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## POSTAL SERVICE

### 39 CFR Part 501

#### Revisions to the Requirements for Authority to Manufacture and Distribute Postage Evidencing Systems

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is making further revisions to the rules concerning PC postage payment methodology. This change adds supplementary information to clarify the revenue assurance requirements.

**DATES:** *Effective date:* August 1, 2017.

**FOR FURTHER INFORMATION CONTACT:** Alfred Rodriguez, Jr., Industry Liaison, Payment Technology, U.S. Postal Service, (202) 268-5022.

**SUPPLEMENTARY INFORMATION:** On July 17, 2015, the United States Postal Service published a final rule to revise the rules concerning authorization to manufacture and distribute postage evidencing systems, and to reflect new revenue assurance practices (80 FR 42392). Postage collection under the new rules will start on August 1, 2017. On September 6, 2016, the Postal Service published a proposal for further revisions to the rules concerning revenue assurance in 39 CFR 501.16 to support our efforts to collect the appropriate revenue on mail pieces in a more automated fashion (81 FR 61159). If adopted, these additional changes were also to be implemented on August 1, 2017.

In response to this further proposal, the Postal Service received a number of comments from the mailing industry. The Postal Service appreciates all of the comments that were provided, and has, where appropriate, modified the proposed rules in response. The industry comments and corresponding Postal Service responses are outlined as follows.

### **Summary of Industry Comments and USPS Responses**

*Industry Comment:* Because PC Postage providers (as defined in paragraph 501.16(i)(1)) are being asked to perform revenue assurance functions that the Postal Service would otherwise have to perform, PC Postage providers should be compensated for the costs imposed by the new system.

*USPS Response:* The Postal Service has previously stated to the industry that there will be no compensation for costs imposed by the new system. These rules are narrowly tailored to resolve current revenue collection challenges posed by the PC Postage program. Serving as a PC Postage provider is a choice and a privilege. The Postal Service is providing notice to the industry that compliance with these rules is a necessary condition of serving as an authorized PC Postage provider, and there will be no compensation for implementing or maintaining necessary infrastructure to support the revenue assurance program.

*Industry Comment:* The Postal Service should seek to minimize the costs imposed by the new system, including by permitting monthly payments and reconciliations.

*USPS Response:* The Postal Service has sought to minimize costs by designing the system to take advantage of existing processes whenever possible. For example,

the requirements will be phased in through the use of a postage adjustment threshold amount. While the PC Postage providers and their customers are adjusting to the revenue assurance program, the Postal Service will initially adopt appropriate threshold amounts to support the success of the program. The Postal Service will thereafter reduce the threshold amount as the Postal Service deems appropriate based on data and trends.

With respect to allowing certain PC Postage providers to aggregate and reconcile postage adjustments (as defined in paragraph 501.16(i)(2)(i)) on a monthly basis, the Postal Service does not agree with this approach and maintains that all collection and refund transactions and reconciliations must occur within the time frames set forth in paragraph 501.16(i)(2)(iii) . Currently, all postage payments in existing systems are reconciled daily; since we are taking advantage of existing processes it makes sense to reconcile the adjustments daily or else entire new processes would need to be put in place. Moreover, permitting payment plans or partial payments for certain PC Postage providers would only complicate the adjudication and reconciliation processes and put burdens on both of our accounting and finance teams.

*Industry Comment:* PC Postage providers should not be required to adjudicate disputed postage assessments.

*USPS Response:* The Postal Service acknowledges that the PC Postage providers cannot adjudicate disputes; the PC Postage providers, however, need to be the first line of interaction with their customers and educate them on root causes of short-paid assessments and how to avoid them in the future. Initially, the Postal Service will have a customer care center dedicated exclusively to this program, as we

understand customers will need to adjust to our new policies and processes with respect to assessing postage in an automated manner.

*Industry Comment:* The definition of a reseller should be further clarified. The proposed rule confuses the definition of a PC Postage provider by inconsistently expanding the definition in a way that would capture some (but not all) postage resellers.

