

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend postal regulations to improve the administration of the Post Office closing and consolidation process. In addition, certain procedures employed for the discontinuance of Post Offices would be applied to the discontinuance of other types of retail facilities operated by Postal Service employees.

DATES: Comments must be received on or before May 2, 2011.

ADDRESSES: Written comments should be mailed or delivered to the Manager, Customer Service Standardization, ATTN: Retail Discontinuance, 475 L'Enfant Plaza SW., Room 6816, Washington, DC 20260-6816. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in the Postal Service Library, at the above address. Arrangements should be made in advance for inspection by contacting (202) 268-2900.

FOR FURTHER INFORMATION CONTACT: Annette Raney, (202) 268-4307.

SUPPLEMENTARY INFORMATION: The Postal Reorganization Act of 1970 directs the Postal Service to establish and maintain postal facilities "of such character and in such locations that postal patrons throughout the nation will, consistent with reasonable economies of postal operations, have ready access to essential postal services." 39 U.S.C. 403(b)(3). The 1976 amendments to the Postal Reorganization Act (PRA), codified in former section 404(b) of title 39 of the U.S. Code, require that the Postal Service provide adequate notice to customers of its intention to close or consolidate a Post Office™. (The

codified statute was re-designated as 39 U.S.C. 404(d) under the Postal Accountability and Enhancement Act of 2006 (PAEA), Public Law 109-435, section 1010(e), 120 Stat. 3261.) Notice must be given at least 60 days in advance to enable customers to present their views. Section 404(d) further requires that the Postal Service consider specific criteria in making determinations to close or consolidate a post office, including the effects on community and employees, the ability to provide a maximum degree of effective and regular postal services to the affected community, and economic savings. A determination to close or consolidate any Post Office may be appealed to the Postal Regulatory Commission (Commission) within 30 days after such determination is made available to customers. The Commission has up to 120 days to issue a decision if an appeal is filed. Even if no appeal is filed, the Postal Service is prevented from taking action to close or consolidate a post office until 60 days have elapsed since its final determination has been made available to customers.

As part of ongoing efforts to rationalize its retail network, the Postal Service has undertaken a review of its regulations in 39 CFR part 241 to determine how the administration of the closing process can be improved. The Postal Service has identified various amendments to section 241.3 that would further the Plan's objective of improving the closing process. In addition, the Postal Service has determined, as a matter of policy, to apply the same discontinuance procedures to all retail facilities operated by Postal Service employees. These proposed measures are described below.

I. Application of Post Office Discontinuance Procedures to Other Retail Facilities

Section 404(d) of title 39, U.S. Code, applies only to the "closing or consolidation" of "post offices." A Post Office is an organizational unit headed by a postmaster that provides retail and delivery services, and mail processing, to residents and businesses in the ZIP Code areas that comprise that office's exclusive delivery service area. In using the term "Post Office" in its technical sense for well over a century, Congress has recognized the need for postal

officials to establish facilities, including Post Offices, stations, and branches, and also to discontinue them. The authority of Congress "to establish post offices," U.S. Const. art. I, section 8, cl. 7, has been consistently delegated to the Postmaster General since the establishment of the Nation's postal system. See the discussion in *Ware v. United States*, 71 U.S. 617, 630-633 (1866).

Numerous other postal statutes, not directly concerned with the establishment of postal facilities, have also illustrated the distinction between a station or branch and a Post Office. For example, former 39 U.S.C. 3524-3530, which set compensation levels for postmasters and other management employees, clearly show the administrative distinction between a Post Office, supervised by a postmaster, and its subordinate stations and branches, generally under the direction of an officer in charge. Similarly, in extending the protection of criminal statutes to postal facilities and operations, Congress was careful to apply those statutes not only to Post Offices, but to their subordinate service units. See, e.g., 18 U.S.C. 1703, 1708, 1709, 1712, 1721.

