



## **POSTAL SERVICE**

### **39 CFR Part 501**

#### **Authorization to Manufacture and Distribute Postage Evidencing Systems**

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending its Postage Evidencing Systems regulations. These changes set forth the current procedure (which may be updated based upon changes to postal regulations) to become an authorized Postage Evidencing System (PES) provider. The changes also update or create new definitions, update all references of the Office of Payment Technology to the Office of Commercial Payment, and reorganize or reword certain provisions currently in the regulations for clarity.

**DATES:** Effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Lisa H Arcari, Director, Commercial Payment, [lisa.h.arcari@usps.gov](mailto:lisa.h.arcari@usps.gov), 202-268-4270.

**SUPPLEMENTARY INFORMATION:** The Postal Service issued proposed revisions to 39 CFR part 501, set forth in the Federal Register on February 6, 2020 (85 FR 6838). The proposal made several changes: (1) it introduced a PES Provider Applicant Guide, (2) it cleaned up some grammatical and formatting issues, and (3) it updated the contact information for the office of Commercial Payment, the successor organization to Payment Technology.

One set of comments was received in response to the Federal Register Notice. The comments raised and the Postal Service's responses are summarized below.

Industry comment: The final rule should clarify that modifications to the underlying substantive standards referenced in the Guide will continue to be made via publication in the Federal Register, including notice and opportunity for comment by affected stakeholders. The Intelligent Mail® Indicia Performance Criteria (IMIPC) will be controlled and distributed by the Commercial Payment group. The Guide should be updated in accordance with updates to other Postal Regulations, but substantive changes in requirements should not be communicated in the Guide.

USPS response: The Postal Service agrees that the Guide, although it sets forth the methodology for a PES provider applicant to be approved as a PES provider, is not a replacement for regulations governing application. The Guide will be updated to reflect changes in postal regulations, which changes are made by publication in the Federal Register.

Industry comment: The final rule should clarify that the Guide only applies to new applicants; current PES providers do not need to reapply.

USPS response: The Postal Service disagrees with this comment, to an extent. The Domestic Mail Manual (DMM) contains a list of authorized PES Providers. The final rule states that the new Guide only applies to 'Any person or entity seeking authorization.' Since the current authorized PES Providers already have authorization, it is clear they do not need to reapply at this time. However, should their existing authorization expire or be terminated, any new or renewal application would be subject to the Guide.

Industry comment: The final rule should clarify that the final approval authority to become a PES provider is the Vice President of Mail Entry and Payment Technology (MEPT).

USPS response: The Postal Service believes that the final rule already communicates this clearly. No changes were made to the final rule in response to this comment.

Industry comment: The final rule and the Guide should be revised to require that access to the IMIPC is conditioned on a Non-disclosure agreement with the Postal Service.

USPS response: The Postal Service agrees that to the extent that a PES provider applicant seeks to obtain access to the IMIPC, such access should only be granted after the applicant enters into a Non-disclosure agreement with the Postal Service permitting such access and the usage thereof.

Industry comment: The definition of Postal terms for Postage meter and PC Postage products should be updated.

USPS response: The Postal Service agrees; both definitions have been updated in the final rule.

Industry comment: Section 501.14(8) has an inadvertent typo with an extra semicolon between 'postage' and 'printing dies'. The reference to printing dies can be removed entirely given the current digital form of printing technology.

USPS response: The Postal Service agrees; reference to 'printing dies' has been removed in the final rule.

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

Administrative practice and procedure, Postal Service

For the reasons stated in the preamble, 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 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. Amend § 501.1 by revising paragraphs (a), (b) and (c) and by adding paragraph (h) to read as follows:

**§501.1 Definitions.**

(a) *Postage Evidencing Systems* regulated by part 501 produce evidence of prepayment of postage by any method other than postage stamps and permit imprints. A Postage Evidencing System is a device or system of components that a customer uses to generate and print evidence that postage required for mailing has been paid. Postage Evidencing Systems print indicia, such as information-based indicia or intelligent mail indicia to indicate postage payment. They include but are not limited to postage meters and PC Postage systems.

(b) A *postage meter* is a USPS-approved Postage Evidencing System that uses a postage security device (PSD) to account for postage purchased and generates evidence of such purchased postage in the form of an indicium, where the PSD is co-

located with the printing of the indicium. The term *meter* as used in this part refers to a postage meter.

