



## POSTAL SERVICE

### 39 CFR Parts 2, 3, 4, 6, 7, and 10

#### Bylaws of the Board of Governors of the United States Postal Service

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Bylaws of the Board of Governors are being amended to address a variety of issues. Many of the amendments are designed to clarify, in both form and substance, existing provisions, and also to increase their accuracy and align them to current practice. Additions and deletions have also been made to better conform the Bylaws to existing law.

**DATES:** This rule is effective as of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Elston, Secretary of the Board of Governors, [michael.j.elston@usps.gov](mailto:michael.j.elston@usps.gov), 202-268-4800.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On November 13, 2020, the Board of Governors approved the following amendments to its Bylaws to address a variety of issues. Many of the amendments are designed to clarify, in both form and substance, existing provisions, and also to increase their accuracy and align them to current practice. Additions and deletions have also been made to better conform the Bylaws to existing law. Among other things, the amendments also clarify that the Governors are ultimately responsible for adjusting rates, and that the Postal Regulatory Commission's role is to review those rate adjustments. Additions have been made to expand the information to which the Governors have regular

access and to clarify that any additional information can be requested as needed.

A new section has been added to govern situations in which there are an insufficient number of Governors to constitute a quorum.

## **List of Subjects**

### **39 CFR Part 2**

General and Technical Provisions.

### **39 CFR Part 3**

Board of Governors.

### **39 CFR Part 4**

Officials.

### **39 CFR Part 6**

Meetings.

### **39 CFR Part 7**

Public Observation.

### **39 CFR Part 10**

Rules of Conduct for Postal Service Governors.

For the reasons stated in the preamble, the Postal Service amends 39 CFR chapter I as follows:

## **PART 2 – GENERAL AND TECHNICAL PROVISIONS.**

1. The authority citation for part 2 continues to read as follows:

**Authority:** 39 U.S.C. 202, 203, 205(c), 207, 401(2); 5 U.S.C. 552b(f), (g).

2. Revise § 2.1 to read as follows:

### **§ 2.1 Office of the Board of Governors.**

There shall be located in Washington, DC, an Office of the Board of Governors of the United States Postal Service. It shall be the function of this Office, led by the Secretary of the Board, to provide staff support for the Board,

as directed by the Chairman of the Board, to enable the Board to carry out effectively its duties and responsibilities.

3. Revise § 2.6 to read as follows:

**§ 2.6 Severability, amendment, repeal, and waiver of bylaws.**

The invalidity of any provision of these bylaws does not affect the validity of the remaining provisions, and for this purpose these bylaws are severable. The Board may amend or repeal these bylaws at any special or regular meeting, provided that each member of the Board has received a written notice containing a statement of the proposed amendment or repeal at least five (5) business days before the meeting. The members of the Board may waive the five (5) business days' notice or the operation of any other provision of these bylaws by unanimous consent, if that action is not prohibited by law. The Secretary shall submit the text of any amendment to these bylaws for publication in the FEDERAL REGISTER as soon as practicable after the amendment is adopted by the Board.

**PART 3 – BOARD OF GOVERNORS.**

4. The authority citation for part 3 continues to read as follows:

**Authority:** 39 U.S.C. 202, 203, 205, 401 (2), (10), 402, 404(b), 414, 416, 1003, 2005, 2011, 2802-2804, 3013, 3622, 3632, 3642, 3652, 3654, 3691; 5 U.S.C. 552b(g), (j); 5 U.S.C. App.; Pub. L. 107-67, 115 Stat. 514 (2001).

5. Revise § 3.2 to read as follows:

**§ 3.2 Compensation of Board.**

Section 202(a)(1) of title 39 provides for the compensation of the Governors and for reimbursement for travel and reasonable expenses incurred in attending meetings of the Board and its Committees. Compensation is provided for not more than 42 days of meetings per year.

6. Amend § 3.3 by revising paragraphs (b), and (d) through (n) to read as follows:

§ 3.3 Matters reserved for decision by the Board.

\* \* \* \* \*

(b) Approval of the annual Postal Service Integrated Financial Plan, which shall include the Financing Plan, the Operating Plan, and the Capital Plan.

\* \* \* \* \*

(d) Approval of any use of the authority of the Postal Service to borrow money under 39 U.S.C. 2005 and 39 U.S.C. 2011, except for short-term borrowings, having maturities of one year or less, assumed in the normal course of business.

(e) Approval of the terms and conditions of each series of obligations issued by the Postal Service under 39 U.S.C. 2005 and 39 U.S.C. 2011, including the time and manner of sale and the underwriting arrangements, except for short-term borrowings, having maturities of one year or less, assumed in the normal course of business.

