

2. Revise § 72.14 to read as follows:

**§ 72.14 Fees for disposing remains.**

No fees are prescribed for services in connection with the disposition of remains of United States citizens or nationals. Fees for such services with respect to the remains of foreign nationals are as prescribed in the Schedule of Fees, 22 CFR 22.1.

3. Revise § 72.52 to read as follows:

**§ 72.52 Fee services**

Fees are charged for overseeing the appraisal, sale and final disposition of the estate, disbursing funds, and forwarding securities, etc., as provided in the Schedule of Fees, 22 CFR 22.1.

4. Revise paragraph (a) of § 72.53 to read as follows:

**§ 72.53 No-Fee services**

\* \* \* \* \*

(a) For taking possession of, making an inventory, placing the official seal on the estate (real or personal property), or for breaking or removing such seals (§ 72.28–72.29);

\* \* \* \* \*

**PART 92—NOTARIAL AND RELATED SERVICES**

5. The authority citation for Part 92 continues to read as follows:

**Authority:** 22 U.S.C. 2658, unless otherwise noted.

**§ 92.43 [Amended]**

6. Section 92.43 is amended by removing “Notarial Services and Authentications in the Tariff of Fees, foreign service of the United States of America § 22.1 of this chapter), unless the service is performed under a “no fee” item of the same tariff” and substituting “Documentary services in the Schedule of Fees § 22.1 of this chapter), unless the service is performed under a “no fee” item of the same caption of the Schedule.”

**§§ 92.44 and 92.48 [Removed]**

7. Sections 92.44 and 92.48 are removed.

Dated: January 27, 1998.

**Mary A. Ryan,**

*Assistant Secretary for Consular Affairs.*

[FR Doc. 98–2962 Filed 2–6–98; 8:45 am]

BILLING CODE 4710–06–M

**POSTAL SERVICE**

**39 CFR Parts 262 and 265**

**Records and Information Management Definitions and Release of Information**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends Postal Service regulations relating to the availability of records to the public. This rule is made necessary by amendments to the Freedom of Information Act, made by Public Law 104–231, the “Electronic Freedom of Information Act Amendments of 1996.” The amendments address the availability of electronic records, the creation of a new electronic reading room, and procedural aspects, such as time limits, expedited processing, denial specifications, and reporting requirements.

**EFFECTIVE DATE:** February 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Betty Sheriff, (202) 268–2608.

**SUPPLEMENTARY INFORMATION:** This rule is substantially the same as the interim rule with request for comments published on December 5, 1997. The Freedom of Information Act (5 U.S.C. 552) was amended on October 2, 1996, by Public Law 104–231, the “Electronic Freedom of Information Act Amendments of 1996.” Consistent with the amended law, these regulations:

a. Add a new category of reading room records consisting of any records processed and disclosed in response to a FOIA request that the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records. These and other reading room records created on or after November 1, 1996, also will be made available through the Postal Service’s world wide web home page after November 1, 1997.

b. Define the term “record” to include electronic records; provide that the requester may choose the form or format in which to receive records; and state that the Postal Service will make reasonable efforts to search for records in electronic form or format unless such efforts would significantly interfere with the operation of its computer systems.

c. Extend the period for response from 10 to 20 working days as of October 2, 1997; provide for notification of the requester when that period cannot be met to arrange for an alternative time frame or a modified request; and establish a new procedure for handling requests for expedited processing.

d. Require the custodian to indicate on the released portion of a record the amount of information deleted and to include in a written response an estimate of the volume of any records withheld in full.

e. Change the annual reporting period from a calendar year to the fiscal year that, for most of the Executive branch,

begins on October 1, and provide that those reports will be made available to the Attorney General and on the Postal Service’s world wide web page.

Other changes update organizational titles and the schedule of fees for searching for records by computer.

**Analysis of Comments Received**

Two written comments were received. One commenter objected to the Postal Service’s exclusion from the category of reading room records that will be made available on its world wide web site those records that were not created by, or on behalf of, the Postal Service. The commenter stated that a limitation based on who created the records is unauthorized and contrary to law. It requested that the exclusionary language appearing in paragraphs 265.5 and 265.6(a)(4) be removed. The Postal Service disagrees with the commenter’s analysis of the statutory requirement regarding electronic availability as set out in section 552(a)(2) and declines to adopt the requested change for the following reasons.