(c) *PC Postage products* are USPS-approved Postage Evidencing Systems that use a computer, tablet, or similar device as a user interface. PC Postage products may use the Internet to download postage to the computer, tablet or similar device. PC Postage products use a mechanism to account for postage that is remote from the printing of the indicium.

\* \* \* \* \*

(h) *Postal Requirements* include the Code of Federal Regulations, title 39 part 501, the Domestic Mail Manual (DMM), the International Mail Manual (IMM), and the Intelligent Mail Indicia Performance Criteria (IMIPC).

3. Revise § 501.2 to read as follows:

**§501.2 Postage Evidencing System provider authorization.**

(a) The Postal Service considers Postage Evidencing Systems and their respective infrastructure to be essential to the exercise of its specific powers to prescribe postage and provide evidence of payment of postage under 39 U.S.C. 404(a)(2) and (4).

(b) Due to the potential for adverse impact upon Postal Service revenue, the following activities may not be engaged in by any person or entity without prior, written approval of the Postal Service. Persons or entities that perform these activities are referred to collectively as Postage Evidencing System (PES) Providers in this section.

(1) Manufacturing and/or distributing any Postage Evidencing System that generates or produces U.S. postage.

(2) Repairing, refurbishing, remanufacturing, modifying, or destroying any component of a Postage Evidencing System that accounts for or authorizes the printing of U.S. postage.

(3) Owning or operating an infrastructure that maintains operating data for the production of U.S. postage, or accounts for U.S. postage purchased for distribution through a Postage Evidencing System.

(4) Owning or operating an infrastructure that maintains operating data that is used to facilitate registration with the Postal Service of customers of a Postage Evidencing System.

(c) Approval to become a Postage Evidencing System Provider:

(1) Any person or entity seeking authorization to become a PES Provider must submit a request to the Postal Service in writing to the Office of Commercial Payment. Once the request is received, the Office of Commercial Payment will provide the applicant the PES Provider Applicant Guide and the Intelligent Mail Indicia Performance Criteria (IMIPC), the IMIPC setting forth PES and indicia specification and requirements. The contact information for Commercial Payment can be found in §501.2(f).

(2) The PES Provider Applicant Guide sets forth the process for applicants seeking to become a PES Provider. An applicant is subject to the rules in both that Guide and the IMIPC, while they are attempting to gain approval to become a PES Provider. Although the Guide sets forth the methodology for a PES provider applicant to be approved as a PES provider, it is not a replacement for postal regulations; such regulations govern the process. As such, the Guide will be updated to reflect changes in postal regulations.

(3) An applicant applying for approval to become a PES Provider must undergo three (3) primary phases which are laid out in the PES Provider Applicant Guide: Applicant Introduction and Letter of Intent; Applicant Qualification and Registration; and PES Evaluation. Each phase includes prerequisites to enter the phase, deliverables expected during that phase, and a requirement of written approval by the Office of Commercial Payment to allow the process to continue to the next phase. Please note that, to the extent that a PES provider applicant seeks to obtain access to the IMIPC, such access should only be granted after the applicant enters into a Non-disclosure agreement with the Postal Service permitting such access and the usage thereof.

(4) To the extent that an applicant reaches the PES Evaluation phase, then the applicant is governed by Postal Requirements, the IMIPC, and the PES Provider Applicant Guide even though not yet an authorized PES Provider.

(5) The Postal Service, in its sole discretion, may approve an applicant. In reaching its approval determination, the Postal Service may review factors and make determinations including, but not limited to, satisfactory evidence of the applicant's integrity and financial responsibility, commitment to comply with the Postal Requirements, and a determination that disclosure to the applicant of Postal Service customer, financial, or other data of a commercial nature necessary to perform the function for which approval is sought would be appropriate and consistent with good business practices within the meaning of 39 U.S.C. 410(c)(2).

(6) No applicant is considered a PES Provider until the Postal Service issues a final written decision. This is accomplished by the provision of a final approval of the applicant's status as an authorized PES Provider in writing from the Vice President of

Mail Entry & Payment Technology (or successor). The applicant is approved in writing to engage in the function(s) for which authorization was sought and approved.