(f) Approval of any use of the authority of the Postal Service to require the Secretary of the Treasury to purchase Postal Service obligations under 39 U.S.C. 2006(b), or to request the Secretary of the Treasury to pledge the full faith and credit of the Government of the United States for the payment of principal and interest on Postal Service obligations under 39 U.S.C. 2006(c).

(g) Authorization of the Postal Service to request that the Postal Regulatory Commission submit an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, pursuant to 39 U.S.C. 3661.

(h) Determination of the number of officers, described in 39 U.S.C. 204 as Assistant Postmasters General, whether so denominated or not, as the Board authorizes by resolution.

(i) Compensation and benefits of officers the Postal Service whose positions are included in Level II of the Postal Career Executive Service.

(j) Approval of official statements adopting major policy positions or departing from established major policy positions, and of official positions on legislative proposals having a major impact on the Postal Service.

(k) Approval of all major policy positions taken with the Department of Justice on petitioning the Supreme Court of the United States for writs of certiorari.

(l) Approval and transmittal to the President and the Congress of the Annual Report to Congress, which shall include the annual report of the Postmaster General under 39 U.S.C. 2402, the comprehensive statement of the Postal Service under 39 U.S.C. 2401(e), the Postal Service's annual performance plan under 39 U.S.C. 2803, and the Postal Service's report on program performance under 39 U.S.C. 2804.

(m) Approval and transmittal to the President and the Congress of the Postal Service's strategic plan, pursuant to 39 U.S.C. 2802.

(n) All other matters that the Board may consider appropriate to reserve for its decision by resolution adopted by the Board, pursuant to § 3.5.

\* \* \* \* \*

7. Amend § 3.4 by revising paragraphs (e), (k), and (m) to read as follows:

**§ 3.4 Matters reserved for decision by the Governors.**

\* \* \* \* \*

(e) Authorization of the Postal Service to adjust the rates and fees for market dominant products and to seek the Postal Regulatory Commission's review of the adjusted rates or fees for such products under 39 U.S.C. 3622.

\* \* \* \* \*

(k) Compensation and benefits, term of service, and appointment/removal of the Secretary of the Board and other necessary staff, which shall be considered annually in closed session.

\* \* \* \* \*

(m) Establishment of the price of any special postage stamp under 39 U.S.C. 414 and any semi-postal stamp under 39 U.S.C. 416 or any act of Congress.

\* \* \* \* \*

8. Amend § 3.6 by revising paragraphs (a) introductory text, (a)(4) and (5) and adding paragraph (c) to read as follows:

**§ 3.6 Information furnished to Board—financial and operating reports.**

(a) To enable the Board to monitor the performance of the Postal Service during the most recent accounting periods for which data are available, postal management shall furnish the Board (on a quarterly basis) financial and operating statements for the fiscal year to date, addressing the following categories:

\* \* \* \* \*

(4) Statement of cash flow; and

(5) Service quality measurements;

\* \* \* \* \*

(c) At the reasonable request of the Board, Postal management shall furnish to the Board such other information as the Board deems necessary.

9. Amend § 3.7 by revising paragraphs (a)(1), (2), (3), (b), and (d) and adding paragraphs (e) and (f) to read as follows:

**§ 3.7 Information furnished to Board—program review.**

(a) \* \* \*

(1) Five-year and ten-year plans, annual operating and investment plans, and significant departures from estimates upon which the plans were based;

(2) Productivity measurements (reflecting workload and resource utilization);

(3) The need for rate adjustments and the outcome of significant matters before the Postal Regulatory Commission and related litigation; and

\* \* \* \* \*

(b) To enable the Board to review the effectiveness of the Postal Service's equal employment opportunity program, performance data relating to this program shall be furnished to the Board at least quarterly. These data shall be categorized in such manner as the Board, from time to time, specifies.

\* \* \* \* \*

(d) Postal management shall annually provide the Board with a summary of the Annual Compliance Report filed with the Postal Regulatory Commission, which includes data on product costs.

(e) Management shall furnish to the Board: information regarding any significant, new program, policy, major modification or initiative; any plan to offer a significant, new or unique product or system implementation; or any significant, new project not related directly to the core business function of the Postal Service. This information shall be provided to the Board in advance of entering into any agreement in furtherance of such project. For the purposes of this paragraph (e), "significant" means a project anticipated to have a notable or conspicuous impact on corporate visibility or the operating budget (including increases in expense amounts) or the capital investment budget. The notification

requirement of this paragraph governs applicable projects regardless of the level of expenditure or potential liability involved.