Furthermore, Congress was well aware of the longstanding distinction between Post Offices and other types of postal facilities when it enacted 39 U.S.C. 404(d). In proposing the legislation which provided the foundation for current section 404(d), Senator Jennings Randolph expressed his opposition to the "indiscriminate closing of our rural and small town post offices" as well as to the decision "to create branches out of many post offices close to large cities." To curtail such actions, he offered legislation requiring the Postal Service to "substantiate any proposal to change or eliminate independent post offices." See 122 Cong. Rec. 6314 (March 11, 1976). In its analysis of the subsequently enacted "Randolph Amendment," the conference report on H.R. 8603 explicitly limited its application to Post Offices: "[T]he managers intend that this provision apply to post offices only and not to other postal facilities." H.R. Rep. No. 94-1444, 94th Cong., 2d Sess. 17 (1976). Thus, as a legal matter, former 39 U.S.C. 404(b) and its modern analogue, 39 U.S.C. 404(d), apply only to Post Offices. See *Wilson v. United States*

Postal Service, 441 F. Supp. 803, 806 (C.D. Cal. 1977); *Knapp v. United States Postal Service*, 449 F. Supp. 158, 161–62 (E.D. Mich. 1978).

As a matter of policy, the Postal Service recognizes that the functional differences among respective types of retail facilities staffed by postal employees may not be readily apparent to its retail customers. The Postal Service is mindful of comments that the Commission has provided to this effect in multiple contexts. Accordingly, many customers expect the same discontinuance procedures to apply for their local station as to the nearest independent Post Office. In the interest of transparency and responsiveness to customer needs, the Postal Service has concluded that it makes sense, as a policy matter, to propose the application of a single set of discontinuance procedures to postal employee-operated retail facilities. Although customers of contractor-operated retail facilities may also experience and expect comparable levels of service to those of postal employee-operated retail facilities, exigencies of contracting relationships make it generally impractical to harmonize their discontinuance procedures with the deliberative timeframe and procedures required for discontinuance of Postal Service-operated facilities.

The Postal Service recognizes that its proposed rule represents a policy change that significantly enhances transparency for its customers. The proposed rule does not, however, change the text or legislative history of 39 U.S.C. 404(d), which indicate Congress's intent that the statute should apply only to independent Post Offices and not to subordinate retail facilities. By proposing the application of uniform procedures to all Postal Service-operated retail facilities, the Postal Service would exceed the procedural requirements of its operating statute in the interests of public transparency and participation.

One consequence of this procedural harmonization is that the distinguishing factor would become the identity of the facility as operated by the Postal Service or a contractor, and not the administrative classification of affected facilities as Post Offices, stations, or branches. The conversion of an independent Post Office to a subordinate Postal Service-operated retail facility would no longer constitute a "consolidation" that triggers discontinuance proceedings, as it does today. The governing statute does not define "close" and "consolidate," nor does it offer any guidance as to the

distinction between the two terms. Postal Service facilities generally offer the same retail services to customers regardless of the facilities' administrative designation. Moreover, by applying the same discontinuance procedures to all Postal Service-operated retail facilities, the proposed rule would erase the effect of administrative designations on applicable discontinuance procedures. Therefore, the Postal Service does not consider it reasonable to continue applying discontinuance procedures to facility re-designations that do not entail any practical effect for customers. These changes would also harmonize with changes regarding administrative oversight of particular offices.

The proposed rule would not be retroactive. Therefore, until such time as any proposed changes are issued in a final rule and take effect, the proposed change in policy is not effective and would not affect the procedures currently in use for discontinuance of Postal Service retail facilities.

II. Procedural Changes

After an extensive review, the Postal Service is in the process of revising and updating its discontinuance procedures. This process significantly improves the internal timeframes, level of coordination, and approvals; it will maintain compliance with the statute and enhances public notice and involvement. The internal procedures for discontinuance actions are detailed in Handbook PO–101, *Post Office Discontinuation Guide*, which is undergoing revision. Certain changes are also required to 39 CFR 241.3 to reflect the new processes. For example, retail facility discontinuances may be prompted not only by local evaluations, but also by nationwide directives from the responsible Headquarters office.

In addition, current regulations require at least a 90-day waiting period after posting of a final determination (if not appealed to the Commission) or after a Commission order upholding the final determination. The statute, however, only requires a 60-day period after posting of the final determination. Accordingly, the proposed rule would make the mandatory waiting period consistent with statutory requirements, although the Postal Service could, at its discretion, defer implementation.

