



POSTAL SERVICE

39 CFR Part 241

Relocating Retail Services; Adding New Retail Service Facilities

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: This final rule revises the Postal Service's current procedures concerning the expansion, relocation, and construction of Post Offices™ to clarify these procedures, and to require the Postal Service to provide more information to communities and elected officials about certain types of projects earlier in the planning phase. Under the final rule, the Postal Service will notify communities and officials, and solicit and consider their input, regarding proposals to relocate retail services or add a new retail service facility. The final rule also will require the Postal Service to provide information about the anticipated new location for relocated services or for a new retail service facility when the Postal Service first gives notice of the proposal.

DATES: *Effective date:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Richard Hancock, Real Estate Specialist, U.S. Postal Service®, at *Richard.A.Hancock2@usps.gov* or 919-420-5284.

SUPPLEMENTARY INFORMATION: On October 27, 2014, the Postal Service published a proposed rule (79 FR 63880) to revise the Postal Service's procedures concerning the expansion, relocation, and construction of Post Offices to clarify those procedures, and to require the Postal Service to provide more information to communities and elected officials about certain types of projects earlier in the planning phase. The proposed rule would require the Postal Service to notify communities and officials, and solicit and consider their input, regarding proposals to relocate retail services or add a new retail service facility. As a significant change from the current rule, the proposed rule would require the Postal Service to provide information about the anticipated new location for relocated services or for a new retail service facility when the Postal Service first gives notice of the proposal. The Postal Service established a 30-day comment period and invited comments on the proposed rule. The Postal Service received five responses.

Comments and Response

Below is a summary of the comments, in order of the specific sections of the proposed rule to which they relate.

General Comments; 241.4(a)

One respondent asserted that there is no substantive reason for changing the current rule and that the Postal Service should retain the current rule. The respondent suggested that defining “customer service facility” is unnecessary.

We disagree with the comment. The Postal Service Office of Inspector General (OIG) specifically recommended that the Postal Service revise its regulations to enhance transparency and public input. Based on past experience, we agreed with the OIG’s recommendation. The current rule does not define “customer service facility” and as the Postal Service evolves to adapt to a fast changing marketplace, providing definitions in the new rule will clarify when the new rule applies.

Another respondent commented that the new rule should define “relocation” and the definition should state a maximum permitted distance for relocating retail services.

We expect readers of the new rule will understand “relocation” to have its ordinary dictionary meaning. We also disagree that the new rule should include an arbitrary distance limitation because such a limitation could prevent appropriately accounting for important factors, such as the setting (urban, suburban, or rural), site conditions (public transit availability, location on a one-way street, etc.) and the proximity of other Postal Service retail locations.

Temporary, Emergency, and Provisional Relocations; 241.4(a)(2)

One respondent suggested that some causes of relocation added to the “emergency” category in the proposed rule are inconsistent with a definition of “emergency” as a sudden event requiring immediate action. The respondent also expressed concern that expanding the “emergency” category increases the universe of relocations that can occur without community input because the new rule, as proposed, provided for the Postal Service to determine when it is prudent to obtain community input on the long-term location after an emergency relocation. The respondent questioned adding examples of relocations arising from safety concerns without limiting those concerns to some specified level of seriousness, and the respondent urged retaining a 180-day limit for both temporary and emergency relocations.

We appreciate the concerns raised in these comments. The current rule lists “lease termination” as an example of an event that may require an emergency relocation, but the current rule is silent on lease expirations. Nor does the current rule recognize that some lessors reserve a right during the lease term to require the Postal Service to move to a different location, e.g., a substitute space in the lessor’s project. However, the Postal Service believes it is prudent to provide in the final rule for soliciting and considering community input regarding relocations arising from such events. While these events may not be completely unexpected like other events listed as “emergencies”, their timing is not always predictable. The Postal Service may not know when a lessor will exercise its right to terminate a lease or its right to require the Postal Service to move to different premises. Similarly, a lease may expire unexpectedly when the Postal Service

had believed it would be renewed. Accordingly, the final rule retains the “temporary” and “emergency” categories, but adds a third category, “provisional relocations,” to include relocations made necessary by lease terminations, expirations and lessor-required moves to substitute locations, when the Postal Service has not undertaken the community input process prior to the relocation. However, the final rule requires the Postal Service to undertake the community input process within 180 days following a provisional relocation.

We disagree with the portion of the comment concerning relocations arising from safety concerns. Because a relocation is a significant project, the Postal Service would not undertake a relocation without good cause. We place great importance on the security of the mail and the safety of our customers and personnel. We see no reason to identify arbitrarily a threshold level of risk to persons or the mail.

