

determined that there are no substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

#### *Executive Order 13211*

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

#### **Drafting Information**

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Steve Kessler, Alaska Regional Office, U.S. Forest Service.

#### **List of Subjects**

##### *36 CFR Part 242*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

##### *50 CFR Part 100*

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR part 242 and 50 CFR part 100 for the 2010–11 and 2011–12 regulatory years. The text of the proposed rule is the same as the final rule for the 2008–09 and 2009–10 wildlife regulatory years published in the **Federal Register** June 24, 2008 (73 FR 35726).

Dated: January 6, 2009.

**Peter J. Probasco,**  
*Acting Chair, Federal Subsistence Board.*

Dated: January 6, 2009.

**Steve Kessler,**  
*Subsistence Program Leader, USDA—Forest Service.*

[FR Doc. E9–1593 Filed 1–28–09; 8:45 am]

**BILLING CODE 3410–11–P; 4310–55–P**

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## **POSTAL SERVICE**

### **39 CFR Part 111**

#### **New Standards for Domestic Mailing Services**

**AGENCY:** Postal Service™.

**ACTION:** Proposed rule.

**SUMMARY:** In February 2009, the Postal Service will file a notice of mailing services price adjustments with the Postal Regulatory Commission, effective in May 2009. This proposed rule provides the mailing standards that would accompany new prices in 2009 and 2010.

**DATES:** We must receive your comments on or before March 2, 2009.

**ADDRESSES:** Mail or deliver written comments to the Manager, Mailing Standards, U.S. Postal Service, 475 L’Enfant Plaza, SW., Room 3436, Washington, DC 20260–3436. You may inspect and photocopy all written comments at USPS Headquarters Library, 475 L’Enfant Plaza, SW., 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. E-mail comments, containing the name and address of the commenter, may be sent to: *MailingStandards@usps.gov*, with a subject line of “Price-related Proposal Comments.” Faxed comments are not accepted.

**FOR FURTHER INFORMATION CONTACT:** Bill Chatfield, 202–268–7278.

**SUPPLEMENTARY INFORMATION:** The Postal Service’s proposed rule includes: Several mail classification changes, modifications to mailpiece characteristics, and changes in classification terminology. This proposed rule contains the revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) that we would adopt to implement the new prices. Additional changes will be included in a separate final rule to support prices established by the Governors.

We think it is vital to share proposed modifications to mailing standards as far in advance as possible; therefore, included are additional proposed revisions scheduled for implementation

in May 2010. We summarize the revisions by shape for 2009 and 2010, and provide proposed changes to the mailing standards in the DMM. We invite your comments on the proposed standards.

#### **Proposed Changes for Letters and Flats for May 2009**

##### *Letters*

In May 2009, we propose alignment of standards for commercial machinable and automation letters so all machinable letters have the physical characteristics required of automation letters, with the exception of a qualifying barcode. Commercial letters that are not machinable are mailed as nonmachinable letters.

We propose a new minimum 0.009-inch thickness standard for automation and machinable letters.

We propose new static charge and the coefficient of friction standards for automation and machinable letters to ensure they do not produce excessive static charge and can be handled efficiently when inducted and removed from processing equipment.

Our proposal revises the list of nonmachinable characteristics. We clarify that letters with nonpaper surfaces, and letters with keys, coins or similar objects that are either loose or thick enough to make a letter nonuniform in thickness, render letters nonmachinable. Letters that do not meet the “automation-compatible” physical standards in DMM 201.3.0 would be considered nonmachinable letters.

We propose to allow optional sortation of First-Class Mail and Standard Mail automation letters and Standard Mail machinable letters to all applicable sort levels, with prices matching the level of sortation chosen.

We propose to revise standards for window envelopes on letter-size mailpieces, restricting the size of an address block window to extend no closer to the bottom edge than  $\frac{3}{4}$  inch when the window is within  $4\frac{3}{4}$  inches of the envelope’s leading edge and no closer than 1 inch to any other edge. For best compatibility with processing, we recommend a window size no greater than 2 inches by  $4\frac{1}{2}$  inches.

##### *Flats*

Effective in May 2009, we plan to extend the eligibility for automation prices to certain flat-size mailpieces that are not able to meet the flexibility standards in DMM 301.1.3, but that are able to demonstrate flats machine compatibility through a Pricing and Classification Service Center (PCSC)-administered testing process. Some flat-

size mailpieces containing rigid items process adequately on USPS® flats-sorting equipment when the surface of the mailpiece does not fit too tightly around the contents. Once inducted, those pieces with rigid contents, but with a surface that can be grasped at induction, may be processed efficiently. Because machine compatibility for these mailpieces may be defined by a number of characteristics, each type of mailpiece must be individually analyzed to ensure that it will process efficiently. We propose to allow mailers of flat-size pieces containing rigid items to mail at automation flats prices after they obtain PCSC approval. Those pieces that do not meet the published flexibility standards for flats, but were authorized to mail at flats prices by PCSC approval, would be required to be marked "Automation Flat."

We propose that the polywrap standards in DMM 301.3.3, currently applicable only to automation flats, be extended to all flat-size mailpieces using polywrap including saturation carrier route flats. The use of automation-compatible polywrap on all flat-size mailpieces improves mail processing efficiency and applies standardization and consistency for mailers of polywrapped flats. We also propose to redefine measurement of height and length dimensions by including polywrap selvage when measuring for maximum dimensions because selvage that extends beyond the maximum height or length may interfere with efficient processing. We would not include selvage when measuring for minimum dimensions, however, because the selvage is not substantial enough for it to be considered part of a uniformly thick flat. Polywrap products approved for flats are available from a number of independent vendors and the approval process for these products is described in DMM 301 and on the USPS *Rapid Information Bulletin Board* (RIBBS™) Web site at <http://ribbs.usps.gov>.