Finally, the proposed rule would give explicit guidance to District Managers as to the circumstances that may justify commencement of a discontinuance study.

III. Analysis of Proposed Changes

Section 241.1(a) and (b) would be updated to state the establishment requirements and classification system for Post Offices in accordance with *Postal Operations Manual* (POM) 123.11. The change in the classification system does not entail any change in how respective retail facilities are rated by revenue units within accounting groups. Subsection 241.1(a) would also clarify that Post Offices may be managed by postmasters, as is commonly the case, or by other designated personnel. The designation of a retail facility as a Post Office, classified station, or classified branch would not depend on whether any responsible personnel is a postmaster.

In keeping with the policy change concerning the scope of discontinuance procedures, the proposed rule would replace all references to "post office" in 39 CFR 241.3 with "USPS-operated retail facility" (or a similar term). A new subparagraph (a)(1)(ii) would be added to define "USPS-operated retail facility" as any Post Office, station, or branch that is operated by Postal Service employees, rather than by contractor personnel. Subparagraph (a)(1)(ii) would also define "contractor-operated retail facility" as any community post office, station, branch, or other facility offering retail postal services that is operated by a contractor, rather than by Postal Service employees.

Paragraph (a)(1) would be renumbered as subparagraph (a)(1)(i), and the scope of 39 CFR 241.3 would be defined in that subparagraph as applying to the closure or combination of any Postal Service-operated retail facility or facilities, or the replacement of such a facility with a contractor-operated retail facility. Corresponding changes would be made to paragraph (c)(2) with respect to the scope of a "consolidation" for purposes of 39 CFR 241.3. Subparagraph (a)(1)(iii) would be added to clarify that the reclassification of a Post Office as a Postal Service-operated station or branch, or the replacement of the former with the latter, is not a closing or consolidation subject to 39 CFR 241.3. Subparagraph (a)(1)(iii) would also clarify that discontinuance actions subject to 39 CFR 241.3 do not include staffing changes in the management of a post office such that it is staffed by a postmaster part-time or not at all and by another type of USPS employee during the remaining office hours.

Because the discontinuance procedures in 39 CFR 241.3 would apply beyond the extent legally required by 39 U.S.C. 404(d), paragraph (a)(2) would be renamed simply

"Requirements," and the reference to 39 U.S.C. 404(d) as the statutory source of such requirements would be deleted.

Paragraph (a)(2), subparagraph (a)(3)(ii), and paragraph (c)(1) would be amended to allow for the possibility that discontinuance actions may result from initiatives or instructions by the responsible Vice President or from District Managers. Although many discontinuance actions will continue to be prompted by local personnel's assessment of prevailing conditions, this change would reflect the fact that discontinuance actions could also flow from nationwide requirements for retail facilities established by relevant Headquarters offices.

Subparagraph (a)(2)(iv) currently refers to the statutory right of persons served by an affected Post Office to appeal a discontinuance determination to the Commission. Although the Postal Service is proposing to extend the applicability of its post office discontinuance procedures to other types of Postal Service-operated retail facilities, the Postal Service does not have the power to alter the scope of the Commission's statutory jurisdiction. Therefore, the Postal Service proposes to add a sentence to subparagraph (a)(2)(iv) to clarify that, in cases where customers of an affected Postal Service-operated retail facility other than a post office file an appeal with the Commission, the Postal Service's Office of General Counsel will determine whether to raise jurisdictional defenses on a case-by-case basis, without waiving any objections as to the Commission's general lack of jurisdiction over such attempted appeals. In addition, subparagraph (a)(2)(iv) would be amended to incorporate the "mailbox rule" for receipt of appeals by the Commission, in accordance with 39 U.S.C. 404(d)(6).

A new paragraph (a)(4) would be added to clarify the circumstances that may prompt a District Manager, Vice President, or a designee of either to initiate a discontinuance study. Permissible factors include postmaster vacancies, emergency suspensions, workload changes, drops in customer demand, availability of reasonable alternate access to postal services, and other special circumstances. Absent one or more such permissible circumstances, a deciding official of either may not initiate a discontinuance study because restroom facilities or building modifications for the handicapped are required, for reasons of compliance with the Occupational Health and Safety Act of 1970 (29 U.S.C. 651 *et seq.*), or because the retail facility

is a small Post Office operating at a deficit.