With regard to applying a 180-day limitation on the duration of a relocation, such a limitation is appropriate for temporary relocations as described in the rule because temporary relocations can be expected to require less than 180 days to fulfill their purposes. In contrast, a 180-day limitation would be arbitrary and imprudent for emergency relocations because the required duration of emergency relocations is not predictable, and the actual required duration may depend on the severity of the event, such as an earthquake. With regard to provisional relocations, the final rule adds a requirement to undertake the community input process within 180 days, which allows time for the Postal Service to tentatively identify potential permanent relocation sites, but assures

that provisional relocations will not become permanent without undertaking the community input process.

Engaging Local Officials; 241.4(c)(1)

One respondent urged the Postal Service to revise the new rule to require personal visits to local officials to discuss proposed projects.

The new rule requires the Postal Service to provide local elected officials with a written outline of the Postal Service's proposed project and to offer to discuss the project with the officials. In the Postal Service's experience, not all local officials welcome a personal visit, and a personal visit is not always the best use of scarce resources. Therefore, the new rule permits the Postal Service the flexibility to personally visit officials or to discuss the same information through other forms of communication.

Notifying the Community; 241.4(c)(2)

Another comment expressed concern that without a requirement for the Postal Service to notify lessors when the Postal Service proposes to relocate out of a leased facility, the new rule could deprive some lessors of an opportunity for comment on the proposed relocation.

Under the proposed rule, lessors who reside in the community would receive the same notice as the rest of the community, making a separate notice unnecessary. However, the comment raises concern for lessors that are located outside the community and lease a facility to the Postal Service in the

community. Those lessors may be unaware of a notice and, therefore, miss an opportunity to comment. The Postal Service values its business relations as well as its community relations, so the final rule incorporates a requirement to notify lessors, except when the lessor itself has terminated or declined to renew a Postal Service lease and therefore is presumed to anticipate a relocation.

One comment pertained to notifying customers in “exceptional circumstances,” e.g., a sparsely populated area without a convenient forum for a public meeting. The proposed rule would have included an option for posting notice in the affected retail service facility in lieu of the current rule’s requirement to distribute notification cards to customers. The comment expressed concern that some customers could miss the notice.

While the proposed rule incorporated flexibility for notifications in these exceptional circumstances, we agree that in sparsely populated areas some customers may visit the affected retail service facility only infrequently and miss the notice. Therefore, the final rule requires the Postal Service to mail notice to customers in such exceptional circumstances.

Presentations to Community; 241.4(c)(3)

One respondent agreed that the public will benefit from the new rule’s requirement for the Postal Service to include the proposed relocation site in the information provided to a community about a proposed relocation, but then asserted that the new rule is a step backwards for community input because it requires the Postal Service to advance the planning process to site selection

before presenting the relocation proposal to the community. This respondent also objected to permitting the Postal Service to identify a relocation “area” and asserted that the new rule will not change current Postal Service practice.

We disagree with these comments. Some communities and elected officials, as well as the Office of Inspector General, strongly suggested that communities could not effectively provide input on a proposed relocation decision without an understanding of the proposed new location for the retail services. To address that concern, the new rule requires the Postal Service to identify and discuss the proposed new site(s) or area, or both, for the relocated retail services as part of the discussion of the relocation proposal, which is a significant change from current practice. Necessarily then, under the new rule the Postal Service must tentatively identify a relocation site or area, or both, before presenting the proposal to the community. However, the requirement to identify a potential site and then obtain community input before committing to that site can create a conundrum for the Postal Service in some markets. For example, in some markets, identifying only one proposed site during the community input process could undercut the Postal Service’s bargaining position with that site’s landlord, which could force the Postal Service to agree to an unfairly high rent. As another example, in markets where landlords are rapidly leasing the available spaces that are suitable for a retail postal facility, a tentatively identified site may no longer be available for lease at the conclusion of the community input process. Accordingly, for proposed relocations and for additions of retail service facilities, the new rule permits the Postal Service to identify more than one site and/or area, which

allows the Postal Service to mitigate those identification risks, while also giving the community an opportunity to voice its preference among the proposed sites or areas. The Postal Service then would consider that community input before selecting a specific location.

Considering Comments and Appeals; 241.4(c)(4)

One comment advocated extending the public comment period, noting that 15 days is not enough time for a public comment period.