The bulk of the material covered by section 552(a)(2)—that is, the materials described in subparagraphs (A), (B) and (C) of that section—consists of records that are created by an agency, not merely obtained by it. Only the newly added category of records subject to multiple FOIA requests, subparagraph (D), has the potential to include records created by another entity and later obtained by the agency. The language of the statute unequivocally limits the electronic availability requirement to records “created” on or after November 1, 1996. This strongly suggests that Congress had in mind records created by the agency, not records obtained by it. If Congress had meant to include in this requirement records generated elsewhere, it could have said “records created or obtained” on or after November 1, 1996. We believe the more reasonable interpretation of the provision—and the one that better comports with the practicalities of agency recordkeeping—is that Congress intended only records created by the agency to be subject to the requirement.

Category (D) records will, of course, be available as conventional reading room records. Also, the Postal Service may exercise its discretion to make them electronically available in the appropriate circumstance.

The other commenter requested the Postal Service add language to section 265.7(g) to allow records custodians in their discretion to waive certification in processing requests for expedited review. The Postal Service sees merit in

this request and is adopting the suggested change.

#### Other Changes from Interim Rule

Sections 265.6(a)(2) and (a)(3) are amended to more accurately identify the Opinions and Manuals available on the Internet.

#### List of Subjects

##### Part 262

Archives and records, Records and information management definitions.

##### Part 265

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

For the reasons set out in the preamble, 39 CFR parts 262 and 265 are amended as set forth below.

#### PART 262—RECORDS AND INFORMATION MANAGEMENT DEFINITIONS

1. The authority citation for part 262 is revised to read as follows:

**Authority:** 5 U.S.C. 552, 552a; 39 U.S.C. 401.

2. Section 262.2(a) is revised to read as follows:

##### § 262.2 Officials.

(a) *Records Custodian.* The postmaster or other head of a facility such as an area vice president, district manager, or head of a postal installation or department who maintains Postal Service records. Vice presidents are the custodians of records maintained at Headquarters. Senior medical personnel are the custodians of restricted medical records maintained within postal facilities.

\* \* \* \* \*

3. Section 262.4 introductory text is revised to read as follows:

##### § 262.4. Records.

Recorded information, regardless of media, format, or physical characteristics, including electronic data, developed or received by the Postal Service in connection with the transaction of its business and retained in its custody; for machine-readable records, a collection of logically related data treated as a unit.

\* \* \* \* \*

#### PART 265—RELEASE OF INFORMATION

4. The authority citation for part 265 continues to read as follows:

**Authority:** 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

5. Section 265.3(a) is revised to read as follows:

##### § 265.3 Responsibility.

(a) *Custodian.* Official records are in the custody of the postmaster or other head of a facility or department at which they are maintained, as defined at § 262.2(a) of this chapter. These custodians are responsible for responding in the first instance to requests from members of the public for Postal Service records.

\* \* \* \* \*

6. Section 265.5 is revised to read as follows:

##### § 265.5 Public reading rooms.

The Library of the Postal Service Headquarters, 475 L'Enfant Plaza SW, Washington, DC 20260-1641, serves as public reading room for the materials which are listed in paragraphs (a)(2), (3), (4) and (5) of § 265.6 as available for public inspection and copying. Such of this material as has been created by the Postal Service on or after November 1, 1996, and has not been published and offered for sale, also will be available in electronic format at the Postal Service's world wide web site at <http://www.usps.gov>.

7. Section 265.6(a) is revised to read as follows:

##### § 265.6 Availability of records.

(a) *Records available to the public on request*—(1) *General.* Postal Service records are available for inspection or copying at the request of any person, in accordance with the provisions of this part, except as otherwise provided by law or regulations, including but not limited to paragraphs (b) through (g) of this section. Certain categories of records of particular interest are available on a continuing basis as provided in paragraphs (a)(2), (3), and (4) of this section and are listed in a public index as provided in paragraphs (a)(4) and (5) of this section. Access to other records may be requested on an individual basis in accordance with the procedures provided in § 265.7. Official records which are maintained on an electronic storage medium will normally be made available, in accordance with this part, as an exact duplicate of the requested original in a form readable by the human eye, such as a computer print-out. On request, records will be provided in a different form or format if they are maintained in the requested form or format or if they can be readily reproduced in the requested form or format.

