of a proposal by the district manager, Customer Service and Sales, must be placed on file in the Postal Service Headquarters Library.

123.67 IMPLEMENTATION OF FINAL DETERMINATION

123.671 *Notice of Final Determination to Discontinue Post Office*

When giving notice of a Final Determination, the district manager, Customer Service and Sales, must do the following:

a. Provide notice of the Final Determination by posting a copy prominently in the affected post office or offices. The date of posting must be noted on the first page of the posted copy as follows:

"Date of Posting:_____, 19___."

The district manager, Customer Service and Sales, must notify the Chief Marketing Officer and Senior Vice President in writing, of the date of posting.

b. Ensure that a copy of the completed record is available for public inspection during normal business hours at each post office where the Final Determination is posted, for 30 days from the posting date.

c. Provide copies of documents in the record on request and payment of fees under *ASM* 352.6.

123.672 *Implementation of Determinations Not Appealed*

If no appeal is filed pursuant to 39 U.S.C. 404(b)(5), the official closing date of the office must be published in the *Postal Bulletin*, effective the first Saturday 90 days after the Final Determination was posted. A district

(continued on back cover)

UNITED STATES POSTAL SERVICE

Proposal to (Close)(Consolidate) the (Name) Post Office and Optional Comment Form

■

Attached is a proposal that we are considering for providing your community with more economical and efficient postal service, while also providing regular and effective service. Please read the proposal carefully and then let us have your comments and suggestions. If you choose, you may use the form below. Your comments will be carefully considered and will be made part of a public record. If you use the form below and need more space, please attach additional sheets of paper.

Return the completed form to _____ by _____.

In considering this proposal, if you have any questions you want to ask a postal official, you may call _____ whose telephone number is _____.

I. Effect on Your Postal Services

Please describe any favorable or unfavorable effects that you believe the proposal would have on the regularity or effectiveness of your postal service.

_____

_____

_____

II. Effect on Your Community

Please describe any favorable or unfavorable effects that you believe the proposal would have on your community.

_____

_____

_____

III. Other Comments

Please provide any other view or information that you believe the Postal Service should consider in deciding whether to adopt the proposal.

_____

_____

_____

_____

_____

(Signature of Postal Customer) (Date)

_____

(Mailing Address)

_____

(City) (State) (ZIP Code)

Proposal and Comment Notice for Post Office Closing or Consolidation
Exhibit 123.642

The Role of the Postal Regulatory Commission

Congress has provided, by law, that the Postal Service follow a specific procedure and consider certain factors before making a final determination to close or consolidate a post office.

The law gives any customer the right to appeal the Postal Service's final determination to the Postal Regulatory Commission (PRC)—an independent agency not associated with the Postal Service. It is the responsibility of the PRC, when a customer appeals a Postal Service final determination, to decide whether the Postal Service's actions were consistent with the law.

The purpose of this section is to help explain the PRC's process in dealing with appeals of Postal Service determinations to close or consolidate post offices.

To assist the PRC in its consideration of the appeal from the Postal Service's decision to close or consolidate a post office, customers should send a written argument explaining why they believe the PRC should revise the Postal Service's determination and return the entire matter to it for further consideration.

Postal Regulatory Commission Authority

In cases of appeals from Postal Service determinations to close or consolidate post offices, the PRC has only "appellate jurisdiction"—a very limited authority.

One limitation on the PRC's authority is that they cannot conduct their own fact-finding investigation. The PRC must consider appeals based upon the "record" (the proposal, final determination and other documents involved in the decision-making) that the Postal Service collected during the time it was making its decision whether or not to close or consolidate the Post Office. The Postal Service's regulations require that a copy of the record be available at the affected post office for 30 days after the final determination is posted.

The PRC may not return a final determination to the Postal Service merely because the PRC believes a different result might be just as good or better. Rather, the PRC may only examine the Postal Service's decision and record, and decide whether the Postal Service has stayed within the guidelines the law has set up.

Specifically, the law requires that the PRC affirm the Postal Service's final determination unless the determination is:

(a) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(b) without observance of procedure required by law, or

(c) unsupported by substantial evidence on the record.

Furthermore, the PRC may not change the Postal Service's final determination. It may only (1) affirm (with the result that the Postal Service's decision will stand), or (2) return the entire matter to the Postal Service for further consideration.

Participant Brief or Statement

The purpose of the brief or participant statement is to point out issues that you believe the PRC should consider in its review of the Postal Service's actions. A customer may choose to file either a participant statement or a formal legal brief. General examples of some issues that would be proper to include would be:

(1) That the Postal Service did not consider certain issues it is required to consider;

(2) The facts upon which the Postal Service is relying have not been established;

(3) The Postal Service did not follow the procedure required by law, and

(4) The facts in the Postal Service's final determination are true, but they do not prove what the Postal Service says they prove.

It is best to be as specific as possible.

In reviewing Postal Service determinations to close or consolidate post offices, the PRC proceedings can be much less formal than is customary in courts. The PRC does not require customers appealing Postal Service decisions to meet the usual requirements as to the form of papers filed, such as typing the documents. No technical formalities are required. A handwritten letter will suffice. However, it is important that papers sent to the PRC be legible. It is also important for statements to be clear and as specific as possible.

Time for Filing Participant Statement

The date a brief or participant statement is due should be posted at the post office slated for closing or consolidation. Customers of the office must, within the first 30 days after the written determination is made available by the Postal Service, appeal the decision to the PRC. Under its rules, the PRC must receive briefs and participant statements within 30 days (rather than receiving briefs that are simply postmarked by that day).

