POSTAL SERVICE

39 CFR Part 233

Mail Screening Regulations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending its regulations regarding the screening of mail to be consistent with aviation regulations regarding the transportation of mail via aircraft; continue to enhance the security and ensure the safety of all persons and property onboard aircraft carrying mail; and prevent and deter the carriage of unauthorized explosives, incendiaries, or other destructive substances or items in the mail or in postal products transported onboard aircraft.

DATES: This rule is effective [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]

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SUPPLEMENTARY INFORMATION: On May 24, 2021, the Postal Service published a Federal Register Notice (86 FR 27823) with a proposed rule to update Postal Service regulations regarding the screening of mail. The circumstances which created the need for the update were as follows: (1) 39 CFR 233.11 was published as a final rule on February 28, 1996; (2) since the publication of 39 CFR 233.11, no updates had been made; (3) after February 28, 1996, changes were made to 49 USC 44901 requiring the screening of all items, including United States mail, transported via aircraft; and (4) an update is required to ensure it is consistent with title 49 of the Code of Federal Regulations as it pertains to mail being transported via aircraft.

Therefore, this final rule modifies the Postal Service regulations regarding the screening of mail to make said regulations: 1) more consistent with aviation regulations regarding the
transportation of mail via aircraft; 2) continue to enhance the security and ensure the safety of all persons and property onboard aircraft carrying mail; and 3) continue to prevent and deter the carriage of unauthorized explosives, incendiaries, or other destructive substances or items in the mail or in postal products transported onboard aircraft.

In response to the proposed rule to update mail screening regulations, the Postal Service received comments and feedback. The comments and feedback can be grouped into four areas: (I) term clarity (II) clarification of the methods for air carriers to request and obtain authority to screen U.S. mail, (III) procedures for screening, and (IV) a defined effective date.

(I) Term Clarity

Term(s): Undeclared hazardous materials, undeclared dangerous goods

Some comments sought clarification as to what items would be included in the phrase unauthorized explosives, incendiaries, or other destructive substances. Of specific interest was whether this phrase and the revised regulation in general would apply to undeclared hazardous materials and undeclared dangerous goods. This phrase must also be taken together with language noting screening must be capable of identifying explosives, nonmailable firearms, or other dangerous contents in the mails that are destructive or could endanger life or property.

It is the intent of the Postal Service to encompass declared and undeclared goods as the dangerous nature of these items is unrelated to whether they have been declared. Additionally, with respect to the definition of hazardous material, explosives, dangerous goods and the concept of item mailability the Postal Service defines these terms in Publication 52, Hazardous, Restricted, and Perishable Mail and it is the intent of the Postal Service for Publication 52 to be used as a reference source.

Term: Sufficient weight to pose a threat
The Postal Service notes that sufficient weight to pose a threat is a shifting factor not conducive to a specific regulated threshold. As noted in one of the comments the weight of a particular package was below 16 ounces and yet a lithium battery inside went into thermal runaway. This circumstance highlights the concerns with setting forth a specified weight or factor that may, at a future point, no longer capture the universe of items of concern. The Postal Service must retain versatility in the definition of sufficient weight in order to address concerns that might arise with future mailed items.

(II) Clarification of the methods for air carriers to request and obtain authority to screen U.S. Mail.

The term “persons not employed by the Postal Service” is used to address those whom the Chief Postal Inspector may authorize to screen U.S. Mail under the regulations and may include air carriers. Each request for authorization will be analyzed on a case by case basis to determine need and acceptable procedures. These requests are not conducive to contractual negotiation as the Postal Service must retain the ability to adjust procedures and maintain full control over who may and may not engage in screening efforts. As one of the comments notes, air carriers need the ability to screen as circumstances warrant. Such versatility requires the Postal Service to liaison with the industry to address specific requests fluidly. Requests should be submitted via extant channels of communication.

(III) Procedures for screening

The procedures for screening will be set forth in the issued authorizations and will include methods for resolving events. It is expected the procedures will be the result of discussions between the Postal Service and interested parties.

(IV) Effective date

An effective date will be included in the final rule.
List of Subjects in 39 CFR Part 233

Law enforcement, Postal Service.