(d) To the extent that any person or entity is approved to be a PES Provider, such PES Provider must adhere to the Postal Requirements.

(e) As a condition of obtaining authorization under this section, the PES Provider's facilities used for the manufacture, distribution, storage, resetting, repair, refurbishment, remanufacturing, modifying, or destruction of a Postage Evidencing System and all facilities housing infrastructure supporting Postage Evidencing Systems will be subject to unannounced inspection by representatives of the Postal Service. If such facilities are outside the continental United States, the PES Provider will be responsible for all reasonable and necessary travel-related costs incurred by the Postal Service to conduct the inspections. Travel-related costs are determined in accordance with Postal Service Handbook F-15, Travel and Relocation. At its discretion, the Postal Service may continue to fund routine inspections outside the continental United States as it has in the past, provided the costs are not associated with particular security issues related to a PES Provider's Postage Evidencing System or supporting infrastructure, or with the start-up or implementation of a new plant or of a new or substantially changed manufacturing process.

(1) When conducting an inspection outside the continental United States, the Postal Service will make every effort to combine the inspection with other inspections in the same general geographic area in order to enable affected PES Providers to share the costs. The Postal Service team conducting such inspections will be limited to the minimum number necessary to conduct the inspection. All air travel will be contracted

for at the rates for official government business, when available, under such rules respecting class of travel as apply to those Postal Service representatives inspecting the facility at the time the travel occurs.

(2) If political or other impediments prevent the Postal Service from conducting security evaluations of Postage Evidencing System facilities in foreign countries, Postal Service approval of the activities conducted in such facilities may be suspended until such time as satisfactory inspections may be conducted.

(f) The Postal Service office responsible for administration of this part is the Office of Commercial Payment or successor organization. All submissions to the Postal Service required or invited by this part are to be made to this office in person or via mail to 475 L'Enfant Plaza SW, Room 3500, Washington DC 20260-0004.

4. Amend § 501.3 by

a. Removing paragraph (c);

b. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d), respectively;

and

c. Revising newly redesignated paragraph (c).

The revision reads as follows:

**§501.3 Postage Evidencing System provider qualification.**

\* \* \* \* \*

(c) Protect customer information by not causing or permitting the data to be released other than for the operation of a third-party location. The provider bears the ultimate responsibility to ensure customer information will not be compromised at any domestic or off shore locations (including third-party locations), and bears the

responsibility to ensure its agents or contractors operating domestic or off shore locations do not compromise this information. The provider shall notify its customer that data relating to its systems is being housed at a third-party location, and shall provide a copy thereof to the Postal Service of such notice to its customers. To the extent that any unauthorized release takes place, the provider shall notify the Postal Service immediately upon discovery of any unauthorized use or disclosure of data or any other breach or improper disclosure of data of this agreement by the provider (as well as its agent operating the third-party location) and will cooperate with the Postal Service in every reasonable way to help the Postal Service regain possession of the data and prevent its further unauthorized use or disclosure. In the event that the Postal Service cannot regain possession of the data or prevent its further unauthorized use or disclosure, the provider shall indemnify the Postal Service from damages resulting from its (or such third-party) actions.

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5. Amend § 501.6 by revising paragraphs (c)(1), (2), and (3) and (e) to read as follows:

**§501.6 Suspension and revocation of authorization.**

\* \* \* \* \*

(c) \* \* \*

(1) Upon determination by the Postal Service that a provider is in violation of provisions of this part, or that its Postage Evidencing System poses an unreasonable risk to postal revenue, Commercial Payment, acting on behalf of the Postal Service, shall issue a written notice of proposed suspension citing the specific conditions or

deficiencies for which suspension of authorization to manufacture and/or distribute a specific Postage Evidencing System or class of Postage Evidencing Systems may be imposed. Except in cases of willful violation, the provider shall be given an opportunity to correct deficiencies and achieve compliance with all requirements within a time limit corresponding to the potential risk to postal revenue.

(2) In cases of willful violation, or if the Postal Service determines that the provider has failed to correct cited deficiencies within the specified time limit, Commercial Payment shall issue a written notice of suspension setting forth the facts and reasons for the decision to suspend, and the effective date if a written defense is not presented as provided in paragraph (d) of this section.