Effective in May 2009, we propose to extend the deflection standards, currently applicable to automation flats, to all flat-size mailpieces, except those mailed at saturation carrier route prices. The deflection standards change to allow one inch less of vertical deflection (droop) than is currently allowed. We propose to eliminate the current exception for oblong flats (those with a bound edge on the shorter side) so all flats would be tested with the length placed perpendicular to the edge of a flat surface. The broader application and revision of deflection standards will improve processing efficiencies within

USPS systems, assuring better machinability of flat-size mailpieces.

We propose to simplify mail preparation by eliminating the bundling requirements for First-Class Mail commercial flats. The new tray-based standards streamline mail preparation and processing and improve efficiency for this type of mail. Similar to the current tray-based preparation option for First-Class Mail flats, prices will be based on the sort level of the tray. Mailers may improve efficiency by eliminating bundling, and the minimum number of pieces per tray will be changed to 50 pieces within a tray, rather than the 90 pieces required today.

#### *Parcels*

We remove definitions of irregular parcels from the mail preparation standards in DMM 465, 475, and 485, and provide references to the current definition of irregular parcels in DMM 401.

#### **Overview of Proposed Changes for 2010**

These initial changes proposed for May 2010 include modifications that enhance processing and delivery efficiency while continuing to offer mailers choices.

#### *Flats*

We propose to merge standards for nonautomation and automation flats in May 2010; requiring all machinable flats, whether or not they are barcoded, to have the same physical characteristics. The terminology would likely change to machinable, barcoded machinable, and irregular flats.

We propose new flexibility standards for May 2010. Current standards in DMM 301.1.3 describe minimum flexibility as demonstrated by "tabletop" flexibility tests. Effective May 2009, we are proposing to extend automation prices to certain flat-size mailpieces not able to meet the flexibility standards in 301.1.3, but able to demonstrate flat machine compatibility through a PCSC-administered testing process. Delivery of rigid pieces is often more costly than delivery of foldable flats. For May 2010, we propose the flexibility standards noted above, be replaced with a single flexibility standard requiring all machinable flat-size mailpieces to be foldable, parallel to the length, to a height no greater than 5 inches. Flat-size pieces failing to meet this level of flexibility may be categorized as irregular flats.

We propose to modify standards in May 2010 for all flats, except those mailed as saturation carrier route, to prevent inserts from falling out of the

host flat-size mailpiece during normal sortation and delivery. We propose that loose inserts less than 75% of the size of a host mailpiece be limited to single-ply unfolded cards, when the mailpiece is not enclosed in polywrap, an envelope, or other wrapper. Allowable loose inserts should be injected well into the body of the mailpiece.

#### *Irregular Flats*

For May 2010, we propose a new "irregular flats" category. This category encompasses two types of flat-size mailpieces. One example is a flat-size piece that is machinable, but with parcel-like characteristics that affect deliverability, such as pieces with rigid contents because the pieces cannot be folded. Another type of irregular flat would be one that is foldable with favorable delivery characteristics, but is not machinable, such as flimsy pieces that are difficult to process on automation equipment.

#### *Not Flat-Machinable (NFM)*

In 2007, we created a NFM category for Standard Mail items that could not meet revised automation flats standards. In May 2010, we propose to discontinue or redefine the NFM category. Pieces that would have been mailed as NFMs can likely qualify as Standard Mail parcels. Some NFMs, with modifications, might be mailable as machinable or irregular flats in 2010.

#### *General*

We encourage customers to comment on the May 2010 proposed changes and hope that this notice provides the opportunity to for mailers prepare for possible operation changes ahead of the proposed May 2010 effective date.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act [5 U.S.C. of 553(b), (c)] regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

#### **List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 111 is proposed to be amended as follows:

#### **PART 111—[AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows:

## 100 Retail Mail Letters, Cards, Flats, and Parcels

### 101 Physical Standards

#### 101.1 Physical Standards for Letters

\* \* \* \* \*

##### 1.2 Nonmachinable Criteria

A letter-size piece is nonmachinable (see 6.4) if it has one or more of the following characteristics (see 601.1.4 to determine the length, height, top, and bottom of a mailpiece):

\* \* \* \* \*

[Revise item b to add that any nonpaper exterior surface is nonmachinable as follows:]

b. Is polybagged, polywrapped, enclosed in any plastic material, or has an exterior surface made of a material that is not paper. Paper envelopes with windows prepared under 202.5.8 and 601.6.3 do not make mailpieces nonmachinable.

\* \* \* \* \*

[Revise item d to clarify that letters are nonmachinable when certain items are loose or when they cause the thickness to be uneven, as follows:]

d. Contains items such as pens, pencils, keys, or coins that cause the thickness of the mailpiece to be uneven; or loose keys or coins or similar objects not affixed to the contents within the mailpiece. Loose items may cause a letter to be nonmailable when mailed in paper envelopes; see 601.2.3, *Odd-Shaped Items in Paper Envelopes*.

\* \* \* \* \*

[Revise item h by referring to sealing standards in 201.3.14.1 for all self-mailers as follows:]

h. Is a self-mailer that is not prepared according to 201.3.14.1.