(f) At the reasonable request of the Board, Postal management shall furnish to the Board such other information as the Board deems necessary.

10. Amend § 3.8 by adding paragraph (h) to read as follows:

**§ 3.8 Information furnished to Board—special reports**

\* \* \* \* \*

(h) At the reasonable request of the Board, Postal management shall furnish to the Board such other information as the Board deems necessary.

**PART 4 – OFFICIALS.**

11. The authority citation for part 4 continues to read as follows:

**Authority:** 39 U.S.C. 202-205, 401(2), (10), 402, 1003, 3013, 3686.

12. Amend § 4.1 by revising paragraph (a)(1) and removing paragraph (d) to read as follows:

**§ 4.1 Chairman.**

(a) \* \* \*

(1) Shall be elected at the Board’s regularly scheduled annual meeting for a term that commences on December 1 of the calendar year in which the election occurred, or upon the death, departure or resignation of the current Chairman, whichever occurs first, and expires upon the election and installation of a successor Chairman;

\* \* \* \* \*

13. Revise § 4.2 to read as follows:

**§ 4.2 Vice Chairman.**

The Vice Chairman is elected by the Governors from among the members of the Board and shall perform the duties and exercise the powers of the

Chairman during the Chairman's absence or disability. The Vice Chairman is elected at the Board's regularly scheduled annual meeting for a term that commences on December 1 of the calendar year in which the election occurred or upon the death, departure or resignation of the current Vice Chairman, whichever occurs first, and expires upon the election and installation of a successor Vice Chairman. In the event of the Vice Chairman's death, departure or resignation prior to the election of a successor, the Board, as soon as practicable, shall elect a new Vice Chairman who shall serve a term that commences immediately upon election and expires upon the election and installation of a successor Vice Chairman.

14. Revise § 4.5 to read as follows:

**§ 4.5 Assistant Postmasters General, General Counsel, Judicial Officer, Chief Postal Inspector.**

There are within the Postal Service a General Counsel, a Judicial Officer, a Chief Postal Inspector, and such number of officers, described in 39 U.S.C. 204 as Assistant Postmasters General, whether so denominated or not, as the Board authorizes by resolution. These officers are appointed by, and serve at the pleasure of, the Postmaster General. The Chief Postal Inspector shall report to, and be under the general supervision of, the Postmaster General. The Postmaster General shall promptly notify the Governors and both Houses of Congress in writing if he or she removes the Chief Postal Inspector or transfers the Chief Postal Inspector to another position or location within the Postal Service, and shall include in any such notification the reasons for such removal or transfer. The Postmaster General's appointment of the Judicial Officer and any other judges in the Judicial Officer Department must be ratified by resolution of the Governors.

15. Revise § 4.6 by revising it to read as follows:

**§ 4.6 Secretary of the Board.**

The Secretary of the Board of Governors is appointed by the Governors and serves at the pleasure of the Governors. The Secretary shall be responsible for carrying out the functions of the Office of the Board of Governors, under the direction of the Chairman of the Board. The Secretary shall also issue notices of meetings of the Board and its committees, keep minutes of these meetings, and take steps necessary for compliance with all statutes and regulations dealing with public observation of meetings. The Secretary shall perform all those duties incident to this office, including those duties assigned by the Board or by the Chairman of the Board. With the concurrence of the Board, the Chairman may designate the number and general qualifications of such assistant secretaries or other staff as may be necessary to perform any of the duties of the Secretary.

**PART 6 – MEETINGS.**

16. The authority citation for part 6 continues to read as follows:

**Authority:** 39 U.S.C. 202, 205, 401(2), (10), 1003, 3622, 3632; 5 U.S.C. 552b(e), (g).

17. Revise § 6.1 to read as follows:

**§ 6.1 Regular meetings, annual meeting.**

The Board shall meet regularly on a schedule established by the Board. The first regular meeting in November of each calendar year is designated as the annual meeting. Consistent with the provisions §§ 6.6 and 7.5 of these bylaws, the time or place of a regular or annual meeting may be varied by recorded vote, with the earliest practicable notice to the Secretary. The Secretary shall distribute to the members an agenda setting forth the proposed subject matter for any regular or annual meeting in advance of the meeting.