*USPS Response:* The definition of *reseller* in paragraph 501.16(i)(1) represents the current position of the Postal Service, that only resellers who pay postage directly to the Postal Service (and not through a PC Postage provider) shall be treated as a PC Postage provider under the regulations. Certain resellers are authorized to pay postage directly to the Postal Service instead of through a PC Postage provider, provided that they comply with certain processes and requirements that are akin to the processes and requirements that are imposed on PC Postage providers. Accordingly, such resellers already are treated separately in several ways. For example, they are required to submit transaction log files and comply with specific payment processes so that the Postal Service can reconcile and account for the payments. Since such resellers do not pay through a PC Postage provider, it is necessary that the reseller (and not the PC Postage provider) facilitate the collection and refund of postage adjustments under these regulations.

*Industry Comment:* The final rule should also clarify that ePostage and eVS labels are subject to the revenue assurance practices.

*USPS Response:* Each sales platform is unique and has different characteristics, including different price structures and acceptance procedures. The

current application of revenue assurance for all platforms is varied, and predicated on what the Postal Service has deemed appropriate from a cost, risk, and workflow standpoint.

*Industry Comment:* Allowing reciprocal adjustments for overpayments is an improvement. Additionally, the final rule should clarify the process and timing for the Postal Service to reimburse PC Postage providers or customers for postage adjustments in connection with overpayments. Proposed paragraph 501.16(i)(2)(iii)(C) states that the postage adjustment must be made within 60 days; the final rule should clarify that the Postal Service will provide payment within that time frame.

*USPS Response:* The Postal Service will issue refunds only in cases where the customer has closed its Postage Evidencing System account. In all other cases, reimbursements for overpayments will be provided in the form of a credit to the Postage Evidencing System account or through a reconciliation performed by the PC Postage provider. We agree with this comment, and have clarified the process and time frames within this final rule.

*Industry Comment:* The account suspension processes needs to be clarified.

*USPS Response:* The Postal Service maintains that the suspension process is clear. When a PC Postage provider cannot immediately recover funds from a customer's account for any reason it must immediately suspend the customer's ability to produce postage until the postage adjustment has been paid in full. The customer can dispute any postage adjustments prior to or after making payment. The Postal Service maintains the discretion to instruct PC Postage providers to allow a customer to continue printing postage. Separately, the Postal Service reserves the discretion to

compel PC Postage providers to suspend accounts upon request in certain instances, such as when fraud is suspected; this is a necessary function in support of revenue assurance. To satisfy due process concerns, the PC Postage providers are required to provide notice of the revenue assurance requirements, including the suspension terms, to their customers and ensure that the customers agree to the requirements before the customers complete another transaction.

*Industry Comment:* The process for changing the revenue assurance rules should be clarified.

*USPS Response:* The process and rules are described in the final rule. Any additional rules or updates, as needed, will be published in the *Federal Register* in accordance with paragraph 501.16(i)(2)(v).

*Industry Comment:* The indemnity provision is overbroad.

*USPS Response:* The Postal Service believes this provision is reasonable and appropriate. Serving as a PC Postage provider is a privilege, and companies that choose to participate in the PC Postage program are required to comply with certain rules that protect the Postal Service from legal, reputational and financial risk. A PC Postage provider that fails to comply with the rules should be liable for the damages the Postal Service suffers as a result of that failure.

*Industry Comment:* The proposed rule sets an unrealistic deadline for implementation before the solution has been fully defined and ready for implementation.

*USPS Response:* In response to this comment, the Postal Service has moved the implementation date to August 1, 2017. Any software that needs to be built should still be completed by the original implementation date of March 20, 2017, to allow ample

time for a warning period. This is reasonable since the Postal Service has been working with all PC Postage providers for over two years on the planning and implementation of this project.

*Industry Comment:* PC Postage providers should not be liable to pay the short-paid or unpaid amounts in instances where providers are unable to collect.

