

the Postal Service is not a party unless authorized by certain authorizing officials.

EFFECTIVE DATE: July 18, 1995.

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SUPPLEMENTARY INFORMATION: On June 6, 1995, the Postal Service published in the **Federal Register** (60 FR 29806-29809) a notice for public comment on a proposed rule to establish procedures for employee compliance with subpoenas, summonses, or other court orders where the Postal Service is not a party. The rule amends 39 CFR 265 to provide that postal employees within or assigned to the Postal Inspection Service must follow certain rules for the release of information in the form of documents or testimony. Giving testimony or releasing a document in legal proceedings where the Postal Service or the United States is not a party must be authorized beforehand. Such employees may comply with subpoenas, summonses, and court orders after consulting Inspection Service legal counsel and with authorization by specified authorizing officials. The release of the information must be in compliance with applicable laws and regulations and not be against the interest of the United States.

No comments were received by the closing date of July 6, 1995. The Postal Service therefore adopts the rule below as originally published on June 6, 1995.

Several federal agencies have enacted regulations that give them the authority to control the release of documents and testimony in legal proceedings where the agency is not a party. Courts have recognized that federal agencies may limit compliance in these situations. See *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Additionally, subpoenas, summonses, and orders issued by state courts, legislatures, or legislative committees that attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution. A federal regulation regarding compliance with those subpoenas reinforces this principle. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967).

This rule does not apply to situations in which the United States, the Postal Service, or any federal agency is a party in action; Congressional requests, summonses, or subpoenas; consultative services and technical assistance rendered by the Inspection Service in the course of its normal functions;

employees serving as expert witnesses; employees making appearances in their private capacity; and when it has been determined by an authorizing official that it is in the public interest.

New § 265.13 of title 39 of the Code of Federal Regulations is the Postal Service regulation concerning the compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service or the United States is not a party. This section has also been written to reflect the changes in organization that the Inspection Service has undergone. As an example, the position of Regional Chief Inspector no longer exists within the Inspection Service. Current regulations identify that official as responsible for authorizing testimony or the production of documents pursuant to a subpoena, summons, or court order where the Postal Service, the United States, or another federal agency is not a party. Now, the authorizing official, in most cases, is the Postal Inspector in Charge of the affected field Division.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Government employees, Release of information.

Accordingly, 39 CFR part 265 is amended as set forth below.

PART 265—RELEASE OF INFORMATION

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

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

2. The heading of § 265.11 is revised to read as follows:

§ 265.11 Compliance with subpoena duces tecum, court orders, and summonses.

3. Paragraphs (b) and (c) of § 265.11 are removed and paragraph (b) is reserved.

4. A new § 265.13 is added to read as follows:

§ 265.13 Compliance with subpoenas, summonses, and court orders by postal employees within the Inspection Service where the Postal Service, the United States, or any other federal agency is not a party.

(a) *Applicability of this section.* The rules in this section apply to all federal, state, and local court proceedings, as well as administrative and legislative proceedings, other than:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Consultative services and technical assistance rendered by the Inspection Service in executing its normal functions;

(4) Employees serving as expert witnesses in connection with professional and consultative services under § 447.23 of this chapter and under title 5, Code of Federal Regulations, part 7001, provided that employees acting in this capacity must state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(5) Employees making appearances in their private capacities in proceedings that do not relate to the Postal Service (e.g., cases arising from traffic accidents, domestic relations) and do not involve professional or consultative services; and

(6) When in the opinion of the Counsel or the Counsel's designee, Office of the Chief Postal Inspector, it has been determined that it is in the best interest of the Inspection Service or in the public interest.

(b) *Purpose and scope.* The provisions in this section limit the participation of postal employees within or assigned to the Inspection Service, in private litigation, and other proceedings in which the Postal Service, the United States, or any other federal agency is not a party. The rules are intended to promote the careful supervision of Inspection Service resources and to reduce the risk of inappropriate disclosures that might affect postal operations.

(c) *Definitions.* For the purposes of this section:

(1) *Authorizing official* is the person responsible for giving the authorization for release of documents or permission to testify.

(2) *Case or matter* means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.

(3) *Demand* includes any request, order, or subpoena for testimony or the production of documents.

(4) *Document* means all records, papers, or official files, including, but not limited to, official letters, telegrams, memoranda, reports, studies, calendar and diary entries, graphs, notes, charts, tabulations, data analyses, statistical or information accumulations, records of meetings and conversations, film impressions, magnetic tapes, computer discs, and sound or mechanical reproductions;