We agree that the current rule's 15-day comment period following the public meeting is too brief. Therefore, the new rule provides a 30-day period following the public meeting for the community and their elected officials to appeal the Postal Service's tentative decision proposing to relocate retail services or add a retail service facility and to comment on the proposal.

One respondent objected that the new rule calls for comments on whether the Postal Service proposal is the optimal solution for the "identified need," asserting that phrase likely means the Postal Service's needs, not the "global needs" of the community or the need for service furthering the "broader public or common good."

As set forth by Congress in 39 U.S.C. 101, 403 and 404(b), the Postal Service's mission is to provide, on a self-sufficient basis without tax support, universal postal services efficiently and economically. The new rule will help

focus comments, and the Postal Service's consideration of the comments, on the matters that are relevant to the Postal Service's mission.

Two comments sought a more elaborate appeal process, with one suggesting the Postal Service create public project files to serve as the basis for appeals and a second respondent arguing that the new rule should require a review of the public's comments and appeals by someone who had no prior involvement in the project and who is insulated from career repercussions.

The purpose of the new rule is to incorporate consideration of community input into Postal Service decisions to relocate retail services or add a retail service facility, not to create an adversarial process pitting community input against Postal Service objectives. The final rule requires the Postal Service to present project information to the community, its local elected officials, and when applicable, a lessor, and solicit and consider their input. Such input presumably will reflect the concerns important to those parties, but it cannot be expected to reflect the operational and business factors the Postal Service must also take into account. Ultimately, it is the Postal Service that is responsible for fulfilling its statutory obligations to provide efficient and economical universal postal services. The final rule provides for the Postal Service to make an informed decision by requiring consideration of community input.

Another comment argued that the new rule should give priority to remaining at the same site or at least in the downtown area.

An arbitrary requirement to give priority to remaining at the same site could thwart a project that would more efficiently and economically provide services to the community. The new rule, like the current rule, focuses on retail services in the community, not at a particular site, in furtherance of the Postal Service's statutory obligation to provide universal service efficiently and economically.

Effect on Other Obligations and Policies; 241.4(d)

One respondent urged the Postal Service to revise the new rule to mirror the procedures under 39 U.S.C. 404(d) that apply to a Postal Service decision to close or consolidate a Post Office. Specifically, the respondent argued for adopting those same requirements for notifying communities, for separate public meetings, and for public comment periods. Another respondent suggested that the new definition, "retail service facility," does not comport with 39 U.S.C. 404(d). Another comment suggested the "retail service facility" definition should expressly exclude consolidations of postal facilities.

This final rule pertains only to relocations of retail services and additions of retail service facilities. It is separate from the rules that apply to discontinuances of Post Offices, which can have a significantly greater effect on a community. Accordingly, this final rule, including its definitions, does not adopt the requirements for discontinuances under 39 U.S.C. 404(d).

The new rule requires posting notice in the affected postal facility and issuing a news release outlining the proposal to one or more news media serving

the community. In the case of a relocation, posting notice in the affected postal facility should be sufficient in most instances to alert the customers who visit the postal facility, and they are the customers who likely would be most affected by the relocation. In contrast, customers who use the USPS® website may be unaffected by a relocation because the website offers all the retail postal services they would purchase at a physical retail location.

The new rule permits the Postal Service to present the proposal either as part of the agenda of a scheduled community meeting, or at a separate meeting scheduled by the Postal Service. Such flexibility is appropriate to allow the Postal Service to accommodate local officials' preference. Although in our experience presentations at regular community meetings often are well attended, to further ensure community members are aware of the presentation and have an opportunity for input, the new rule bolsters notice and comment period requirements. Where the current rule requires 7 days' advance notice of the meeting, the new rule increases the requirement to 15 days' advance notice, to be published in local news media and posted in the affected facility. Where the current rule requires a 15-day public comment period following the public meeting, the new rule requires a 30-day public comments and appeals period.

Three respondents contended that the new rule should expressly adopt a position that the National Historic Preservation Act requires the Postal Service to engage in the Section 106 consultation process at the time the Postal Service considers relocation.

The Postal Service highly values its historic properties and follows the requirements of Sections 106, 110, and 111 of the National Historic Preservation Act and its implementing regulations. As the new rule states, those requirements are independent of the requirements set forth in the rule for community input regarding relocations and adding retail service facilities. Because the National Historic Preservation Act and its implementing regulations sufficiently express their requirements, there is no need to restate those requirements in the final rule.