The Appeals Process May Save a Post Office, But Only if Used

By the Hon. Wayne Schley
Former Postal Rate Commissioner

Section 101(b) of Title 39 of the U.S. Code reads as follows:

"The Postal Service shall provide a maximum degree of effective and regular postal service to rural areas, and small towns where post offices are not self-sustaining. *No small post office shall be closed solely for operating at a deficit* (emphasis mine), it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities."

Too often this section of the law governing the U.S. Postal Service has been overlooked or not carried out in the spirit that Congress intended. Consequently, in 1976 Congress added a new responsability to the Postal Regulatory Commission (PRC). That new task was the responsability of serving as an appellate court, so to speak, for those interested citizens who wished to object to any action to close or consolidate their local post office.

The idea was to allow the local citizens to ensure the law was being carried out as Congress intended. Since the PRC accepted this new responsibility, there have been 292 appeals by citizens to stop the taking away of their post offices. Of these, 54 have been remanded, or rejected, and sent back to the Postal Service.

It should be noted, however, that 22 of these rejected cases occurred in the first year when the Postal Service was learning how to go about the process of closing a post office. The agency has learned its lesson well; in the past 19 years, it has lost only 32 cases.

Of the almost 300 cases appealed before the PRC, 66 have been dismissed or withdrawn by the Postal Service. These cases, by and large, were ones so deficient that the Postal Service itself withdrew its efforts to close or consolidate the post offices.

One startling fact should be noted: Less than 8 percent of all post office closings or consolidations are appealed. It is hard to believe that 100 percent of the people in 92 percent of the communities faced with the loss of their post offices do not object. I suspect the real reason for so few appeals is that folks simply do not know that you can fight City Hall, or in this case, the Postal Service. Remember, it is not really so much "fighting City Hall" as it is simply being heard by a disinterested party in order to prevent a federal agency trampling on the rights of postal customers.

The Postal Regulatory Commission is, indeed, a disinterested third party. It has been said that, if anything, the PRC bends over backwards not to interfere with the Postal Service's management prerogatives in these cases. In fact, the law does not allow the Commission to second-guess postal management's decision to close or consolidate a postal office. The Postal Regulatory Commission may only examine the agency's decision and record, and decide whether the Postal Service has stayed within the guidelines the law has established.

The law requires the Postal Regulatory Commission to approve the Postal Service's decision unless the agency was:

- arbitrary, capricious, indiscreet, or otherwise not in accordance with the law;
- without observance of procedures required by law, or
- unsupported by substantial evidence on the record.

In actuality, the Postal Regulatory Commission may not change the Postal Service's final decision to close or consolidate an office. It can only affirm, or let stand, the agency's decision, or return (remand) for further consideration (i.e., do it right next time).

Despite all the above, the appeals process is very important in bringing to light the actions of Postal Service management and ensuring they follow not only the letter of the law, but the spirit of the law, as well. Once an issue sees the light of day, minds often can be changed. Elected officials and the public can become involved. Efforts to save a post office can be galvanized.

However, unless the appeals process is used, none of these actions can occur. The key is to use the appeals process the way Congress intended. When 92 percent of the post offices are closed without the appeals process being used, the law is not working the way Congress envisioned.

The challenge—especially to retired Postmasters—is to either use, or urge others to use, the appeals process where warranted. If it is not used, there is no chance to save a post office. The result is a loss not only to the community and the Postal Service—which, after all, loses a retail outlet—but to the nation as a whole.

– *continued from page 12* –

manager, Customer Service and Sales, may request a different date for official discontinuance when the documents are submitted to the Chief Marketing Officer and Senior Vice President. However, the post office may not be discontinued sooner than 60 days after the posting of the notice required by 123.671.

123.673 ***Actions During Appeal***

The procedures for appeal are as follows:

a. *Implementation of Discontinuance.* If an appeal is filed, only the Chief Marketing Officer and Senior Vice President may direct a discontinuance before disposition of the appeal. However, the post office may not be discontinued sooner than 60 days after the posting of notice required by 123.671.

b. *Display of Appeal Documents.* Classification and Customer Service, Postal Service General Counsel must provide the district manager, Customer Service and Sales, with copies of all pleadings, notices, orders, briefs and opinions filed in the appeal proceeding.

(1) The district manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the post office to be discontinued. If that post office has been or is discontinued, the manager must display copies in the affected post offices.

(2) 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 for 30 days.

123.674 ***Actions Following Appeal Decision***

The procedures following an appeal decision are outlined below.

a. *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 the first Saturday 90 days after the Commission renders its opinion, if not previously implemented under 123.673a. However, the post office may not be discontinued sooner than 60 days after the posting of the notice required under 123.671.

b. *Determination Returned for Further Consideration.* If the Commission returns the matter for further consideration, the Chief Marketing Officer and Senior Vice President must direct that either (1) notice be provided under 123.663 that the proposed discontinuance is determined not to be warranted or (2) the matter be returned to an appropriate stage under these regulations for further consideration following such instructions as the Chief Marketing Officer and Senior Vice President may provide.

123.7 EMERGENCY SUSPENSION OF SERVICE

123.71 ***Authority and Conditions***

A district manager, Customer Service and Sales, may suspend the operations of any post office under his or her jurisdiction when an emergency or other conditions require such action. Circumstances that justify a suspension include but are not limited to a natural disaster, the termination of a lease when other adequate quarters are not available, the lack of qualified employees for the office, severe damage to or destruction of the office, and the lack of adequate measures to safeguard the office or its revenue. The district manager must provide written notice of any suspension by FAX to the Chief Marketing Officer and Senior Vice President.

123.72 ***Discontinuance of Suspension***

If it is proposed to discontinue a suspended post office rather than restore operations, the procedures outlined in 123.6 must be followed. All notices and other documents required to be posted or kept in the office to be discontinued must be posted or kept in the post office or offices temporarily serving the customers of the suspended post office.

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