18. Revise § 6.4 to read as follows:

**§ 6.4 Attendance.**

For regularly scheduled meetings of the Board, members are expected to attend in person. Unless prohibited by law or by these bylaws, however, a member of the Board, under exceptional circumstances, may participate in a meeting of the Board by conference telephone, video conference, or similar communications equipment which enables all persons participating in the meeting to hear each other and which permits full compliance with the provisions of these bylaws concerning public observation of meetings. Attendance at a meeting by this method constitutes presence at the meeting and a member of the Board may be paid for his or her participation provided such meeting addresses substantive, as opposed to procedural or administrative, matters on which the Board has decision making authority.

19. Amend § 6.6 by revising the introductory text to read as follows:

**§ 6.6 Quorum and voting.**

As provided by 39 U.S.C. 205(c), and except for matters considered through the notation voting process described in § 6.7, the Board acts by resolution upon a majority vote of those members who attend a meeting in accordance with § 6.4. No proxies are allowed in any vote of the members of the Board. Any six (6) members constitute a quorum for the transaction of business by the Board, except:

\* \* \* \* \*

20. Amend § 6.7 by revising paragraph (a) to read as follows:

**§ 6.7 Notation voting.**

(a) General. Notation voting consists of the circulation of physical or electronic written memoranda and voting sheets to each member of the Board

simultaneously and the tabulation of submitted responses. Notation voting may be used only for routine, non-controversial, or administrative matters.

\* \* \* \* \*

21. Add § 6.8 to read as follows:

**§ 6.8 Delegation of Authority for Continuity of Operations.**

When, by reason of death, incapacity, or disruption of transportation and communications, a quorum of the Board of Governors cannot reasonably be assembled, or when vacancies on the Board make it impossible for a quorum to assemble, the remaining members of the Board who are able to assemble are constituted a Temporary Emergency Committee of the Board of Governors. The Chairman or Vice Chairman of the Board, or in their absence any available member of the Board, may convene a meeting of such Temporary Emergency Committee for the consideration of such business as may be needed to provide for continuity of operations for the duration of the emergency, or for the duration of the period of time in which vacancies on the Board prevent a quorum from being assembled. The powers reserved to the Board under § 3.3 of these bylaws necessary to provide for continuity of operations are delegated to the Committee, which may exercise such powers until such time as sufficient members of the Board are again available to enable the Board to convene.

**PART 7 – PUBLIC OBSERVATION.**

22. The authority citation for part 7 continues to read as follows:

**Authority:** 39 U.S.C. 410; 5 U.S.C. 552b(a)-(m).

23. Amend § 7.6 by revising paragraph (a) to read as follows:

**§ 7.6 Certification and transcripts of closed meetings.**

(a) No later than the beginning of every meeting or portion of a meeting closed under §§ 7.3(a) through (j) of these bylaws, the General Counsel shall

publicly certify that, in his or her opinion, the meeting or portion of the meeting may be closed to the public, stating each relevant exemptive provision. The Secretary shall retain this certification, together with a statement from the officer presiding at the meeting which sets forth the time and place of the meeting, and the persons present.

\* \* \* \* \*

## **PART 10 – RULES OF CONDUCT FOR POSTAL SERVICE GOVERNORS.**

24. The authority citation for part 10 continues to read as follows:

**Authority:** 39 U.S.C. 401(2), (10).

25. Revise § 10.1 to read as follows:

### **§ 10.1 Applicability.**

This part contains rules of conduct for the members of the Board of Governors of the United States Postal Service. As special Government employees within the meaning of 18 U.S.C. 202(a), the members of the Board are also subject to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR part 2635, and Postal Service regulations supplemental thereto, 5 CFR part 7001.

26. Revise § 10.2 to read as follows:

### **§ 10.2 Advisory service.**

(a) The Associate General Counsel and Chief Ethics and Compliance Officer is the Ethical Conduct Officer of the Postal Service and the Designated Agency Ethics Official for purposes of the Ethics in Government Act, as amended, and the implementing regulations of the Office of Government Ethics, including 5 CFR part 2638.

(b) A Governor may obtain advice and guidance on questions of conflicts of interest, and may request any ruling provided for by either the Standards of

Ethical Conduct for Employees of the Executive Branch, or the Postal Service regulations supplemental thereto, from the Associate General Counsel or a designated assistant.

(c) If the Associate General Counsel determines that a Governor is engaged in activity which involves a violation of federal statute or regulation, including the ethical conduct regulations contained in 5 CFR parts 2635 and 7001, or conduct which creates the appearance of such a violation, he or she shall bring this to the attention of the Governor or shall notify the General Counsel, the Chairman of the Board of Governors, or the Vice Chairman, as appropriate.

Michael J. Elston,

*Secretary of the Board of Governors.*

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