(3) The notice shall also advise the provider of its right to file a response under paragraph (d) of this section. If a written response is not presented in a timely manner the suspension may go into effect. The suspension shall remain in effect for ninety (90) calendar days unless revoked or modified by Commercial Payment.

\* \* \* \* \*

(e) After receipt and consideration of the defense, Commercial Payment shall advise the provider of its decision, and the facts and reasons for it. The decision shall be effective upon receipt unless it provides otherwise. The decision shall also advise the provider that it may be appealed within thirty (30) calendar days of receipt (unless a shorter time frame is deemed necessary). If an appeal is not filed in a timely manner, the decision of Commercial Payment shall become a final decision of the Postal Service. The appeal may be filed with the Chief Information Officer of the Postal Service and must include all supporting evidence and state with specificity the reasons the

provider believes that the decision is erroneous. The decision of the Chief Information Officer shall constitute a final decision of the Postal Service.

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6. Amend § 501.7 by revising paragraph (a) to read as follows:

**§501.7 Postage Evidencing System requirements.**

(a) A Postage Evidencing System submitted to the Postal Service for approval must meet the requirements of the Intelligent Mail Indicia Performance Criteria (IMIPC) published by Commercial Payment. Copies of the current IMIPC may be requested via mail to the address in §501.2(f).

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7. Amend § 501.8 by revising paragraph (a) to read as follows:

**§501.8 Postage Evidencing System test and approval.**

(a) To receive Postal Service approval, each Postage Evidencing System must be submitted by the provider and evaluated by the Postal Service in accordance with the Intelligent Mail Indicia Performance Criteria (IMIPC) published by Commercial Payment. Copies of the current IMIPC may be requested via mail to the address in §501.2(f). These procedures apply to all proposed Postage Evidencing Systems regardless of whether the provider is currently authorized by the Postal Service to distribute Postage Evidencing Systems. All testing required by the Postal Service will be an expense of the provider.

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8. Amend § 501.10 by revising paragraphs (a) introductory text and (b) to read as follows:

**§501.10 Postage Evidencing System modifications.**

(a) An authorized provider must receive prior written approval from the director, Commercial Payment, of any and all changes made to a previously approved Postage Evidencing System. The notification must include a summary of all changes made and the provider's assessment as to the impact of those changes on the security of the Postage Evidencing System and postage funds. Upon receipt of the notification, Commercial Payment will review the summary of changes and make a decision regarding the need for the following:

\* \* \* \* \*

(b) Upon receipt and review of additional documentation and/or test results, Commercial Payment will issue a written acknowledgement and/or approval of the change to the provider.

9. Amend § 501.14 by revising paragraphs (c) introductory text, (c)(8), and (d) introductory text to read as follows:

**§501.14 Postage Evidencing System inventory control processes.**

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(c) To ensure adequate control over Postage Evidencing Systems, plans for the following subjects must be submitted for prior approval, in writing, to the Office of Commercial Payment.

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(8) *Postage meter destruction*—when required, the postage meter must be rendered completely inoperable by the destruction process, and associated components must be destroyed. Manufacturers or distributors of meters must submit the proposed

destruction method; a schedule listing the postage meters to be destroyed, by serial number and model; and the proposed time and place of destruction to Commercial Payment for approval prior to any meter destruction. Providers must record and retain the serial numbers of the meters to be destroyed and provide a list of such serial numbers in electronic form in accordance with Postal Service requirements for meter accounting and tracking systems. Providers must give sufficient advance notice of the destruction to allow Commercial Payment to schedule observation by its designated representative who shall verify that the destruction is performed in accordance with a Postal Service-approved method or process. To the extent that the Postal Service elects not to observe a particular destruction, the provider must submit a certification of destruction, including the serial number(s), to the Postal Service within 5 calendar days of destruction. These requirements for meter destruction apply to all postage meters, Postage Evidencing Systems, and postal security devices included as a component of a Postage Evidencing System.

(d) If the provider uses a third party to perform functions that may have an impact upon a Postage Evidencing System (especially its security), including, but not limited to, business relationships, repair, maintenance, and disposal of Postage Evidencing Systems, Commercial Payment must be advised in advance of all aspects of the relationship, as they relate to the custody and control of Postage Evidencing Systems and must specifically authorize in writing the proposed arrangement between the parties.

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