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POSTAL SERVICE

39 CFR Part 111

Delivery of Mail to a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends section D042.2.0 of the Domestic Mail Manual (DMM) by adding section D042.2.8 to provide procedures to identify when an office business center (OBC) or part of its operation is considered a commercial mail receiving agency (CMRA) for postal purposes.

EFFECTIVE DATE: December 14, 2001.

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SUPPLEMENTARY INFORMATION: On July 11, 2001, the Postal Service published in the Federal Register a proposed rule to add section D042.2.8 to the Domestic Mail Manual (66 FR 36224-362260). In order to accommodate requests for additional time, the Postal Service extended the comment period to September 17, 2001 (66 FR 40663-40664). The proposed rule provided procedures to identify when an office business center (OBC) (sometimes called corporate executive center) or part of its operation is considered a commercial mail receiving agency (CMRA), for postal purposes.

Background Summary

It is expected that this notice of proposed rulemaking (NPRM) will be the culmination of an effort by the Postal Service to update and

clarify its standards concerning the delivery of mail to CMRAs. The Postal Service has long had rules applicable to CMRAs. Approximately 5 years ago, following reviews demonstrating confusion regarding some of the standards and noncompliance in some instances, the Postal Service reviewed the standards and provided useful clarifications and modifications consistent with changes in the nature of the industry and the needs of postal customers. The initial revisions were published in the Federal Register (64 FR 14385-14391) on March 25, 1999.

Traditional CMRAs provide, as a principal service, mail receipt services for their customers. Thus, they provide a mailing address and customers either pick up mail at an assigned "private mailbox" provided at the physical location of the CMRA, or they have the mail re-mailed to their actual address or another address they supply to the CMRA. The Postal Service has long required that individuals or businesses desiring the Postal Service to deliver their mail to a CMRA fill out a postal form (PS Form 1583, Application for Delivery of Mail Through Agent) authorizing delivery by the Postal Service. As part of this process, CMRAs have long been required to verify the party's identity. Additionally, CMRAs have also been required to register with their local Post Office. Among other things, the initial NPRM clarified these requirements. As part of its efforts, the Postal Service also updated PS Form 1583 and, for the first time, provided a standard "registration" form (PS Form 1583-A, Application to Act as a Commercial Mail Receiving Agency) for CMRAs.

The initial NPRM (64 FR 14385-14391), along with modifications that followed, addressed other issues. For example, based on privacy concerns expressed by some customers, particularly those working out of their homes and domestic violence victims, the Postal Service modified existing rules to limit the release of information (65 FR 3857-3859). The Postal Service also clarified the responsibility of CMRAs to re-mail mail addressed to former clients, significantly reducing the length of that obligation. The Postal Service also adopted addressing standards for CMRA addresses; no specific postal standards previously existed. Nothing in CMRA regulations had prohibited CMRA customers from citing the "PMB" (private mailbox) number assigned by the CMRA as a "suite," even though this may have led some correspondents to believe the CMRA customer to be located at a physical office at the CMRA street address. Under the new standard, CMRA customers are now given the option of using "PMB" or the alternative "#" sign to designate the private mailbox assigned by the CMRA.

As the Postal Service has become aware, CMRA-type services are now offered by businesses other than traditional CMRAs. These businesses may primarily offer services other than CMRA services, but as an additional business also offer CMRA services. For example, some firms offering storage units may also erect mailboxes and provide mail receipt services to some of their customers. The CMRA rules are

applicable to all businesses that provide agent-mailing services to their customers, whether or not the "CMRA" label is used to describe the business. Customers of those businesses that receive CMRA-type services are required to follow the same procedures as CMRA customers.

An OBC is another type of business that may provide CMRA-type services to some customers. Generally, OBCs provide private office space for customers along with other business support services. However, some OBCs have customers who do not rent private office space, but only use the OBC for mail receipt (and sometimes other business support services as well). These customers may rent meeting rooms or offices from the OBC on an as-needed basis. Other customers may rent private office space on a part-time basis. These customers generally are not assigned a specific private office for their use, but are assigned to use one of the open private offices in the OBC when they choose to use their allotted time. Customers using private offices on a full- or part-time basis also receive mail at the OBC address. The policy of the Postal Service has long been that OBCs who offer and OBC customers who receive CMRA-type service should follow the same procedures as CMRAs and CMRA customers. However, the Postal Service had not published clear guidelines in this area. During its review of the CMRA standards, the Postal Service was asked to publish such guidelines.