Summary

To continue operating on a self-funding basis without tax dollars and to fulfill its statutory obligations, the Postal Service must make efficient and economical use of its postal facilities. As a result, the Postal Service will have an ongoing need to relocate retail services and to add retail service facilities to account for factors such as population shifts and growth, and a dynamic marketplace with changing customer needs and evolving technologies and retail servicing options. Accordingly, the Postal Service is publishing this final rule to clarify the rule's application and procedures for relocating retail services and adding retail service facilities. At the same time, this final rule also responds to concerns that communities and their elected officials should have information about the proposed new location for relocated retail postal services in order to comment effectively on a proposal to relocate those services. This final rule provides for additional transparency, clarity, and opportunity for soliciting and

considering public input as the Postal Service pursues its mission to efficiently and economically provide universal postal services to the nation.

List of Subjects in 39 CFR Part 241:

Organization and functions (Government agencies), Retail service facilities.

Accordingly, the Postal Service amends 39 CFR part 241 as set forth below.

PART 241 – ESTABLISHMENT CLASSIFICATION, AND DISCONTINUANCE

1. The authority citation for Part 241 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 410, 1001.

2. Revise § 241.4 to read as follows:

§ 241.4 Relocating retail services; adding new retail service facilities.

(a) *Application.* (1) Except as otherwise provided, this section applies when the Postal Service makes a tentative decision to relocate all retail services from a retail service facility to a separate existing physical building, or to add a new retail service facility for a community. As used in this section, “retail services” means the single-piece mail services offered to individual members of the public on a walk-in basis at a retail service facility, and a “retail service facility” is a physical building where Postal Service employees provide such retail services.

(2) The rules of this paragraph (a)(2) apply to temporary additions of retail service facilities, temporary or emergency relocations of retail services, and to provisional relocations of retail services.

(i) The Postal Service may implement temporary additions or relocations without undertaking the process in paragraph (c) of this section when necessary to support Postal Service business for holidays, special events, or overflow business. Temporary additions and relocations normally will be limited to 180 days in duration. Any additional incremental time periods of up to 180 days each must be approved by the vice president, Facilities or his designee.

(ii) The Postal Service may implement emergency relocations without first undertaking the process in paragraph (c) of this section when the Postal Service determines relocation is required to protect Postal Service business due to events such as earthquakes, floods, fire, potential or actual OSHA violations, safety factors, environmental causes, other business disrupting events, or as necessary to protect employees, customers, or the security of the mail. Following an emergency relocation, as soon as the Postal Service determines it is feasible to identify the long-term location for the retail services, the Postal Service will make a tentative decision to remain in the emergency relocation site on a long-term basis, to return to the original retail service facility (if feasible), or to relocate to another site. Unless the decision is to return to the original retail service facility, the Postal Service then will follow the process in paragraph (c) of this section with respect to collecting and considering community input on a proposal to implement that decision.

(iii) The Postal Service may implement provisional relocations in connection with lease terminations or expirations, or in connection with a lessor exercising a right to require the Postal Service to move to alternate premises, when the Postal Service has not already undertaken the process in paragraph (c) of this section for such relocations. Not later than 180 days following a provisional relocation, the Postal Service will make a tentative decision to remain in the provisional relocation site on a long-term basis or to relocate to another site. After that decision, the Postal Service will follow the process in paragraph (c) of this section with respect to collecting and considering community input on a proposal to implement that decision.

(3) This section applies to tentative decisions described in paragraphs (a)(1) and (a)(2) made on or after [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The rules under § 241.4 in effect prior to that date shall apply to projects described in paragraph (a) of this section undertaken prior to that date.

(b) *Purpose.* The purpose of this section is to provide opportunities for community members and their elected local officials to appeal Postal Service tentative decisions described in paragraphs (a)(1) and (a)(2) of this section and to give input on proposals for implementing those decisions (each a “proposal”), and to require the Postal Service to consider any appeals and input in arriving at final decisions to proceed with, modify, or cancel proposals.

(c) *Collecting and considering community input.* When the Postal Service makes a tentative decision described in paragraphs (a)(1) and (a)(2) of this section, a Postal Service representative will take the following steps:

(1) *Identify the community and engage local elected officials.* The Postal Service representative will identify the community the Postal Service anticipates would be affected by implementing the proposal, taking into account such factors as the Postal Service determines are appropriate for the proposal. The Postal Service representative then will deliver to one or more local elected public officials a written outline of the proposal and offer to discuss the proposal with them. The Postal Service representative may elect to conduct that discussion either in person or using any other appropriate communication tool, including electronic communications. If the officials accept the offer, then the Postal Service representative will identify the need and outline the proposal that is under consideration to meet it, explain the process by which the Postal Service will solicit and consider input from the affected community, and solicit input from the local officials regarding the proposal.