(2) *Opinions.* All final opinions and orders made in the adjudication of cases by the Judicial Officer and

Administrative Law Judges, all final determinations pursuant to section 404(b) of title 39, United States Code, to close or consolidate a post office, or to disapprove a proposed closing or consolidation, all advisory opinions concerning the private express statutes issued pursuant to 39 CFR 310.6, and all bid protest decisions are on file and available for inspection and copying at the Headquarters Library and, if created on or after November 1, 1996, also at the Postal Service's world wide web site identified at § 265.5.

(3) *Administrative manuals and instructions to staff.* The manuals, instructions, and other publications of the Postal Service that affect members of the public are available through the Headquarters Library and at many post offices and other postal facilities. Those which are available to the public but are not listed for sale may be inspected in the Headquarters Library, at any postal facility which maintains a copy, or, if created on or after November 1, 1996, through the world wide web site identified at § 265.5. Copies of publications which are not listed as for sale or as available free of charge may be obtained by paying a fee in accordance with § 265.9.

(4) *Previously released records.* Records processed and disclosed after March 31, 1997, in response to a Freedom of Information Act request, which the Postal Service determines have become or are likely to become the subject of subsequent requests for substantially the same records, are available for inspection and copying at the Headquarters Library. Any such records created by the Postal Service on or after November 1, 1996, also will be available at the Postal Service's world wide web site identified at § 265.5. Records described in this paragraph that were not created by, or on behalf of, the Postal Service generally will not be available at the world wide web site. Records will be available in the form in which they were originally disclosed, except to the extent that they contain information that is not appropriate for public disclosure and may be withheld pursuant to this section. Any deleted material will be marked and the applicable exemption(s) indicated in accordance with § 265.7(d)(3). A general index of the records described in this paragraph is available for inspection and copying at the Headquarters Library. [Beginning on or before December 31, 1999, the index also will be available at the Postal Service's world wide web site.]

(5) *Public index.* (i) A public index is maintained in the Headquarters Library and at the world wide web site of all

final opinions and orders made by the Postal Service in the adjudication of cases, Postal Service policy statements which may be relied on as precedents in the disposition of cases, administrative staff manuals and instructions that affect the public, and other materials which the Postal Service elects to index and make available to the public on request in the manner set forth in paragraph (a) of this section.

(ii) The index contains references to matters issued after July 4, 1967, and may reference matters issued prior to that date.

(iii) Any person may arrange for the inspection of any matter in the public index in accordance with the procedures of § 265.7.

(iv) Copies of the public index and of matters listed in the public index may be purchased through the Headquarters Library with payment of fees as listed in the index or as provided in § 265.9.

(v) Materials listed in the public index that were created on or after November 1, 1996, will also be available in electronic format at the Postal Service's world wide web site at <http://www.usps.gov>.

(6) *Listings of employees' names.* Upon written request, the Postal Service will, to the extent required by law, provide a listing of postal employees working at a particular postal facility.

\* \* \* \* \*

8.–10. Sections 265.7(b) and (c), (d)(1), (e)(1), (f) (1) and (2), and (g) are revised to read as follows:

**§ 265.7 Procedure for inspection and copying of records.**

\* \* \* \* \*

*(b) Responsibilities of the custodian.*

(1) The custodian of the requested record is the person responsible for determining whether to comply with or to deny the request. A custodian who is not an Officer as defined in § 221.8 of this chapter, however, should not deny a request until he has obtained the advice of Chief Field Counsel. If denial of a request appears necessary, the custodian should seek advice as soon as possible after receipt of the request so as to provide adequate time for legal review. Denial must be made in accordance with paragraph (d) of this section.

(2) The custodian shall make the determination whether to release or deny the record(s) within 20 working days (i.e., exclusive of Saturdays, Sundays, and holidays) of receiving the request, and more rapidly if feasible. The custodian and the requester may, by mutual agreement, preferably in writing, establish a different response period.