Before formally proposing such rules, the Postal Service asked interested parties for their views. Some principles appear relatively clear. OBC customers who rent private office space on a full-time basis should not be considered CMRA customers. Although they do receive mail at the OBC address, that is incidental to their tenancy. In contrast, OBC customers who contract for mail and other business support services and are not physically located at the OBC address should be treated as CMRA customers. The difficult question is the treatment of OBC customers who contract for private office space on a part-time basis, for example, what part-time customers should be treated as CMRA customers for postal purposes? The Postal Service does not believe that all part-time customers should be considered CMRA customers. However, as the right to occupy space decreases, the Postal Service believes that, at some point, mail service becomes a primary service for the customer rather than incidental to occupancy of private office space.

The purpose of the Postal Service's rulemaking efforts concerning OBCs was to provide guidance when an OBC or a

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part of its operation is considered a CMRA for the purpose of postal standards. During the discussions held before rules were formally proposed, interested parties suggested that the test be based on the existence of a right to occupy private office space at the OBC. The

test also included the payment of a monthly fee of at least \$125 for private office occupancy and a listing in the office directory, if available, and conference rooms and other business support services on demand. The Postal Service published this as a proposed test in the February 2, 2000, Federal Register (65 FR 4918). However, based on the comments received, many of which criticized the \$125 test, the Postal Service determined to revise its NPRM. Again, the Postal Service discussed the issue with interested parties and an attempt was made to attain a consensus based on the number of private office hours for which the OBC customer contracted. Some parties wanted a relatively low number and others, a higher number. No consensus was reached. Accordingly, the Postal Service published a revised NPRM.

Discussion of Comments Received

Comments on the NPRM were due on or before August 10, 2001. At the request of a commenter representing the OBC industry (and echoed by several other commenters), the Postal Service reopened the public comment period with written comments due on or before September 17, 2001 (66 FR 40663-40664). The Postal Service received a total of 117 comments. Of the total comments, 64 were from individual owners or officers of OBCs, 41 from OBC customers, one from the OBC industry association, and one from a not-for-profit membership organization. These comments were largely identical in content and format, and generally opposed the NPRM asserting that OBC part-time customers should not be considered as CMRA customers. The Postal Service received 10 comments that generally opposed the NPRM asserting that exemption from CMRA rules should only be for those OBC customers that occupy private office space and physically conduct business at the address indicated. CMRA owners, franchisers, the CMRA industry association, a Member of Congress, and the National Association of Attorneys General, representing 48 states and the District of Columbia and Puerto Rico, submitted these comments. A number of comments also appeared to include views on the CMRA rules that were previously adopted. These comments are outside the scope of this NPRM.

As foreshadowed in some of the preproposal discussions described above, there was no dominant view expressed by the commenters. While all were critical of the NPRM to some extent, there was no consensus as to the preferred change. That is, some urged a test so that fewer OBC customers would be considered CMRA customers for postal purposes, while others urged a test so that more OBC customers would be considered CMRA customers. If anything, the NPRM appeared to constitute a middle ground among the commenters.

View--Fewer OBC Customers Considered as CMRA Customers

Commenters opposed to consideration of OBC customers as CMRA customers rely on the assertion that the North American Industry Classification System (NAICS) classifies the OBCs and CMRAs with different industry codes. They believe this defines the two as fundamentally different types of businesses. Also, some commenters suggested that, in economic terms, the Postal Service is attempting to bias competition in a market broader than mail receipt.

The Bureau of Census uses the NAICS in economic surveys to collect data about business activity. The NAICS separates businesses within a primary industrial activity and collects data on the number of establishments, employment, payroll, sales, receipts, or shipments within that segment.

The NPRM does not attempt to classify an OBC and a CMRA as the same type of business, nor does it classify all OBC customers as CMRA customers. Rather, the NPRM is based on the principal that persons receiving similar services should be treated in a similar manner under our standards, regardless of the label placed on the business providing the service.