[Revise item i by referring to sealing standards in 201.3.14.2 for all booklets as follows:]

i. Is a booklet that is not prepared according to 201.3.14.2.

\* \* \* \* \*

## 200 Commercial Mail Letters and Cards

### 201 Physical Standards

#### 1.0 Physical Standards for Machinable Letters and Cards

##### 1.1 Physical Standards for Machinable Letters

###### 1.1.1 Dimensional Standards for Letters

Letter-size mail is:

[Revise item a to increase minimum thickness to 0.009 inch as follows:]

a. Not less than 5 inches long, 3½ inches high, and 0.009-inch thick.

\* \* \* \* \*

###### 1.1.3 All Machinable Letters

[Revise the first sentence of 1.1.3 as follows:]

All pieces of First-Class Mail and Standard Mail machinable letters must meet the standards for automation-compatible letters in 201.3.0.

\* \* \* \* \*

## 2.0 Physical Standards for Nonmachinable Letters

### 2.1 Criteria for Nonmachinable Letters

[Revise 2.1 by noting that letters not made of paper or that do not meet automation-compatibility standards are nonmachinable; that all letters over 3.3 ounces must have a barcode and claim an automation letter price to avoid a surcharge; and by removing the individual listed items as follows:]

A letter-size piece is nonmachinable if it has an exterior surface that is not made of paper or if it does not meet the standards in 201.3.0. In addition, a letter-size piece is nonmachinable if it weighs more than 3.3 ounces (up to 3.5 ounces) unless it has a barcode and is eligible for and claims automation letter prices or Standard Mail Enhanced Carrier Route letter prices.

\* \* \* \* \*

### 3.0 Physical Standards for Automation Letters and Cards

\* \* \* \* \*

### 3.2 Dimensions and Shape Standards for Automation Letters

Each letter-size piece must be rectangular (see 1.1.1) and:

\* \* \* \* \*

[Revise item c to increase minimum thickness to 0.009 inch as follows:]

c. For thickness, no more than 0.25 inch, or less than 0.009-inch thick, except for cards mailed at First-Class Mail postcard prices. Cards eligible for and mailed at postcard prices may be no

more than 0.016-inch thick or less than 0.007-inch thick.

[Renumber current 3.3 through 3.15 as new 3.4 through 3.16.]

[Add new 3.3 as follows:]

### 3.3 Static and Coefficient of Friction

Letter-sized machinable and automation mailpieces must be made of paper material with the following characteristics:

a. Static charge of less than 2 KV when tested using test method ASTM D4470.

b. Kinetic coefficient of friction between 0.26 and 0.34 when tested as paper to same paper using test method ASTM D4917.

\* \* \* \* \*

## 202 Elements on the Face of a Mailpiece

\* \* \* \* \*

### 5.0 Barcode Placement

\* \* \* \* \*

### 5.7 Barcode in Address Block

When the barcode is included as part of the address block:

\* \* \* \* \*

[Delete item d and relocate text to new 5.8.]

[Redesignate current items e and f as new items d and e.]

\* \* \* \* \*

[Renumber current 5.8 through 5.11 as new 5.9 through 5.12.]

[Add new 5.8 with revised text from former 5.7d to read as follows:]

### 5.8 Address Block Barcodes on Inserts in Window Envelopes

If a window envelope is used to display the address and a barcode in the address block, the clearance between the leftmost and rightmost bars and any printing or window edge must be at least 0.125 (1/8) inch. The clearance between the barcode and the top and bottom window edges must be at least 0.040 (1/25) inch for POSTNET barcodes or 0.028 inch for Intelligent Mail barcodes. These clearances must be maintained during the insert's range of movement in the envelope. Address block windows also must meet the standards in 5.12 and 601.6.3.

\* \* \* \* \*

[Revise heading and text of renumbered 5.11 as follows:]

### 5.11 Barcode Window Construction

When the barcode is printed in the lower right corner on an insert, a barcode window may be used to allow only the barcode to be read through the window. The barcode window must not

extend any further than necessary to accommodate the barcode and required tolerances and must not touch any window used to display the address block. The barcode window must meet these criteria:

- a. *Left:* At least 4 3/4 inches from the right edge of the envelope.
- b. *Right:* At least 1/4 inch from the right edge of the envelope.
- c. *Top:* At least 5/8 inch from the bottom of the envelope.
- d. *Bottom:* Form part of the bottom edge of the envelope.

*[Revise heading and text of renumbered 5.12 as follows:]*

## 5.12 Window Covers

The following standards apply to window covers for address block windows as well as barcode windows:

- a. The window cover must be made of a nontinted clear or transparent material (e.g., cellophane or polystyrene) that permits the address, the barcode and its background, as viewed through the window material, to meet the reflectance standards in 708.4.4.
- b. The edges of the window cover must be securely glued to the envelope and must not extend closer than 3/4 inch from the bottom mailpiece edge and not closer than 1 inch from any other mailpiece edge.
- c. Covered windows may extend to no more than 1/2 inch from the bottom mailpiece edge when the window is at least 4 3/4 inches from the leading edge of the mailpiece.