(3) If a requested record cannot be located from the information supplied, the requester should be given an opportunity to supply additional information and, if feasible, to confer with the custodian or his/her representative, in an attempt to provide a reasonable description of the records sought. If additional information is furnished, the request will be deemed to have been received by the custodian when sufficient additional information to identify and locate the record with a reasonable amount of effort has been received.

(4) The custodian shall make reasonable efforts to search for the records in electronic form or format, except when such efforts would significantly interfere with the operation of the automated information system.

(5) The 20 working day response period allowed in paragraph (b)(2) of this section may be extended by the custodian, after consultation with Chief Field Counsel or with the General Counsel if the custodian is at Headquarters, for a period not to exceed an additional 10 working days, except as provided in paragraph (b)(7) of this section, when, and to the extent, reasonably necessary to permit the proper processing of a particular request, under one or more of the following unusual circumstances:

(i) The request requires a search for and collection of records from a facility other than that processing the request.

(ii) The request requires the search for, and collection and appropriate examination of, a voluminous amount of separate and distinct records.

(iii) The request requires consultation:

(A) With another agency having a substantial interest in the determination of whether to comply with the request or

(B) Among two or more components of the Postal Service having substantial subject matter interest in the determination of whether to comply with the request.

(6) When the custodian finds that the additional time is required, he shall acknowledge the request in writing within the initial 20-day response period, state the reason for the delay, and indicate the date on which a decision as to disclosure is expected.

(7) If a request cannot be processed within the additional time provided by paragraph (b)(5) of this section, in spite of the exercise of due diligence, the custodian shall notify the requester of the exceptional circumstances preventing timely compliance and of the date by which it is expected that the determination will be made. The custodian also shall provide the

requester an opportunity to limit the scope of the request so that it may be processed within the extended time limit, or an opportunity to arrange with the custodian an alternative time frame for processing the request or a modified request. The custodian shall nonetheless make a determination on the request as promptly as possible.

(8) If a requested record is known to have been destroyed, disposed of, or otherwise not to exist, the requester shall be so notified.

*(c) Compliance with request upon affirmative determination by custodian.*

(1) When a requested record has been identified and is to be disclosed in whole or in part, the custodian shall ensure that the record is made available promptly and shall immediately notify the requester where and when and under what reasonable conditions, if any, including the payment of fees, the record will be available for inspection or copies will be available. Postal Service records will normally be available for inspection and copying during regular business hours at the postal facilities at which they are maintained. The custodian may, however, designate other reasonable locations and times for inspection and copying of some or all of the records within his custody.

(2) Any fees authorized or required to be paid in advance by § 265.9(f)(3) shall be paid by the requester before the record is made available or a copy is furnished unless payment is waived or deferred pursuant to § 265.9(g).

(3) A custodian complying with a request may designate a representative to monitor any inspection or copying.

(d) *Denial of request.* (1) A reply denying a request in whole or in part shall be in writing, signed by the custodian or his designee, and shall include:

(i) A statement of the reason for, or justification of, the denial (e.g., records personal in nature), including, if applicable, a reference to the provision or provisions of § 265.6 authorizing the withholding of the record and a brief explanation of how each provision applies to the records requested.

(ii) If entire records or pages are withheld, a reasonable estimate of the number of records or pages, unless providing such estimate would harm an interest protected by the exemption relied upon.

(iii) The name and title or position of the person responsible for the denial of the request (see paragraph (d)(2) of this section).

(iv) A statement of the right to appeal and of the appeal procedure within the

Postal Service (described in paragraph (e) of this section).

\* \* \* \* \*

(e) *Appeal procedure.* (1) If a request to inspect or to copy a record, or a request for expedited processing of the request, is denied, in whole or in part, if no determination is made within the period prescribed by this section, or if a request for waiver of fees is not granted, the requester may appeal to the General Counsel, U.S. Postal Service, Washington, DC 20260-1100.