(2) *Notify the community and arrange for public presentation.* The Postal Service will send an initial news release outlining the proposal to one or more news media serving the community and, if the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news release in the public lobby of that retail service facility. If the proposal concerns relocating retail services from a leased facility, then, using the most current notice address information in the Postal Service's file for

the site, the Postal Service will deliver to the lessor a copy of the information given to local officials, provided, however, that no such notice will be required when the lessor has terminated the Postal Service's lease or has declined to renew the Postal Service lease on terms acceptable to the Postal Service.

Additionally, the Postal Service representative will ask the local officials to place a Postal Service presentation of the proposal on the regular agenda of the next scheduled public meeting, or will schedule a separate Postal Service public meeting concerning the proposal. At least 15 days prior to the meeting, the Postal Service will advertise the date, time, and location of the public meeting in a local news medium and, if the community has an existing retail service facility, then the Postal Service also will post in the public lobby of that retail service facility a notice of the date, time, and location of the public meeting.

(3) *Present the proposal to the community.* At the public meeting, the Postal Service will identify the need, e.g., to replace an expiring lease or to serve a new population center; identify the tentative decision, e.g., to relocate retail services or add a retail service facility; outline the proposal to meet the need; invite questions; solicit written input on the proposal; and provide an address to which the community and local officials may send written appeals of the tentative decision and comments on the proposal for a period of 30 days following the public meeting. Under exceptional circumstances that would prevent a Postal Service representative from attending or conducting a public meeting to present the proposal within a reasonable time, the Postal Service, in lieu of a public meeting, will mail written notification of the tentative decision and the proposal to

customers within the community and post a notice of the proposal in the retail service facility that would be affected by the proposal, seeking their written input on the proposal and providing an address to which the community and local officials may send written appeals of the tentative decision and comments on the proposal during the 30 days following that notification. An example of exceptional circumstances would be a proposal that would be implemented in a sparsely populated area remote from the seat of local government or any forum where the public meeting reasonably could be held.

(i)(A) If the proposal concerns relocation, then the Postal Service will:

(1) Discuss the reasons for relocating;

(2) Identify the site or area, or both, to which the Postal Service anticipates relocating the retail services; and

(3) Describe the anticipated size of the retail service facility for the relocated retail services, and the anticipated services to be offered at that site or in that area.

(B) The Postal Service may identify more than one potential relocation site and/or area, for example, when the Postal Service has not selected among competing sites.

(ii)(A) If the proposal concerns adding a new retail service facility for a community, then the Postal Service will:

(1) Discuss the reasons for the addition;

(2) Identify the site or area, or both, to which the Postal Service anticipates adding the retail service facility;

(3) Describe the anticipated size of the added retail service facility, and the anticipated services to be offered; and

(4) Outline any anticipated construction (e.g., of a stand-alone building or interior improvements to an existing building (or portion thereof) that will be leased by the Postal Service).

(B) The Postal Service may identify more than one potential site and/or area, for example, when the Postal Service has not selected yet among competing sites.

(4) *Consider comments and appeals.* After the 30-day comment and appeal period, the Postal Service will consider the comments and appeals received that identify reasons why the Postal Service's tentative decision and proposal (e.g., to relocate to the selected site, or to add a new retail service facility) is, or is not, the optimal solution for the identified need. Following that consideration, the Postal Service will make a final decision to proceed with, modify, or cancel the proposal. The Postal Service then will inform local officials in writing of its final decision and send an initial news release announcing the final decision to local news media. If the community has a retail service facility, then the Postal Service also will post a copy of the information given to local officials or the news release in the public lobby of that retail service facility. The Postal Service then will implement the final decision.

(5) *Identify any new site or area.* After the public meeting under paragraph (c)(3) of this section, if the Postal Service decides to use a site or area that it did not identify at the public meeting, and this section applies with respect to that new site or area, then the Postal Service will undertake the steps in paragraphs (c)(2) through (4) of this section with regard to the new site or area.

(d) *Effect on other obligations and policies.* (1) Nothing in this section shall add to, reduce, or otherwise modify the Postal Service's legal obligations or policies for compliance with:

(i) Section 106 of the National Historic Preservation Act, 16 U.S.C. 470, Executive Order 12072, and Executive Order 13006;

(ii) 39 U.S.C. 404(d) and 39 CFR 241.3; or

(iii) 39 U.S.C. 409(f);

(2) These are independent policies or obligations of the Postal Service that are not dependent upon a relocation or addition of a retail service facility.

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