\* \* \* \* \*

## 230 First-Class Mail

\* \* \* \* \*

## 235 Mail Preparation

\* \* \* \* \*

*[Revise heading of 6.0 as follows:]*

## 6.0 Preparing Automation Letters

\* \* \* \* \*

### 6.6 Tray Preparation

\* \* \* Preparation sequence, tray size, and Line 1 labeling:

\* \* \* \* \*

*[Revise items b through d to allow optional preparation and modify grouping requirement as follows:]*

b. *3-digit/scheme:* Optional, but required for 3-digit price (150-piece minimum except no minimum for origin or entry 3-digit/scheme); overflow allowed; for Line 1, use L002, Column B.

c. *AADC:* Optional, but required for AADC price (150-piece minimum); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code when overflow pieces from 3-digit trays are

placed in AADC trays. For Line 1, use L801, Column B.

d. *Mixed AADC:* Required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 use L201; for mail originating in ZIP Code areas in Column A, use "MXD" followed by city, state, and 3-digit ZIP Code prefix in Column C (use "MXD" instead of "OMX" in the destination line and ignore Column B).

\* \* \* \* \*

## 240 Standard Mail

\* \* \* \* \*

## 245 Mail Preparation

\* \* \* \* \*

## 5.0 Preparing Nonautomation Letters

\* \* \* \* \*

## 5.3 Machinable Preparation

\* \* \* \* \*

### 5.3.2 Traying and Labeling

\* \* \* Preparation sequence, tray size, and labeling:

\* \* \* \* \*

*[Revise first sentence of 5.3.2 b to allow optional preparation as follows:]*

b. AADC (optional, but required for AADC price); 150-piece minimum (overflow allowed); labeling: \* \* \*

\* \* \* \* \*

*[Revise heading of 7.0 as follows:]*

## 7.0 Preparing Automation Letters

\* \* \* \* \*

## 7.5 Tray Preparation

\* \* \* Preparation sequence, tray size, and Line 1 labeling:

\* \* \* \* \*

*[Revise items b through d to allow optional preparation and modify grouping requirement as follows:]*

b. 3-digit/scheme; optional, but required for 3-digit price (150-piece minimum, except no minimum for optional origin/entry 3-digit/scheme(s)); overflow allowed; for Line 1, use L002, Column B.

c. *AADC:* Optional, but required for AADC price (150-piece minimum); overflow allowed; group pieces by 3-digit (or 3-digit scheme) ZIP Code when overflow pieces from 3-digit/scheme trays are placed in AADC trays. For Line 1, use L801, Column B.

d. *Mixed AADC:* Required (no minimum); group pieces by AADC when overflow pieces from AADC trays are placed in mixed AADC trays. For Line 1 labeling: Use L011, Column B. Use L010, Column B if entered at an ASF or BMC or for mail placed on an

ASF, BMC, or SCF pallet under the option in 705.8.10.3.

\* \* \* \* \*

## 300 Commercial Mail Flats

### 301 Physical Standards

#### 1.0 Physical Standards for Flats

\* \* \* \* \*

##### 1.2 Length and Height of Flats

*[Revise the text of 1.2 by adding new third and fourth sentences about selvage as follows:]*

The length of a flat-size mailpiece is the longest dimension. The height is the dimension perpendicular to the length. When determining the maximum height or length of a flat, include any selvage of polywrap material that may enclose the piece. When determining the minimum height or length of a flat, do not include the selvage of any polywrap material that may enclose the piece.

\* \* \* \* \*

*[Renumber current 1.5 as new 1.7.]*

*[Move 301.3.2.3 in its entirety, renumber as 1.5, revise heading and text to extend maximum deflection standards to all flat-size mailpieces, and delete item c as follows:]*

#### 1.5 Maximum Deflection for Flat-Size Mailpieces

Flat-size mailpieces must be flexible (see 1.3) and must meet maximum deflection standards. Flat-size pieces mailed at saturation carrier route prices are not required to meet these deflection standards. Test deflection as follows:

a. For pieces 10 inches or longer (see Exhibit 1.5a):

1. Place the piece on a flat surface with the length perpendicular to the edge of the surface and extend the piece 5 inches off the edge of the surface. Test square-shaped bound flats by placing the bound edge parallel to the edge. Turn the piece around and repeat the process.

2. The piece is mailable at flat prices if it does not droop more than 3 inches vertically at either end.

#### Exhibit 1.5a Deflection Test-Pieces 10 Inches or Longer

*[Placeholder for new exhibit reflecting new standards.]*

b. For pieces less than 10 inches long (see Exhibit 1.5b):

1. Place the piece on a flat surface with the length perpendicular to the edge of the surface and extend the piece one-half of its length off the edge of the surface. Test square-shaped bound flats by placing the bound edge parallel to the edge. Turn the piece around and repeat the process.

2. The piece is mailable at flat prices if it does not droop more than 2 inches less than the extended length. For example, a piece 8 inches long would extend 4 inches off a flat surface. It must not droop more than 2 inches vertically at either end.

\* \* \* \* \*

*[Renumber 301.3.3 in its entirety as new 1.6 and revise text to extend polywrap standards to all flats as follows:]*

## 1.6 Polywrap Coverings

### 1.6.1 Polywrap Films and Similar Coverings

*[Revise renumbered 1.6.1 as follows:]*

Mailers using polywrap film or similar material to enclose or cover flat-size mailpieces must use a product meeting the standards in 1.6. Film approved for use under 1.6.5 must meet the specifications in Exhibit 1.6.1 as follows:

- a. Films or similar coverings must meet all six properties in Exhibit 1.6.1.
- b. If the address label is affixed to the outside of the polywrap, the haze property (property 2) does not apply.
- c. Only products listed as approved on the USPS RIBBS Web site (<http://ribbs.usps.gov>) may be used on flat-size mailpieces.