The scope of paragraph (b)(4) would be extended to the replacement of any Postal Service-operated retail facility with another type of Postal Service-operated or contractor-operated retail facility.

Paragraph (b)(5) would be deleted, because the Publication that lists discontinued Post Offices referenced in that paragraph is obsolete.

Subparagraph (c)(4)(vii) would be reorganized to more accurately indicate the contents of the proposal notice. Clause (c)(4)(vii)(B) and subparagraph (f)(2)(ii) would be amended to require notice of appeal rights only for proposed discontinuances of post offices, in accordance with the scope of the Commission's statutory jurisdiction, as described in the analysis of subparagraph (a)(2)(iv) above.

Paragraph (d)(2) and the sample form included therein would be deleted. This form will be available to customers in accordance with these regulations. Current paragraphs (d)(3) and (4) would be renumbered (d)(2) and (3), respectively.

Paragraph (d)(3) (re-designated as (d)(2)) would be amended to clarify that a community meeting should be held unless the responsible Vice President or Area Manager of Delivery Programs Support instructs otherwise.

Subparagraph (d)(4)(v) (re-designated as (d)(3)(v)) would advise that certain personally identifiable information may be redacted from publicly accessible copies of the discontinuance record, in the interest of protecting personal privacy.

Subsection (e)(2)(ii)(A) and (B) would be amended to reflect the fact that discontinuance records are typically transmitted electronically, as well as forwarded in paper form. Therefore, it is more appropriate for the District Manager to certify accuracy of the record being transmitted, rather than to attach a separate certification as to the accuracy of copies.

Subparagraph (g)(1)(i) would be amended to remove the District Manager's obligation to notify the responsible Vice President of the date of posting.

The timeframe for implementation in the event that a final determination is not appealed, set forth in paragraph (g)(2), would be amended such that implementation can occur anytime after the statutorily required 60-day waiting period that commences the first day after posting of the final determination. Similarly, when the Commission upholds the Postal Service's final determination under subparagraph

(g)(4)(i), the proposed rule would allow implementation anytime after issuance of the Commission's Order, so long as the 60-day waiting period after posting of the final determination is also satisfied. The current rule for both instances, that a discontinuance be effective on the first Saturday 90 days after the Commission's order, is not required by statute. Although the Postal Service may continue to apply a longer time period in some cases, the proposed rule would allow the Postal Service to do otherwise within the statutory framework.

Clause (g)(3)(ii)(B) would be amended to clarify that the Commission's final order and opinion need only be displayed at the Postal Service-operated retail facility subject to discontinuance for 30 days or until the effective date of the discontinuance, whichever is earlier.

The proposed rule would also make several minor changes to update terms. References to the former "Postal Rate Commission" would be replaced with "Postal Regulatory Commission," in accordance with the renaming of that entity under Section 604 of the PAEA, Public Law 109-435, 120 Stat. 3241-3242. References to Administrative Support Manual (ASM) 352.6 would be updated to refer to chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management*, to which the ASM's records request regulations have been transferred. References to former 39 U.S.C. 404(b) would be updated to 39 U.S.C. 404(d). Subparagraph (g)(3)(ii) would assign responsibility to the Postal Service's Office of the General Counsel, rather than specifically to the former section for Legal Policy and Ratemaking Law. Finally, the position titles of District Manager, Customer Service and Sales, and Vice President, Delivery and Retail, throughout the section would be updated to District Manager and responsible Vice President, respectively.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed amendments to the Code of Federal Regulations.

An appropriate amendment to 39 CFR part 241 to reflect these changes will be published if the proposal is adopted.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

For the reasons set out in this document, the Postal Service proposes to amend 39 CFR part 241 as follows:

PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

1. The authority citation for 39 CFR part 241 is revised to read as follows:

Authority: 39 U.S.C. 101, 401, 404, 410.

2. Revise § 241.1 to read as follows:

§ 241.1 Post offices.