For the reasons stated in the preamble, the Postal Service amends 39 CFR part 233 as follows:

PART 233 -- INSPECTION SERVICE AUTHORITY

1. The authority citation for 39 CFR part 233 continues to read as follows:


2. Revise §233.11 to read as follows:

§ 233.11 Mail Screening

   (a) Screening of Mail Transported by Aircraft.--(1) Authority. Pursuant to 39 U.S.C. 5401, the Postal Service is authorized to provide for the safe and expeditious transportation of mail by aircraft and may make such rules, regulations, and orders consistent with part A of subtitle VII of title 49 of the Code of Federal Regulations or any order, rule or regulation made by the Secretary of Transportation as may be necessary for such transportation, except as otherwise provided in 39 U.S.C. 5402.

      (2) Purpose. To prevent and deter the carriage of unauthorized explosives, incendiaries, or other destructive substances or items in the mail or in postal products onboard aircraft and to ensure the security and safety of all persons and property onboard aircraft carrying mail.

      (3) Policy. Mail of sufficient weight to pose a hazard to aviation may, without a search warrant or the sender’s or addressee’s consent, be screened by any means capable of identifying explosives, nonmailable firearms, or other dangerous contents in the mails that are destructive or could endanger life or property.
(b) Screening of Surface Transported Mail--(1) Authority. Pursuant to 39 U.S.C. 404 the Postal Service has specific power to provide for, among other things, the handling of mail. Mail may be screened without a search warrant or the sender’s or addressee’s consent in exigent circumstances to identify explosives or other dangerous contents in the mails.

(2) Purpose. To prevent and deter the carriage of unauthorized explosives or other dangerous content in the mail or in postal products transported via surface transportation providers and to ensure the security and safety of all persons and property associated with mail usage, processing, handling, and transportation.

(3) Policy. When the Chief Postal Inspector or designee determines there is a credible threat that certain mail may contain a bomb, explosives, or other material that could endanger life or property, including nonmailable firearms, the Chief Postal Inspector or designee may, without a search warrant or the sender's or addressee's consent, authorize the screening of such mail by any means capable of identifying explosives, nonmailable firearms, or other dangerous contents in the mails.

(c) Mail Screening Restrictions. Screening of mail authorized by paragraphs (a) and (b) of this section is subject to the following restrictions:

(1) No Unreasonable Delay. The mail must be screened in a manner which does not unreasonably delay its delivery.

(2) Authorization to Screen Mail. The mail screening may be conducted by Postal Service employees or persons not employed by the Postal Service, as authorized by the Chief Postal Inspector, under such instruction that requires compliance with this part and protects the security of the mail. No information obtained from this mail screening may be disclosed unless authorized by this part.

(3) Mail of Insufficient Weight to Pose a Threat. Mail of insufficient weight to pose a hazard to air transportation, surface transportation, or to contain firearms must be excluded from such screening.
(4) The screening must be within the limits of this section and conducted without opening mail that is sealed against inspection or revealing the contents of correspondence within mail that is sealed against inspection.

(d) Identified Threatening Pieces of Mail--(1) Hazardous Mail. Mail, sealed or unsealed, reasonably suspected of posing an immediate danger to life or limb or an immediate substantial danger to property as a result of screening or other information may, without a search warrant, be detained, opened, removed from postal custody, processed, and treated, but only to the extent necessary to determine and eliminate the danger. Such mail must be processed in accordance with the instructions promptly furnished by the Inspection Service.

(2) Indeterminate Mail. After screening, mail sealed against inspection that presents doubts about whether its contents are hazardous, that cannot be resolved without opening, must be reported to the Postal Inspection Service. Such mail must be processed in accordance with the instructions promptly furnished by the Inspection Service.

(3) Mandatory Reporting. Any person who opens mail sealed against inspection, in accordance with paragraph (d)(1) or (d)(2) of this section, is required to provide a complete written and sworn statement regarding the detention, screening, opening, and treatment of the mail piece, as well as the circumstances surrounding its identification as a possible threat. The statement is required to be signed by the person purporting to act under this section and promptly forwarded to the Chief Postal Inspector. Any person purporting to act under this section who does not report his or her action to the Chief Postal Inspector under the requirements of this section, or whose action is determined after investigation not to have been authorized, is subject to disciplinary action or criminal prosecution or both.

Ruth Stevenson

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