One commenter stated that "USPS initiated the extension of the CMRA regulations to OBC operations at the behest of the mail and package stores within the scope of its initial NPRM." The commenter also suggested that the purpose of the NPRM is to protect the competitive interests of CMRA stores, including the operations of the Postal Service subject to the CMRA regulations.

It is hardly surprising that comments from the OBC industry would seek to serve the economic interests of OBCs, just as it is no surprise that comments from the CMRA industry sought to protect its economic interests. There is nothing improper in this. Indeed, such comments are extremely useful to the rulemaking process by ensuring that the Postal Service understands the potential consequences of any rules. As the Postal Service has made clear throughout this rulemaking process, the final rules seek to balance numerous interests. These include both economic and consumer interests, represented by diverse parties such as individual postal customers and mailers, domestic violence victims, businesses of all sizes, OBCs, CMRAs, and law enforcement entities. No group has been favored in this process.

It is also important to note that, contrary to the apparent belief of these commenters, Post Office box service is not subject to CMRA regulations. However, the CMRA regulations were designed using current Post Office box regulations and are similar. Both sets of standards were designed to serve consumer protection interests. During the CMRA rulemaking process, we revisited the Post Office box regulations and made revisions to enhance protection for the American public.

Other commenters observed that they may change their agreements with OBCs from year to year and, under the 16-hour standard, might be considered OBC customers in some years and CMRA customers in others.

They cited a concern that this might require new stationery in order for them to comply with addressing standards. That is not the case however, since they might use the alternative ``#'' sign to signify their secondary addresses in either instance.

One commenter asserted that, if his corporation were deemed a CMRA customer, the state would revoke its charter under state law. Questions concerning eligibility for state charters are a matter of state, not postal law, and the Postal Service has no wish to be involved in such decisions. States are certainly not required, or encouraged, to incorporate postal standards into their corporate laws. In this instance, the rules in issue are postal addressing standards that are intended to enable correspondents to determine if the sender is physically located at the address provided. The Postal Service does not take any position on whether a corporation considered as a CMRA customer for purposes of postal standards should be authorized to receive a charter under state laws. Rather, that question is one that should be decided by each state and its citizens.

View--More OBC Customers Considered as CMRA Customers

The Postal Service received a comment from a state government concerned that ``State anti-fraud efforts be permitted to coexist with the Postal Service's CMRA rules." The commenter asked the Postal Service to ``expressly

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take a position that state laws that are more protective of consumers than the CMRA rules are not preempted." Questions as to whether postal statutes and regulations preempt state laws ultimately are legal issues for decision by appropriate courts. Except to the extent necessary to fulfill postal responsibilities, the Postal Service does not desire to interfere with state activities and understands that state statutes will not be held preempted by postal laws and regulations except to the extent that there is a conflict between them. *United States Postal Service v. Council of Greenburgh Civic Associations*, 453 U.S. 114 (1981); *United States v. City of Pittsburg, California*, 661 F.2d 783 (9th Cir. 1981). We expect these instances regarding state regulation of CMRAs to be rare. For instance, postal regulations provide that CMRA customers use one of these options as secondary address designations: ``PMB'' or the alternative ``#." If a state were to prescribe that customers subject to its rules use only one of these options, that would comply with postal standards. However, if the state were to prescribe that a third option be used (e.g. ``CMRA Box"), that would conflict with postal standards and should be preempted.

Some commenters who urged that more part-time OBC customers be

treated as CMRA customers for postal purposes stated that the proposed rule places CMRAs and their customers at a competitive disadvantage. Several commenters pointed out that the 16-hour standard per month represents only 2 days (10 percent) of the standard 20-day work month, and that the rule does not require occupancy, only payment for the right of occupancy. The commenters assert that without standards requiring an actual and increased physical presence at the location, it was unlikely that individuals would be able to find the OBC customer at the address, even though their mailing address would imply a physical presence there. Given that, these commenters asserted that there would be little practical difference between these OBC customers and those at CMRAs. Some commenters also pointed out the potential danger that some customers seeking no more than mail service might be willing to contract for private office space with the OBC, even without any intent to occupy the space. Finally, one commenter also stated that the consequences of being considered a CMRA customer (rather than an OBC customer) for postal purposes are relatively light in any case.