*USPS Response:* The Postal Service agrees that as a general matter the customer, and not the PC Postage provider, should be held responsible for the postage adjustment. The PC Postage provider is responsible for either paying the adjustment or seeking to collect the postage adjustment from the customer and simultaneously prohibiting additional postage generation by said customer while postage is outstanding. The PC Postage provider must notify the customer of the details of the postage adjustment (including the dispute process), retain evidence that such notice was actually received by the customer, and attempt to collect the postage adjustment by adjusting the funds available to the customer in the Postage Evidencing System, or if funds are not available, facilitating customer payment by invoicing the customer or by pursuing other methods available to collect against the customer or access funds of the customer. Immediately upon receiving notice of the underpayment from the Postal Service, the PC Postage provider shall prohibit the customer from printing additional postage labels until the postage adjustment is satisfied or the customer disputes the adjustment and prevails. The final rule provides that the customer is responsible for short paid amounts except in certain cases where it is reasonable to hold the PC Postage provider accountable, such as in cases where the PC Postage provider caused the underpayment by incorrectly programming postage rates.

*Industry Comment:* Provisions that regulate marketing practices of providers fall outside the jurisdiction of the Postal Service.

*USPS Response:* Serving as a PC Postage provider is a privilege and comes with certain responsibilities that are aimed at protecting the Postal Service and customers. This provision is narrowly tailored to ensure that the PC Postage providers, when selling and marketing Postal Service products, comply with applicable laws and describe Postal Service products accurately. The purpose of this provision is to protect customers and limit the Postal Service's potential liability under consumer protection and other laws.

#### **List of Subjects in 39 CFR Part 501**

Administrative practice and procedure.

Accordingly, for the reasons stated, the Postal Service amends 39 CFR part 501 as follows:

#### **PART 501 — AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE EVIDENCING SYSTEMS**

1. The authority citation for 39 CFR part 501 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605, Inspector General Act of 1978, as amended (Pub. L. 95-452, as amended); 5 U.S.C. App. 3.

2. In § 501.16, revise paragraph (i) to read as follows:

**§ 501.16 PC postage payment methodology.**

\* \* \* \* \*

(i) *Revenue assurance.* (1) The PC Postage provider must support business practices to assure Postal Service revenue and accurate payment from customers. For purposes of this paragraph, *PC Postage provider* shall mean: *providers* who offer *PC Postage products* (as such terms are defined in § 501.1); Click-N-Ship<sup>®</sup> service; and postage resellers when such resellers transmit postage revenue to the Postal Service in any manner other than through a PC Postage provider. With respect to the reseller transactions described above, the resellers, and not the PC Postage providers who provide the labels, are responsible for complying with this paragraph. For the purpose of this paragraph, a *reseller* is an entity that obtains postage through a PC Postage provider and is authorized to resell such postage to its customers pursuant to an agreement with the Postal Service. For example, an entity that sells postage to its customers, but uses a PC Postage provider to enable its customers to print postage labels, is a reseller hereunder. If that entity collects postage revenue from its customers and transmits it to the Postal Service directly (instead of through the PC Postage provider) that entity shall be deemed a PC Postage provider hereunder. For the purpose of this paragraph, a *customer* is the person or entity that deposits the mail piece into the mail system. PC Postage providers must comply with these revenue assurance requirements regardless of whether they have a direct relationship with the customer or sell postage to the customer through one or more resellers.

(2)(i) For the purposes of this paragraph, a *postage adjustment* is defined as the difference between the postage or fee actually paid to the Postal Service for a specific service, and the actual postage due to the Postal Service under the published or

negotiated rate for that service, as applicable, which shall be calculated as of the time the mail piece is entered into the mailstream.

(ii) When the collection of a postage adjustment or the provision of a refund is appropriate because a customer has underpaid or overpaid the amount of postage that should have been paid, and such postage adjustment exceeds a threshold amount to be set by the Postal Service from time to time in its discretion, the PC Postage provider must, upon receiving notice from the Postal Service, pay, attempt to collect, or refund, as applicable, the postage adjustment in accordance with paragraph (i)(2)(iii) of this section. The Postal Service will supply the PC Postage provider with the details necessary to explain the correction and the amount of the postage adjustment to be used in the adjustment process. As part of this process, the PC Postage provider shall enable customers to submit disputes concerning the postage adjustment to the Postal Service, in a method approved by the Postal Service, including via phone call to the customer care center or API in the PC Postage provider's user interface of postage collections. In addition, the PC Postage provider must convey the Postal Service's dispute decision to the customer. If the Postal Service determines the customer's dispute was valid, and the customer had already paid the postage adjustment, the PC Postage provider must return the postage adjustment to the customer when notified by the Postal Service according to the rules set forth in paragraph (i)(2)(iii)(B) of this section.