(a) *Establishment.* Post offices are established and maintained at locations deemed necessary to ensure that regular and effective postal services are available to all customers within specified geographic boundaries. A post office may be operated or managed by a postmaster or by another type of postal employee.

(b) *Classification.* As of October 1 of each year, Post Offices are categorized through a cost ascertainment grouping (CAG) process based on allowable postal revenue units for the second proceeding fiscal year as follows:

(1) *CAG A–G.* Post offices having 950 or more revenue units.

(2) *CAG H–J.* Post offices having 190 but less than 950 revenue units.

(3) *CAG K.* Post offices having 36 but less than 190 revenue units.

(4) *CAG L.* Post offices having less than 36 revenue units.

3. Revise § 241.3 to read as follows:

§ 241.3 Discontinuance of USPS-operated retail facilities.

(a) *Introduction—(1) Coverage.* (i) This section establishes the rules governing the Postal Service's consideration of whether an existing retail Post Office, station, or branch should be discontinued. The rules cover any proposal to:

(A) Replace a USPS-operated post office, station, or branch with a contractor-operated retail facility;

(B) Combine a USPS-operated post office, station, or branch with another USPS-operated retail facility, or

(C) Discontinue a USPS-operated post office, station, or branch without providing a replacement facility.

(ii) As used in this section, “USPS-operated retail facility” includes any Postal Service employee-operated post office, station, or branch, but does not include any station, branch, community post office, or other retail facility operated by a contractor. “Contractor-operated retail facility” includes any station, branch, community post office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.

(iii) The conversion of a post office into, or the replacement of a post office with, another type of USPS-operated retail facility is not a discontinuance action subject to this section. A change in the management of a post office such that it is staffed only part-time by a postmaster, or not staffed at all by a postmaster, but rather by another type of USPS employee, is not a discontinuance action subject to this section.

(2) *Requirements.* A District Manager or the responsible Vice President may initiate a study of a USPS-operated facility for possible discontinuance. Any decision to close or consolidate a USPS-operated retail facility may be effected only upon the consideration of certain factors. These include the effect on the community served; the effect on employees of the USPS-operated retail facility; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a USPS-operated retail facility to evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a USPS-operated retail facility must be made in writing and must include findings covering all the required considerations.

(iii) The written determination must be made available to persons served by the USPS-operated retail facility at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by a Post Office subject to discontinuance may appeal the decision to the Postal Regulatory Commission. Where persons regularly served by another type of USPS-operated retail facility subject to discontinuance file an appeal with the Postal Regulatory Commission, the General Counsel reserves the right to assert defenses, including the Commission's lack of jurisdiction over such appeals. For purposes of determining whether an appeal is filed within the 30-day period, receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required to make any determination subject to 39 U.S.C. 404(d)(5) no later than 120 days after receiving the appeal.

(vii) The following table summarizes the notice and appeal periods defined by statute.

BILLING CODE 7710-12-P

Public Notice of Proposal

60-day notice

Public Notice of Final Determination

30 days for filing any appeal

Up to 120 days for appeal
consideration and decision

Wait at least 60 days from first day
after posting final determination
before closing USPS-operated retail
facility

BILLING CODE 7710-12-C

(3) *Additional requirements.* This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading to discontinuance of a particular USPS-operated retail facility are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(4) *Circumstances prompting decision to study* —(i) *Permissible circumstances.* A District Manager, the responsible Vice President, or a designee of either may initiate a study of a USPS-operated retail facility's potential discontinuance based upon circumstances including, but not limited to, the following:

(A) A postmaster vacancy;

(B) Emergency suspension of the USPS-operated retail facility due to cancellation of a lease or rental agreement when no suitable alternate quarters are available in the community, a fire or other natural disaster, severe health or safety hazards, challenge to

the sanctity of the mail, or similar reasons;

(C) Earned workload below the minimum established level for the lowest non-bargaining (EAS) employee grade;

(D) Insufficient customer demand, evidenced by declining or low volume, revenue, revenue units, local business activity, or local population trends;

(E) The availability of reasonable alternate access to postal services for the community served by the USPS-operated retail facility; or

(F) The incorporation of two communities into one or other special circumstances.