### Exhibit 1.6.1 Polywrap Specifications

*[Revise the introductory sentence of renumbered exhibit 1.6.1 as follows:]*

Mailers who polywrap flats must use polywrap that meets all of the properties in this exhibit.

\* \* \* \* \*

*[Delete renumbered 1.6.4, Polywrap on Mailpieces, in its entirety and redesignate renumbered 1.6.5 to new 1.6.4.]*

### 1.6.4 Polywrap Certification Process for Manufacturers

*[Revise the first sentence of the introductory paragraph in 1.6.4 as follows:]*

To ensure that all polywrap manufacturers use the same criteria, the Postal Service developed specification USPS-T-3204, *Test Procedures for Polywrap Films*. \* \* \* Manufacturers should follow this procedure before submitting the letter certifying compliance with the specifications:

*[Revise item a as follows:]*

a. Test each film according to procedures listed in USPS-T-3204, *Test Procedures for Polywrap Films*.

\* \* \* \* \*

### 1.7 Flat-Size Pieces Not Eligible for Flat-Size Prices

*[Revise text of renumbered 1.7 as follows:]*

Mailpieces that do not meet the standards in 1.1 through 1.6 are not eligible for flat-size prices and must pay applicable prices as follows:

- a. First-Class Mail—Parcel prices.
- b. Standard Mail—Not Flat-Machinable or parcel prices.
- c. Bound Printed Matter—Parcel prices.

\* \* \* \* \*

## 3.0 Physical Standards for Automation Flats

\* \* \* \* \*

*[Further renumber 3.3 through 3.7 as the new 3.5 through 3.9, and add new 3.3 and 3.4 as follows:]*

### 3.3 Flats-Machine Compatibility

Flat-size mailpieces meeting the standards in 1.0 and 3.0, but unable to meet the minimum flexibility standards described in 1.3, are not eligible for automation prices unless the mailpieces demonstrate flats-machine compatibility. Until May 2010, rigid flat-size mailpieces in paper, polywrap or similar packaging that allows for the pieces to be grasped and inducted into USPS flat-sorting equipment may qualify for automation prices when meeting the following standards:

- a. Mailpieces must be enclosed in envelopes or similar packaging capable of withstanding normal processing on USPS flat-sorting equipment.
- b. Mailpieces must be approved for automation flats prices by the USPS. Mailers seeking approval for mailpieces under this standard must contact the Pricing and Classification Service Center (PCSC) for instructions on submitting sample mailpieces for testing (see 608.8.0 for address). Mailpieces having a previous approval from the PCSC for automation flats prices, granted after May 2007, are not required to be resubmitted for a new approval. These and all other approvals granted under 3.3 expire in May 2010.

c. Mailpieces approved for automation flats pricing under this standard must print the endorsement “Automation Flat” directly under the postage imprint.

### 3.4 Additional Flexibility Standards for Automation Flats

It is recommended that all automation flats be foldable to a height no greater than 5 inches. Effective May 2010, flat-size automation mailpieces must be foldable, parallel to the length, to a height no greater than 5 inches (in addition to meeting the flexibility standards in 1.3). With a postal employee observing, customers may demonstrate the flexibility, according to these standards, of their own

mailpieces. The employee does not then need to perform the test.

\* \* \* \* \*

## 302 Elements on the Face of a Mailpiece

\* \* \* \* \*

## 4.0 Barcode Placement

\* \* \* \* \*

## 4.6 Barcode in Address Block

When the barcode is included as part of the address block:

\* \* \* \* \*

*[Revise 4.6d by adding a new last sentence as follows:]*

- d. \* \* \* Window envelopes also must meet the specifications in 601.6.3.

\* \* \* \* \*

## 330 First-Class Mail Flats

### 333 Prices and Eligibility

\* \* \* \* \*

*[Revise the heading of 5.0 as follows:]*

## 5.0 Additional Eligibility Standards for Automation First-Class Mail Flats

### 5.1 Basic Standards for Automation First-Class Mail

All pieces in a First-Class Mail automation price mailing must:

\* \* \* \* \*

*[Revise item e to require an 11-digit barcode as follows:]*

- e. Bear an accurate barcode meeting the standards in 708.4.0, a delivery point barcode (DPBC), or an Intelligent Mail barcode with a delivery point routing code, either on the piece or on an insert showing through a barcode window.

\* \* \* \* \*

*[Delete 5.2 and renumber current 5.3 through 5.5 as new 5.2 through 5.4.]*

*[Revise the heading and text of renumbered 5.2 as follows:]*

## 5.2 Price Application

Automation prices apply to each piece that is sorted under 335.6.5, *First-Class Mail Tray-Based Preparation*, into the corresponding qualifying groups:

*[Revise items a through c to change eligibility from 90 pieces or more to 50 pieces or more as follows:]*

- a. Groups of 50 or more pieces in 5-digit trays qualify for the 5-digit price. Preparation to qualify for the 5-digit price is optional and need not be done for all 5-digit destinations.

b. Groups of 50 or more pieces in 3-digit trays qualify for the 3-digit price.

- c. Pieces in origin 3-digit trays and groups of 50 or more pieces in ADC trays qualify for the ADC price.