(iii)(A) In the case of an underpayment that exceeds the threshold amount, within 14 business days of receiving notice of the underpayment from the Postal Service the PC Postage provider must pay the postage adjustment directly to the Postal Service, or

seek to collect the postage adjustment from the customer in accordance with this paragraph. If the PC Postage provider opts to pursue collection activity, it must notify the customer of the details of the postage adjustment (including the dispute process), retain evidence that such notice was actually received by the customer, and attempt to collect the postage adjustment by adjusting the funds available to the customer in the Postage Evidencing System, or if funds are not available, facilitating customer payment by invoicing the customer or by pursuing other methods available to collect against the customer or access funds of the customer. If the customer has a Postage Evidencing System account, the PC Postage provider must process any refunds due to the customer under paragraph (i)(2)(iii)(B) of this section before processing any collections due to the Postal Service hereunder. If the PC Postage provider opts to pursue collection activity, it shall continue to make affirmative efforts to collect the postage adjustment from the customer until the postage adjustment is satisfied in whole or the collection period (as defined in paragraph (i)(2)(iii)(C) of this section) expires. Immediately upon receiving or securing access to funds of the customer, the PC Postage provider shall remit to the Postal Service any and all available funds from the customer's account from the Postage Evidencing System or that are otherwise recovered by the PC Postage provider to the extent necessary to satisfy the postage adjustment. The postage adjustment must be paid in full; no partial payments will be accepted by the Postal Service, except for payments made under paragraph paragraph (i)(2)(iii)(C) of this section.

(B) In the case of an overpayment that exceeds the threshold amount, the Postal Service shall within 14 business days of identifying the overpayment, provide notice of

the postage adjustment to the PC Postage provider and instruct the PC Postage provider to give the customer a credit and adjust the funds available to the customer in the Postage Evidencing System. If the Postage Evidencing System account has been closed or for customers who do not have individual Postage Evidencing System accounts, the Postal Service shall instruct the PC Postage provider to issue a refund to the customer and the Postal Service shall either refund the postage adjustment to the PC Postage provider or permit the PC Postage provider to submit a reconciliation to the Postal Service. The PC Postage provider must immediately upon receiving notice of the overpayment from the Postal Service, notify the customer and, consistent with the Postal Service's instructions, adjust the funds available to the customer in the Postage Evidencing System, refund the postage adjustment to the customer, or provide a credit to the customer. If the PC Postage provider is unable to comply with the above requirements within 2 business days, the PC Postage provider must immediately notify the Postal Service.

(C) The *collection period* is a time period to be set by the Postal Service not to exceed 60 calendar days after initial notification by the Postal Service, subject to any applicable notification periods and dispute mechanisms that may be available to customers for these corrections. If an underpayment has not been satisfied within this collection period, the PC Postage provider shall adjust any funds available to the customer in the Postage Evidencing System to satisfy the postage adjustment to the greatest extent possible, and assist the Postal Service in its efforts to pursue any remedies that may be available in law or equity, including seeking payment directly from the customer.

(iv)(A) In the case of an underpayment that exceeds the threshold amount, immediately upon receiving notice of the underpayment from the Postal Service the PC Postage provider shall prohibit the customer from printing additional postage labels until the postage adjustment is satisfied in accordance with paragraph (i)(2)(iii)(A) of this section, or the customer disputes the adjustment and prevails. The Postal Service may, in its discretion, waive or delay this prohibition in specific instances.

