

**ADDRESSES:** Address written comments and requests to present oral testimony to the Commissioner of Patents and Trademarks, Washington, DC 20231. Attention: Stephen G. Kunin, Deputy Assistant Commissioner for Patent Policy and Projects, Crystal Park 2, Suite 910, or by fax to (703) 305-8825.

**FOR FURTHER INFORMATION CONTACT:** Magdalen Y. Greenlief or John F. Gonzales, Special Program Examiners, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, at (703) 305-9285, or by mail marked to their attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

Dated: February 9, 1995.

**Bruce A. Lehman,**

*Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.*

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## POSTAL SERVICE

### 39 CFR Part 265

#### **Demands for Testimony or Records in Certain Legal Proceedings**

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service proposes establishing a procedure for Postal Service response to subpoenas or other demands for Postal Service employees to testify about, or produce records concerning, Postal Service matters in private litigation or other proceedings in which the United States is not a party. This proposed rule should minimize the disruption of official duties caused by compliance with those demands, maintain Postal Service control over the release of official information, and otherwise protect the interests of the United States. This proposed rule would prohibit Postal Service employees from complying with those demands without the General Counsel's permission.

**DATES:** Comments must be received on or before March 17, 1995.

**ADDRESSES:** Written comments should be mailed or delivered to: Library, Attention Federal Register Comments, U.S. Postal Service, 475 L'Enfant Plaza, SW, Room 11800, Washington, DC 20260-1540. Copies of all written comments will be available for public inspection and photocopying between 8:15 a.m. and 4:45 p.m., Monday through Friday, in Room 11800 at the above address.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Holvik, Attorney, (312) 765-5230.

**SUPPLEMENTARY INFORMATION:** The proposed rule provides that, in response to subpoenas or other demands for testimony or records concerning Postal Service matters in private litigation or other proceedings in which the United States is not a party, Postal Service employees may testify or produce records only if the General Counsel or the General Counsel's delegate authorizes compliance with the demand. In making this determination, the General Counsel or his or her delegate will consider whether compliance is in accordance with applicable laws, privileges, rules, authority, and regulations and would not be contrary to the interests of the United States.

Several federal agencies have enacted this type of regulation, including the Department of Justice, the Department of Transportation, and the Department of Veterans Affairs. The courts have recognized the authority of federal agencies to limit compliance with demands in this manner. *See, United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951). Moreover, subpoenas by state courts, legislatures, or legislative committees that attempt to assert jurisdiction over federal agencies are inconsistent with the Supremacy Clause of the U.S. Constitution, and a federal regulation regarding compliance with those subpoenas reinforces this principle. *See, McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316 (1819); *United States v. McLeod*, 385 F.2d 734 (5th Cir. 1967).

This proposed rule would not apply to situations in which the United States is a party in a lawsuit. It also would not apply to instances in which an employee is requested to appear in legal proceedings unrelated to federal activities or the employee's duties at the Postal Service. Finally, the proposed rule would not apply to subpoenas or requests for information submitted by either House of Congress or by a congressional committee or subcommittee with jurisdiction over the matter for which the testimony or information is requested.

#### **List of Subjects in 39 CFR Part 265**

Administrative practice and procedure, Government employees, Release of information.

For the reasons set out in this notice, 39 CFR part 265 is proposed to be amended as follows.

## **PART 265—RELEASE OF INFORMATION**

1. The authority citation for part 265 is revised to read as follows:

**Authority:** 39 U.S.C. 401, 403, 410, 1001, 2601; 5 U.S.C. 552; Inspector General Act of 1978, as amended (Pub. L. 95-452, as amended, 5 U.S.C. App. 3).

2. Section 265.12 is added to read as follows:

#### **§ 265.12 Demands for testimony or records in certain legal proceedings.**

(a) *Scope and applicability of this section.* (1) This section establishes procedures to be followed if the Postal Service or any Postal Service employee receives a demand for testimony concerning or disclosure of:

(i) Records contained in the files of the Postal Service; or

(ii) Information relating to records contained in the files of the Postal Service; or

(iii) Information or records acquired or produced by the employee in the course of his or her official duties or because of the employee's official status.

(2) This section does not create any right or benefit, substantive or procedural, enforceable by any person against the Postal Service.

(3) This section does not apply to any of the following:

(i) Any legal proceeding in which the United States is a party;

(ii) A demand for testimony or records made by either House of Congress or, to the extent of matter within its jurisdiction, any committee or subcommittee of Congress; or

(iii) An appearance by an employee in his or her private capacity in a legal proceeding in which the employee's testimony does not relate to the employee's official duties or the functions of the Postal Service; or

(iv) A demand for testimony or records submitted to the Postal Inspection Service (a demand for Inspection Service records or testimony will be handled in accordance with rules published at § 265.11).

(4) This section does not exempt a request from applicable confidentiality requirements, including the requirements of the Privacy Act. 5 U.S.C. 552a.

(b) *Definitions.* The following definitions apply to this section:

(1) *Adjudicative authority* includes, but is not limited to, the following:

(i) A court of law or other judicial forums, whether local, state, or federal; and

(ii) Mediation, arbitration, or other forums for dispute resolution.

(2) *Demand* includes a subpoena, subpoena duces tecum, request, order,