\* \* \* \* \*

**335 Mail Preparation****1.0 General Definition of Terms**

\* \* \* \* \*

**1.2 Definition of Mailings**

Mailings are defined as:

\* \* \* \* \*

*[Revise item b as follows:]*

b. The types of First-Class Mail listed below must not be part of the same mailing despite being in the same processing category (see 705.9.0, *Combining Automation and Nonautomation Flats in Trays and Sacks* for a preparation option for flat-size mail):

1. Automation price and any other type of mail, except under 705.9.0.
  2. Presorted price and any other type of mail, except under 705.9.0.
  3. Single-piece price and any other type of mail.
  4. Machinable and nonmachinable pieces.
- \* \* \* \* \*

**1.4 Preparation Definitions and Instructions**

For purposes of preparing mail:

\* \* \* \* \*

*[Revise item b to change the definition of an automation flats full tray as follows:]*

b. For purposes of preparing automation flats, a full flat tray is one that contains at least 50 pieces of automation flats or one that is physically full. For nonautomation flats, a full flat tray is one that is physically full. A physically full tray contains at least a single stack of mail lying flat on the bottom of the tray and filling the tray to the bottom of the handholes. Before additional trays for the same destination are prepared, trays must be filled with additional available pieces (up to the reasonable capacity of the tray).

\* \* \* \* \*

*[Delete current items e through g and redesignate current items h through j as new e through g.]*

*[Revise redesignated item g as follows:]*

g. An instruction to group pieces means the pieces are to be sorted as a unit (as if bundled) but not actually secured into a bundle.

*[Delete current item k in its entirety.]*

*[Redesignate current item l as new item h and revise as follows:]*

h. A “logical” presort destination represents the total number of pieces that are eligible for a specific presort level based on the required sortation, but which might not be contained in a single container due to applicable

preparation requirements or the size of the individual pieces.

*[Delete current item m.]*

\* \* \* \* \*

*[Delete 2.0 in its entirety.]*

*[Renumber current 3.0 through 6.0 as new 2.0 through 5.0.]*

\* \* \* \* \*

**2.0 Flat Trays**

\* \* \* \* \*

**2.4 Preparation for Flats in Flat Trays**

All flat tray preparation is subject to these standards:

\* \* \* \* \*

*[Revise items f through h, to delete the “optional” phrasing, as follows:]*

f. For automation mailings, one less-than-full overflow tray may be prepared for a presort destination when the total number of pieces for that destination meets the minimum for preparation of the tray level, and when one or more full trays for that destination are also prepared.

g. For automation mailings, if the total number of pieces for a presort destination meets or exceeds the minimum number of pieces required to prepare a tray for that destination, but the total volume does not physically fill a single tray, then the mail for that presort destination may be prepared in a less-than-full tray.

h. Pieces prepared as automation flats do not have to be grouped by 3-digit ZIP Code prefix in ADC trays or by ADC in mixed ADC trays if the mailing is prepared using an MLOCR/barcode sorter and standardized documentation is submitted.

\* \* \* \* \*

**2.5 Preparation for Flats in EMM Letter Trays**

Mailers may prepare First-Class Mail flat-size pieces in EMM letter trays instead of flat trays if the following standards are met:

\* \* \* \* \*

*[Revise item c as follows:]*

c. All mail must be prepared under 6.6, and must not be prepared in bundles.

\* \* \* \* \*

**4.0 Preparation of Nonautomation Flats****4.1 Basic Standards**

*[Revise 4.1 to specifically prohibit bundling as follows:]*

Each mailing of Presorted First-Class Mail must be prepared under 4.0 and 333.3.0, *Eligibility Standards for First-Class Mail Flats*. All pieces must be in the flat-size processing category. Flat-

size pieces must be prepared loose (unbundled) in flat trays under 2.4 and 4.0. All pieces must be marked “Presorted” and “First-Class Mail.”

\* \* \* \* \*

*[Delete 4.4 and renumber 4.5 and 4.6 as new 4.4 and 4.5.]*

*[Revise the heading and text of renumbered 4.5 as follows:]*

**4.5 Cotraying With Automation Flats**

If a single mailing job contains an automation mailing and a Presorted mailing, and both mailings are reported on the same postage statement, the mailing job must be presorted under the cotraying standards in 705.9.0.

*[Revise the heading of renumbered 5.0 as follows:]*

**5.0 Preparation of Automation Flats****5.1 Basic Standards**

*[Revise 5.1 to specifically prohibit bundling as follows:]*

Automation First-Class Mail flats must be prepared under 5.0 and meet the eligibility standards for the price claimed; trays must bear the appropriate barcoded container labels under 708.6.0, *Standards for Barcoded Tray Labels, Sack Labels, and Container Placards*. Flat-size pieces must be prepared loose (unbundled) in flat trays under 2.4 and 5.0.

\* \* \* \* \*

*[Delete renumbered 5.4 and 5.5.]*

*[Renumber current 6.6 as new 5.4 and revise heading and text as follows:]*

**5.4 First-Class Mail Preparation**

Tray size, preparation sequence, and Line 1 labeling:

a. 5-digit: Optional, but 5-digit trays required for price eligibility (50-piece minimum); one overflow tray allowed; for Line 1, use city, state, and 5-digit ZIP Code destination of pieces (for military mail see 3.3c). (Preparation to qualify for 5-digit price is optional and need not be done for all 5-digit destinations.)

b. 3-digit: Required (50-piece minimum); one overflow tray allowed; for Line 1, use L002, Column A for 3-digit destinations.

c. Origin 3-digit: Required for each 3-digit ZIP Code served by the SCF of the origin (verification) office; no minimum; for Line 1, use L002, Column A for 3-digit destinations.

d. ADC: Required (50-piece minimum); one overflow tray allowed; group pieces by 3-digit ZIP Code prefix, except under 2.4h; for Line 1, use L004 (ZIP Code prefixes in Column A must be combined and labeled to the corresponding ADC destination shown in Column B).

e. Mixed ADC (required); no minimum for price eligibility. Group

pieces by ADC, except under 2.4h. For Line 1 use L201; for mail originating in ZIP Code areas in Column A, use "MXD" followed by city, state, and 3-digit ZIP Code prefix in Column C (use "MXD" instead of "OMX" in the destination line and ignore Column B).