(ii) *Impermissible circumstances.* In the absence of any circumstances identified in paragraph (a)(4)(i) of this section, the following do not constitute circumstances that justify initiation of a discontinuance study:

(A) Any claim that the continued operation of a building without handicapped modifications is inconsistent with the Architectural Barriers Act (42 U.S.C. 4151 *et seq.*);

(B) The absence of running water or restroom facilities;

(C) Compliance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*); or

(D) The operation of a small Post Office at a deficit.

(b) *Preservation of community address*—(1) *Policy.* The Postal Service permits the use of a community's separate address to the extent practicable.

(2) *ZIP Code assignment.* The ZIP Code for each address formerly served from the discontinued USPS-operated retail facility should be kept, wherever practical. In some cases, the ZIP Code originally assigned to the discontinued USPS-operated retail facility may be changed if the responsible District Manager receives approval from his or her Vice President, Area Operations, before any proposal to discontinue the USPS-operated retail facility is posted.

(i) In a consolidation, the ZIP Code for the replacement contractor-operated retail facility is the ZIP Code originally assigned to the discontinued facility.

(ii) If the ZIP Code is changed and the parent or gaining USPS-operated retail facility covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) *USPS-operated retail facility's city name in address.* If all the delivery addresses using the city name of the USPS-operated retail facility being discontinued continue to use the same ZIP Code, customers may continue to use the discontinued facility's city name in their addresses, instead of that of the new delivering USPS-operated retail facility.

(4) *Name of facility established by consolidation.* If a USPS-operated retail facility is replaced by a contractor-operated facility, the replacement unit is usually given the same name of the facility that is replaced.

(c) *Initial proposal*—(1) *In general.* If a District Manager believes that the discontinuance of a USPS-operated retail facility within his or her responsibility may be warranted, or if the responsible Vice President believes

that the discontinuance of any USPS-operated retail facility may be warranted, the District Manager:

(i) Must use the standards and procedures in § 241.3(c) and (d).

(ii) Must investigate the situation.

(iii) May propose the USPS-operated retail facility be discontinued.

(2) *Consolidation.* The proposed action may include a consolidation of USPS-operated retail facilities. A consolidation arises when a USPS-operated retail facility is replaced with a contractor-operated retail facility.

(3) *Views of postmasters.* Whether the discontinuance under consideration involves a consolidation or not, the District Manager must discuss the matter with the postmaster (or the officer in charge) of the USPS-operated retail facility considered for discontinuance, and with the postmaster of any other USPS-operated retail facility affected by the change. The District Manager should make sure that these officials submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) *Preparation of written proposal.* The District Manager, or a designee, must gather and preserve for the record all documentation used to assess the proposed change. If the District Manager thinks the proposed action is warranted, he or she, or a designee, must prepare a document titled "Proposal to (Close) (Consolidate) the (Facility Name)." This document must describe, analyze, and justify in sufficient detail to Postal Service management and affected customers the proposed service change. The written proposal must address each of the following matters in separate sections:

(i) *Responsiveness to community postal needs.* It is the policy of the Government, as established by law, that the Postal Service will provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. The proposal should:

(A) Contrast the services available before and after the proposed change;

(B) Describe how the changes respond to the postal needs of the affected customers; and

(C) Highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

(ii) *Effect on community.* The proposal must include an analysis of the effect the proposed discontinuance might have on the community served, and discuss the application of the requirements in § 241.3(b).

(iii) *Effect on employees.* The written proposal must summarize the possible effects of the change on postmasters and other employees of the USPS-operated retail facility considered for discontinuance.

(iv) *Savings.* The proposal must include an analysis of the economic savings to the Postal Service from the proposed action, including the cost or savings expected from each major factor contributing to the overall estimate.

(v) *Other factors.* The proposal should include an analysis of other factors that the District Manager determines are necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(vi) *Summary.* The proposal must include a summary that explains why the proposed action is necessary, and assesses how the factors supporting the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service is paramount.

(vii) *Notice.* The proposal must include the following notices:

(A) *Supporting materials.* "Copies of all materials on which this proposal is based are available for public inspection at (Facility Name) during normal office hours."

(B) *Nature of posting.* "This is a proposal. It is not a final determination to (close) (consolidate) this facility."