There likely is merit to each of these points. The Postal Service recognizes the need to balance all interests here, including economic, consumer, and mailer concerns. Adopting occupancy standards and increasing the 16-hours standard, although likely to yield some consumer protection benefits, would likely impose additional costs on OBCs and their customers. The Postal Service believes it appropriate to err on the side of caution and has determined not to change these standards--with one exception. Section D042.2.8 (b)(2) has been revised to make clear that agreements for the right to private office space at an OBC must be made at an appropriate market rate for the location. This is intended to ensure that customers seeking CMRA-type service from an OBC cannot circumvent the intent of these standards by the inclusion, in their service agreements with the OBC, of a provision granting them the right to occupy office space for a nominal fee.

To minimize implementation costs for OBCs and their CMRA customers to comply with the adopted rules in section 2.8, 2.5 through 2.7, and all other applicable postal standards, the Postal Service has established the following timeline for compliance to the rules by the OBC and its CMRA customers:

1. OBCs with CMRA customers must complete Form 1583-A to register as a CMRA and submit it to their local postal delivery office within 30 days of the effective date of this rule;
2. OBC customers considered CMRA customers must complete Form 1583 and submit it to the OBC within 90 days of the effective date of this rule; and
3. The Postal Service is extending the deadline for compliance by OBC CMRA customers with section D042.2.6e, addressing standards, until November 1, 2002. This allows OBC CMRA customers to advise correspondents of their new address and to deplete existing stationery

in the ordinary course of business. This timeline is similar to that established for CMRA customers after the earlier rulemakings.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference into the Code of Federal Regulations (see 39 CFR part 111.1).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111--[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

2. The Domestic Mail Manual (DMM) is amended by revising module D to read as follows:

Domestic Mail Manual (DMM)

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D Deposit, Collection, and Delivery

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D000 Basic Information

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D040 Delivery of Mail

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D042 Conditions of Delivery

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2.0--DELIVERY TO ADDRESSEE'S AGENT
[Add new 2.8 to read as follows]

2.8 OBC Acting as a CMRA

The procedures for an office business center (OBC) or part of its operation acting as a commercial mail-receiving agency (CMRA) for postal purposes are as follows:

a. An OBC is a business that operates primarily to provide private office facilities and other business support services to individuals or firms (customers). OBCs receive single point delivery. OBC customers that receive mail at the OBC address will be considered CMRA customers for postal purposes under the standards set forth in b. Parties considered CMRA customers under this provision must comply with the standards set forth in 2.5 through 2.7. An OBC must register as a CMRA by completing PS Form 1583-A, Application to Act as a Commercial Mail Receiving Agency, and comply with all other CMRA standards if one or more customers receiving mail through its address is considered a CMRA customer.

b. An OBC customer is considered to be a CMRA customer for postal purposes if its written agreement with the OBC provides for mail service only or mail and other business support services (without regard for occupancy or other services that the OBC might provide and bill separately). Additionally, an OBC customer receiving mail at the OBC address is considered to be a CMRA customer for postal purposes if each of the following is true:

(1) The customer's written agreement with the OBC does not provide for the full-time use of one or more of the

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private offices within the OBC facility; and

(2) The customer's written agreement with the OBC does not provide all of the following:

(A) The use of one or more of the private offices within the facility for at least 16 hours per month at market rate for the location;

(B) Full-time receptionist service and live personal telephone answering service during normal business hours and voice mail service after hours;

(C) A listing in the office directory, if available, in the building in which the OBC is located; and

(D) Use of conference rooms and other business services on demand, such as secretarial services, word processing, administrative services, meeting planning, travel arrangements, and videoconferencing.

c. Notwithstanding any other standards, a customer whose written agreement provides for mail services only or mail and other business support services will not be considered an OBC customer (without regard for occupancy or other services that an OBC may provide and bill for on demand).

d. The Postal Service may request from the OBC copies of written agreements or any other documents or information needed to determine compliance with these standards. Failure to provide requested documents or information might be basis for suspending delivery service to the OBC under the procedures set forth in 2.6f through h.

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Notice of issuance of the transmittal letter will be published in the Federal Register as provided by 39 CFR 111.3.

Stanley F. Mires,
Chief Counsel, Legislative.
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