[Delete current 6.7.]

[Rerun current 6.8 as new 5.5 and revise as follows:]

### **5.5 Cotraying With Presorted Price Mail**

If the mailing job contains an automation mailing and a Presorted mailing, and both mailings are reported on the same postage statement, the mailing job must be prepared under the cotraying standards in 705.9.0.

### **400 Commercial Mail Parcels**

#### **401 Physical Standards**

\* \* \* \* \*

#### **2.0 Additional Physical Standards by Class of Mail**

\* \* \* \* \*

#### **2.2 Standard Mail Parcels and Not Flat-Machinable Pieces**

\* \* \* \* \*

##### **2.2.2 Not Flat-Machinable Pieces**

[Revise introductory text of 2.2.2 to indicate ending date of NFM category as follows:]

Rectangular Standard Mail pieces with any of the following characteristics must be prepared as *Not Flat-Machinable* (NFM) pieces (until May 2010) or as parcels:

\* \* \* \* \*

### **460 Bound Printed Matter**

\* \* \* \* \*

### **465 Mail Preparation**

\* \* \* \* \*

#### **5.0 Preparing Presorted Parcels**

##### **5.1 Basic Standards**

###### **5.1.1 General Preparation Requirements**

All mailings of Presorted Bound Printed Matter (BPM) are subject to these general standards:

\* \* \* \* \*

[Revise item b as follows:]

b. All pieces in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

\* \* \* \* \*

### **470 Media Mail**

\* \* \* \* \*

### **475 Mail Preparation**

\* \* \* \* \*

#### **5.0 Preparing Media Mail Parcels**

##### **5.1 Basic Standards**

All mailings of Presorted Media Mail are subject to the standards in 5.0 and to these general requirements:

\* \* \* \* \*

[Revise item b as follows:]

b. All parcels in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

\* \* \* \* \*

### **480 Library Mail**

\* \* \* \* \*

#### **485 Mail Preparation**

\* \* \* \* \*

#### **5.0 Preparing Library Mail Parcels**

##### **5.1 Basic Standards**

All mailings of Presorted Library Mail are subject to the standards in 5.0, *Preparing Library Mail Parcels*, and to these general standards:

\* \* \* \* \*

[Revise item b as follows:]

b. All pieces in a mailing must be within the same processing category. See 401.1.0 for definitions of machinable and irregular parcels.

\* \* \* \* \*

### **600 Basic Standards for All Mailing Services**

#### **601 Mailability**

\* \* \* \* \*

#### **6.0 Mailing Containers—Special Types of Envelopes and Packaging**

\* \* \* \* \*

##### **6.3 Window Envelopes**

\* \* \* Any window envelope used for letter-size or flat-size mail must meet the following additional standards:

\* \* \* \* \*

[Redesignate current item e as new item f, and add new item e as follows:]

e. The following standards apply to an address block window on machinable and automation letters:

1. Address block windows on letters over 3 ounces must be covered. Address block windows may be covered on other mail.

2. Uncovered or open windows must be no larger than 2 inches by 4½ inches, and must not extend closer than ¾ inch from the bottom mailpiece edge and not closer than 1 inch from any other mailpiece edge.

3. Covers for address block windows are subject to 202.5.12.

### **700 Special Standards**

\* \* \* \* \*

#### **705 Advanced Preparation and Special Postage Payment Systems**

\* \* \* \* \*

[Revise the heading of 9.0 as follows:]

#### **9.0 Combining Automation and Nonautomation Flats in Trays and Sacks**

##### **9.1 First-Class Mail**

###### **9.1.1 Basic Standards**

[Revise text of 9.1.1. to delete references to bundling as follows:]

Flats in an automation mailing prepared under 335.6.5 must be cotrayed with flats in a Presorted mailing under the following conditions:

a. The automation pieces and Presorted pieces are part of the same mailing job and reported on the same postage statement.

b. Pieces in the automation mailing must meet the criteria for a flat under 301.3.0. Pieces in the Presorted mailing must meet the criteria for a flat under 301.1.0.

c. The automation mailing must meet the eligibility criteria in 333.5.0, except that the traying criteria in 9.1.4 must be met rather than the traying criteria in 335.5.0.

d. The Presorted mailing must meet the eligibility criteria in 333.3.0, except that the traying and documentation criteria in 9.1.1 and 9.1.4 must be met rather than the traying and documentation criteria in 335.4.0.

[Delete item e and redesignate current items f through i as new items e through h.]

\* \* \* \* \*

[Revise redesigned item f as follows:]

f. The pieces from the automation mailing and the pieces from the Presorted mailing must be sorted into the same trays as described in 9.1.2.

\* \* \* \* \*

[Delete 9.1.2 and 9.1.3 in their entirety.]