(C) *Posting of final determination.* "If a final determination is made to close or consolidate this facility, after public comments on this proposal are received and taken into account, a notice of that final determination will be posted in this facility."

(D) *Appeal rights.* "The final determination will contain instructions on how affected customers may appeal a decision to close or consolidate a post office to the Postal Regulatory Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final determination." The notice in this clause is provided when the USPS-operated retail facility under study is a post office. For purposes of this clause, the date of receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(d) *Notice, public comment, and record*—(1) *Posting proposal and comment notice.* A copy of the written proposal and a signed invitation for comments must be posted prominently in the USPS-operated retail facility under study and in any other affected

USPS-operated retail facility. The invitation for comments must:

(i) Ask interested persons to provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, on the potential effect of the proposed change on postal services and the community.

(ii) State that copies of the proposal with attached optional comment forms are available in the affected USPS-operated retail facilities.

(iii) Provide a name and telephone number to call for information.

(2) *Other steps.* In addition to providing notice and inviting comment, the District Manager must take any other steps necessary to ensure that the persons served by affected USPS-operated retail facilities understand the nature and implications of the proposed action. A community meeting should be held unless otherwise instructed by the responsible Vice President or the Area Manager of Delivery Programs Support.

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the District Manager should encourage persons offering the views or information to provide written comments to preserve them for the record.

(ii) As a factor in making his or her decision, the District Manager may not rely on communications received from anyone unless submitted in writing for the record.

(3) *Record.* The District Manager must keep as part of the record for consideration and review all documentation gathered about the proposed change.

(i) The record must include all information that the District Manager considered, and the decision must stand on the record. No written information or views submitted by customers may be excluded.

(ii) The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

(iii) The record must include a chronological index in which each document contained is identified and numbered as filed.

(iv) As written communications are received in response to the public notice and invitation for comments, they are included in the record.

(v) A complete copy of the record must be available for public inspection during normal office hours at the USPS-operated retail facility proposed for discontinuance or at the USPS-operated retail facility providing alternative service, if the office to be discontinued

was temporarily suspended, beginning no later than the date on which notice is posted and extending through the comment period. When appropriate, certain personally identifiable information, such as individual names or residential addresses, may be redacted from the publicly accessible copy of the record.

(vi) Copies of documents in the record (except the proposal and comment form) are provided on request and on payment of fees as noted in chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management*.

(e) *Consideration of public comments and final local recommendation—*(1) *Analysis of comments.* The District Manager or a designee must prepare an analysis of the public comments received for consideration and inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each point favorable to the proposal and each point unfavorable to the proposal. The analysis should identify to the extent possible how many comments support each point listed.

(2) *Re-evaluation of proposal.* After completing the analysis, the District Manager must review the proposal and re-evaluate all the tentative conclusions previously made in light of additional customer information and views in the record.

(i) *Discontinuance not warranted.* If the District Manager decides against the proposed discontinuance, he or she must post, in the USPS-operated retail facility considered for discontinuance, a notice stating that the proposed closing or consolidation is not warranted.

(ii) *Discontinuance warranted.* If the District Manager decides that the proposed discontinuance is justified, the appropriate sections of the proposal must be revised, taking into account the comments received from the public. After making necessary revisions, the District Manager must:

(A) Transmit the revised proposal and the entire record to the responsible Vice President.

(B) Certify that all documents in the record are originals or true and correct copies.

(f) *Postal Service decision.*—(1) *In general.* The responsible Vice President or a designee must review the proposal of the District Manager and decide on the merits of the proposal. This review and the decision must be based on and supported by the record developed by the District Manager. The responsible Vice President can instruct the District Manager to provide more information to

supplement the record. Each instruction and the response must be added to the record. The decision on the proposal of the District Manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth in this paragraph (f).

(2) *Approval.* The responsible Vice President or a designee may approve the proposed discontinuance, with or without further revisions. If approved without further revision, the term “Final Determination” is substituted for “Proposal” in the title. A copy of the Final Determination must be provided to the District Manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(d).

(i) *Supporting materials.* The Final Determination must include the following notice: “Copies of all materials on which this Final Determination is based are available for public inspection at the (Facility Name) during normal office hours.”