\* \* \* \* \*

(f) *Action on appeals.* (1) The decision of the General Counsel or his designee constitutes the final decision of the Postal Service on the right of the requester to inspect or copy a record, or to expedited processing of the request, as appropriate. The General Counsel will give prompt consideration to an appeal for expedited processing of a request. All other decisions normally will be made within 20 working days from the time of the receipt by the General Counsel. The 20-day response period may be extended by the General Counsel or his designee for a period not to exceed an additional 10 working days when reasonably necessary to permit the proper consideration of an appeal, under one or more of the unusual circumstances set forth in paragraph (b)(5) of this section. The aggregate number of additional working days utilized pursuant to this paragraph (f)(1) and paragraph (b) of this section, however, may not exceed 10.

(2) The decision on the appeal shall be in writing. If the decision sustains a denial of a record, in whole or in part, or if it denies expedited processing, it shall state the justification therefor and shall inform the requester of his right to judicial review. In the case of records withheld, the decision also shall specify any exemption or exemptions relied on and the manner in which they apply to the record, or portion thereof, withheld.

\* \* \* \* \*

(g) *Expedited processing.* (1) *Criteria.* A request for expedited processing of a request for records shall be granted when the requester demonstrates compelling need. For purposes of this paragraph, "compelling need" exists if:

(i) Failure of the requester to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual or;

(ii) In the case of a request made by a person primarily engaged in disseminating information, there is an urgency to inform the public concerning actual or alleged federal government activity.

(2) *Request.* A request for expedited processing shall be directed in writing to the records custodian. The requester must provide information in sufficient detail to demonstrate compelling need for the records and certify this statement to be true and correct to the best of the requester's knowledge and belief. The custodian may waive the formality of certification when deemed appropriate.

(3) *Determination.* The records custodian shall make a determination of whether to provide expedited processing and notify the requester within ten days after the date of the request for expedited processing. If the request is granted, the records custodian shall process the request for records as soon as practicable. If the request for expedited processing is denied, the written response will include the procedures at paragraph (d) of this section for appealing the denial.

Section 265.10 is revised to read as follows:

#### **§ 265.10 Annual report.**

A report concerning the administration of the Freedom of Information Act and this part will be submitted to the Attorney General of the United States on or before February 1 of each year, with the first such report, for fiscal year 1998, due on or before February 1, 1999. Data for the report will be collected on the basis of fiscal year that begins on October 1 of each year. The Attorney General, in consultation with the Director, Office of Management and Budget, will prescribe the form and content of the report. The report will be made available to the public at the headquarters Library and on the Postal Service's world wide web site at <http://www.usps.gov>.

12. Appendix A to Part 265—Information Services Price List is revised to read as follows:

#### **Appendix A to Part 265—Information Services Price List**

When information is requested that must be retrieved by computer, the requester is charged for the resources required to furnish the information. Estimates are provided to the requester in advance and are based on the following price list.

Service description	Price	Unit
Servers		
A. OS390 Servers:		
Batch or on-line	\$1,350.00	Hour.
Services .....	25.00	Volume.
Media Charge	.10	Page.
(Tape Produced).		

Service description	Price	Unit
Print.		
B. Production Servers:		
(Running UNIX or NT OS).	155.00	Hour.
On-line Services	.13	Page.
Print.		
C. Personal Computers:		
On-line search ...	6.25	15. Minutes.
Print. ....	.13	Page.
D. Personnel		
Charges:		
Software Systems.	81.00	Hour.
Services .....	70.00	Hour.
Programming	48.00	Hour.
Services.		
Manual Unit		
Services.		

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 98-2907 Filed 2-6-98; 8:45 am]

BILLING CODE 7710-12-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Parts 51 and 52**

[FRL-5960-3]

#### **Technical Amendments to Control of Air Pollution; Removal and Modification of Obsolete, Superfluous or Burdensome Rules; Correction of Effective Date Under Congressional Review Act (CRA)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule correction; correction of effective date under CRA.

**SUMMARY:** On June 24, 1996 (61 FR 32339), the Environmental Protection Agency published in the **Federal Register** a final rule correcting Clean Air Act final regulations which were published on April 11, 1996, which established an effective date of June 24, 1996. This document corrects the effective date of the rule to February 9, 1998 to be consistent with sections 801 and 808 of the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 801 and 808.

**EFFECTIVE DATE:** This rule is effective on February 9, 1998.

**FOR FURTHER INFORMATION CONTACT:** Tom Eagles, OAR, at (202) 260-5585.