[Rerun current 9.1.4 as new 9.1.2 and revise as follows:]

##### **9.1.2 Tray Preparation and Labeling**

Presorted and automation pieces must be presorted together into trays (cotrayed) in the sequence listed below. Trays must be labeled using the following information for Lines 1 and 2 and 335.4.0 for other tray label criteria.

a. 5-digit, required, 50 piece minimum; one less-than-full or overflow tray allowed; labeling:

1. Line 1: Use city, state, and 5-digit ZIP Code destination (see 335.4.3 for military mail).

2. Line 2: "FCM FLTS 5D BC/NBC." b. 3-digit, required, 50 piece minimum; one less-than-full or overflow tray allowed; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: "FCM FLTS 3D BC/NBC."

c. Origin/entry 3-digit, required for each 3-digit ZIP Code served by the SCF of the origin (verification) office, optional for each 3-digit ZIP Code served by the SCF of an entry office other than the origin office, no minimum; labeling:

1. Line 1: Use L002, Column A.

2. Line 2: "FCM FLTS 3D BC/NBC."

d. ADC, required, 50 piece minimum; one less-than-full or overflow tray allowed; use L004 to determine ZIP Codes served by each ADC; labeling:

1. Line 1: Use L004, Column B.

2. Line 2: "FCM FLTS ADC BC/NBC."

e. Mixed ADC, required, no minimum; labeling:

1. Line 1: Use L201; for mail originating in ZIP Code areas in Column A, use "MXD" followed by the city, state, and 3-digit ZIP Code prefix in the corresponding row in Column C (use "MXD" instead of "OMX" in the destination line and ignore Column B).

2. Line 2: "FCM FLTS BC/NBC  
WKG."

\* \* \* \* \*

*[Revise heading of 11.0 as follows:]*

## 11.0 Combining Automation and Nonautomation Flats in Bundles

*[Delete 11.1 and renumber current 11.2 through 11.4 as new 11.1 through 11.3.]*

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes if our proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. E9-1862 Filed 1-28-09; 8:45 am]

BILLING CODE 7710-12-P

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## POSTAL SERVICE

### 39 CFR Part 958

#### Rules of Practice in Proceedings Relative to Mailing Hazardous Materials

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Accountability and Enhancement Act requires the Postal

Service to prescribe regulations for the safe transportation of hazardous materials in the mail, and to prescribe regulations for the conduct of proceedings to determine the implementation of civil penalties, clean-up costs and damages for violations of these hazardous materials regulations. Accordingly, the Postal Service proposes to adopt new rules of practice for its Office of the Judicial Officer.

**DATES:** Comments must be received on or before March 2, 2009.

**ADDRESSES:** Judicial Officer Department, United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, VA 22201-3078.

#### FOR FURTHER INFORMATION CONTACT:

Administrative Judge Gary E. Shapiro, (703) 812-1910.

**SUPPLEMENTARY INFORMATION:** The Postal Accountability and Enhancement Act (Pub. L. 109-435, 120 Stat. 3198 (December 20, 2006)) inserted section 3018 into title 39, United States Code. Section 3018(a) requires the Postal Service "to prescribe regulations for the safe transportation of hazardous material in the mail." Section 3018(c) requires the Postal Service to implement procedures for the imposition of civil penalties, clean-up costs and damages for violations of these hazardous materials regulations. Section 3018(d) provides that the Postal Service may determine that a person has violated these regulations only after notice and an opportunity for a hearing in accordance with section 3001(m) of title 39, United States Code.

Accordingly, the Postal Service is proposing to adopt implementing regulations as new 39 CFR part 958, which would designate the Chief Postal Inspector as the Postal Service's Determining Official for purposes of these rules. Any hearing would be presided over by an Administrative Law Judge designated by the Postal Service Judicial Officer. Administrative appeals of a Presiding Officer's decision would be determined by the Judicial Officer.

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 public comment on the following rules proposed to be codified at title 39, Code of Federal Regulations, part 958.

#### List of Subjects in 39 CFR Part 958

Administrative practice and procedure, Penalties, Postal Service.

For the reasons stated in the preamble, the Postal Service proposes to

amend 39 CFR part 958 as set forth below:

1. Part 958 is added to read as follows:

## PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO CIVIL PENALTIES, CLEAN-UP COSTS AND DAMAGES FOR VIOLATION OF HAZARDOUS MATERIAL REGULATIONS

Sec.

958.1 Purpose.

958.2 Definitions.

958.3 Petition for hearing.

958.4 Referral of complaint.

958.5 Scope of hearing; evidentiary standard.

958.6 Notice of docketing and hearing.

958.7 Hearing location.

958.8 Rights of parties.

958.9 Responsibilities and authority of presiding officer.

958.10 Prehearing conferences.

958.11 Respondent access to information.

958.12 Depositions; interrogatories; admission of facts; production and inspection of documents.

958.13 Sanctions.

958.14 Ex parte communications.

958.15 Post-hearing briefs.

958.16 Transcript of proceedings.

958.17 Initial decision.

958.18 Appeal of initial decision to Judicial Officer.

958.19 Form and filing of documents.

958.20 Service of notice of docketing and hearing, other documents.

958.21 Computation of time.

958.22 Continuances and extensions.

958.23 Settlement.

**Authority:** 39 U.S.C. 204; 39 U.S.C. 401; 39 U.S.C. 3001; 39 U.S.C. 3018.

#### § 958.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

#### § 958.2 Definitions.

(a) *Complaint* refers to the determination by the Determining Official that an individual has violated the prohibition against mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

(b) *Initial Decision* refers to the written decision which the Presiding Officer renders.

(c) *Determining Official* refers to the Chief Postal Inspector or designee.

(d) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or designee within the Judicial Officer Department.

(e) *Party* refers to the Postal Service or the respondent.