(ii) *Appeal rights.* If the USPS-operated retail facility subject to discontinuance is a post office, the Final Determination must include the following notice: “This Final Determination to (close) (consolidate) the (Facility Name) may be appealed by any person served by that office to the Postal Regulatory Commission. Any appeal must be received by the Commission within 30 days of the date this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Regulatory Commission, or the parties to the appeal, must be made available for public inspection at the (Facility Name) during normal office hours.”

(3) *Disapproval.* The responsible Vice President or a designee may disapprove the proposed discontinuance and return it and the record to the District Manager with written reasons for disapproval. The District Manager or a designee must post a notice in each affected USPS-operated retail facility that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The responsible Vice President or a designee may return the proposal of the District Manager with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the responsible Vice President must be placed on file in the Postal Service Headquarters library.

(g) *Implementation of final determination*—(1) *Notice of final determination to discontinue USPS-operated retail facility.* The District Manager must:

(i) Provide notice of the Final Determination by posting a copy prominently in the USPS-operated retail facilities likely to be serving the affected customers. The date of posting must be noted on the first page of the posted copy as follows: “Date of posting.”

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each USPS-operated retail facility where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management*.

(2) *Implementation of determinations not appealed.* If no appeal is filed, the official closing date of the office must be published in the *Postal Bulletin* and effective, at the earliest, 60 days after the first day that Final Determination was posted. A District Manager may request a different date for official discontinuance in the Retail Change Announcement document submitted to the responsible Vice President or a designee. However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(3) *Actions during appeal*—(i) *Implementation of discontinuance.* If an appeal is filed, only the responsible Vice President may direct a discontinuance before disposition of the appeal. However, the USPS-operated retail facility may not be permanently discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(ii) *Display of appeal documents.* The Office of General Counsel must provide the District Manager with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The District Manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the USPS-operated retail facility to be discontinued. If the operation of that USPS-operated retail facility has been suspended, the District Manager must ensure that copies are displayed in the USPS-operated retail facilities likely to be serving the affected customers.

(B) All documents except the Postal Regulatory Commission’s final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed at the USPS-operated retail facility to be discontinued for 30 days or until the effective date of the discontinuance, whichever is earlier. The final order and opinion must be displayed for 30 days in the USPS-operated retail facilities likely to be serving the affected customers.

(4) *Actions following appeal decision*—(i) *Determination affirmed.* If the Commission dismisses the appeal or affirms the Postal Service’s determination, the official closing date of the office must be published in the *Postal Bulletin*, effective anytime after the Commission renders its opinion, if not previously implemented under § 241.3(g)(3)(i). However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required under § 241.3(g)(1).

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the responsible Vice President must direct that either:

(A) Notice be provided under paragraph (f)(3) of this section that the proposed discontinuance is determined not to be warranted or

(B) The matter be returned to an appropriate stage under this section for further consideration following such instructions as the responsible Vice President may provide.

Stanley F. Mires,
Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R02-OAR-2010-1058, FRL-9288-5]

Approval and Promulgation of Implementation Plans; New York Reasonable Further Progress Plans, Emissions Inventories, Contingency Measures and Motor Vehicle Emissions Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing action on portions of a proposed State Implementation Plan revision submitted

by New York that are intended to meet several Clean Air Act requirements for attaining the 0.08 part per million 8-hour ozone national ambient air quality standards. EPA is proposing to approve: the 2002 base year emission inventory and the projection year emissions, the motor vehicle emissions budgets used for planning purposes, the reasonable further progress plan, and the contingency measures as they relate to the New York portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Poughkeepsie 8-hour ozone moderate nonattainment areas.

DATES: Comments must be received on or before May 2, 2011.

ADDRESSES: Submit your comments, identified by Docket Number EPA-R02-OAR-2010-1058, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail: Werner.Raymond@epa.gov.
- Fax: 212-637-3901.
- Mail: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866.

• *Hand Delivery*: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866. Such deliveries are only accepted during the Regional Office’s normal hours of operation. The Regional Office’s official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket No. EPA-R02-OAR-2010-1058. EPA’s policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an “anonymous access” system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov> your e-mail address will be automatically captured and included as part of the comment