(B) Separately, without regard to any threshold, in certain cases (such as where a customer is suspected of having intentionally or repeatedly underpaid postage) the Postal Service may, in its discretion, instruct the PC Postage provider to shut down temporarily or permanently a customer's ability to print PC Postage, and the PC Postage provider shall promptly comply with such instruction.

(C) In no event shall the Postal Service be liable to any PC Postage provider, customer or other party for any direct, indirect, exemplary, special, consequential, or punitive damages (including without limitation damages relating to loss of profit or business interruption) arising from or related to any customer's permanent or temporary inability to print postage labels in accordance with this paragraph (i)(2)(iv) or as a result of funds offset in accordance with this paragraph.

(v) The Postal Service, in its discretion, may adopt and modify from time to time, and the PC Postage providers shall comply with, business rules setting forth processes (including time constraints) for payments, refunds, account suspensions, collections, notifications, dispute resolutions and other activities to be performed hereunder. Such business rules will be published in the *Federal Register*.

(3)(i) Without regard to any threshold, if the PC Postage provider incorrectly programmed postage rates, delayed programming postage rate changes, or otherwise provided systems or software which caused customers to pay incorrect postage amounts, then within two calendar weeks of the PC Postage provider being made aware of such error, the PC Postage provider shall:

(A) Correct the programming error;

(B) Provide the Postal Service with a detailed breakdown of how the error affected the PC Postage provider's collection of revenue; and

(C) Pay the Postal Service for the postage deficiency caused by the programming error, except in instances where the error was caused by the Postal Service or as a direct result of incorrect specifications provided by the Postal Service.

(4) The PC Postage provider is responsible for ensuring that:

(i) All customers pay (and the Postal Service receives) the current published prices that are available to customers who purchase postage through an approved PC Postage provider, or negotiated contracted prices where applicable in accordance with this paragraph; and

(ii) All payments to the Postal Service (or the log files necessary for the Postal Service to collect payments directly from customers) are complete and accurate and are initiated or transmitted, as applicable, to the Postal Service each day.

(5) Each PC Postage provider shall:

(i) Before each customer's first transaction following the implementation date of August 1, 2017, provide notice to such customer of the terms, conditions and processes described in this paragraph – including, without limitation, that the customer may be

charged for deficient payments and prevented from printing additional postage labels while a postage adjustment remains unpaid – and obtain a certification from each customer that the customer has read, understands and agrees to such terms, conditions and processes, as they may be amended or supplemented from time to time;

(ii) Ensure that each customer certifies that it:

(A) Will comply with all laws and regulations applicable to Postal Service services, including, without limitation, the provisions of the Domestic Mail Manual and the International Mail Manual,

(B) Does not owe any money to the Postal Service and is not a controlling member or officer of an entity that owes money to the Postal Service, and

(C) Authorizes the PC Postage provider to disclose the customer's personal information to the Postal Service and such other information retained by the PC Postage provider that may enable the Postal Service to collect debts owed to it;

(iii) Maintain a complete and accurate record for each customer, which includes such customer's current name and a valid U.S. address that is sufficient for service of process under the law, as well as a copy of all terms agreed to by the customer and the date of such agreements;

(iv) Comply with applicable laws, rules, regulations and guidelines and ensure that its Postage Evidencing Systems, software, interfaces, communications and other properties that are used to sell or market Postal Service products accurately describe such products;

(v) Cover any costs or damages that the Postal Service may incur as a result of such PC Postage provider or its employees, contractors, or representatives failing to

comply with the terms of this section, or any applicable law, regulation, rule, or government policy; and

(vi) In performing its obligations hereunder, comply with the business rules that shall be published in the *Federal Register* from time to time and provide all agreed-upon interface documentation (as updated from time to time).

(6) In the event that the Postal Service fails to exercise or delays exercising any right, remedy, or privilege under this paragraph, such failure or delay shall not operate as a waiver thereof or of any other provision hereof, nor shall any single or partial exercise of any right, remedy, or privilege preclude any further exercise of the same. The rights and remedies available to the Postal Service under this paragraph are cumulative and in addition to, and do not diminish, any rights or remedies otherwise available to the Postal Service.

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