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POSTAL SERVICE

39 CFR Part 233

Inspection Service Authority; Civil Monetary Penalty Inflation Adjustment

AGENCY: Postal Service.

ACTION: Interim final rule.

SUMMARY: This rule updates postal regulations to implement inflation adjustments to civil monetary penalties that may be imposed under consumer protection and mailability provisions enforced by the Postal Service pursuant to the Deceptive Mail Prevention and Enforcement Act and the Postal Accountability and Enhancement Act. These adjustments are required under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. This notice also includes the statutory civil monetary penalties subject to the 2015 Act.

DATES: *Effective date:* August 1, 2016.

FOR FURTHER INFORMATION CONTACT: Steven Sultan, (202) 268-7385.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), Pub. L. 114-74, 129 Stat. 584, amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Pub. L. 101-410, 104 Stat. 890 (28 U.S.C. 2461 note), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Section 3 of the 1990 Act specifically includes the Postal Service in the definition of “agency” subject to its provisions.

The 2015 Act requires the Postal Service to make two types of adjustments to civil penalties that meet the definition of “civil monetary penalty” under the 1990 Act. The Office of Management and Budget has furnished detailed instructions regarding these adjustments in memorandum M-16-06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act*

Improvements Act of 2016 (February 24, 2016), www.whitehouse.gov/omb/memoranda/2016/m-16-06.

First, the Postal Service must make an initial “catch-up” adjustment to each of its qualifying civil monetary penalties through an interim final rule by July 1, 2016. The catch-up adjustment is based on the Consumer Price Index (CPI-U) and is calculated for each penalty. The amount of the adjustment is calculated by multiplying the current published penalty amount by an adjustment factor provided by the Office of Management and Budget (OMB). The adjustment factor varies depending on the year a penalty was last adjusted. The new penalty amount must be rounded to the nearest dollar.

Second, the Postal Service must make an annual adjustment for inflation and publish the adjustment in the Federal Register by January 15 of each year, beginning in 2017. Each penalty will be adjusted as instructed by OMB based on CPI-U from the most recent October.

The 2015 Act allows the interim final rule and annual inflation adjustments to be published without prior public notice or opportunity for public comment.

Adjustments to Postal Service Civil Monetary Penalties

Civil monetary penalties may be assessed for postal offenses under sections 106 and 108 of the Deceptive Mail Prevention and Enforcement Act, Pub. L. 106-168, 113 Stat. 1811, 1814 (see, 39 U.S.C. 3012(a), (c)(1), (d), and 3017 (g)(2), (h)(1)(A)); and section 1008 of the Postal Accountability and Enhancement Act, Pub. L. 109-435, 120 Stat. 3259-3261 (see, 39 U.S.C. 3018 (c)(1)(A)). The statutory civil monetary penalties subject to the 2015 Act and the amount of each penalty after the “catch-up” adjustment are as follows:

39 U.S.C. 3012(a) – False representations and lottery orders.

Under 39 U.S.C. 3005(a)(1)-(3), the Postal Service may issue administrative orders prohibiting persons from using the mail to obtain money through false representations or lotteries. Persons who evade, attempt to evade, or fail to comply with an order to stop such prohibited practices may be liable to the United States for a civil penalty under 39 U.S.C.

3012(a). This section currently imposes a \$50,000 penalty for each mailing less than 50,000 pieces, \$100,000 for each mailing 50,000 to 100,000 pieces, and \$10,000 for each piece above 100,000 up to a penalty of \$2,000,000. These penalties were last adjusted in 2000. Based on the guidance in OMB memorandum M-16-06, an adjustment multiplier of 1.36689 will be used. The new penalties will be as follows: \$68,345 for each mailing less than 50,000 pieces, \$136,689 for each mailing of 50,000 to 100,000 pieces, and \$13,669 for each piece above 100,000 not to exceed \$2,733,780.

39 U.S.C. 3012(c)(1) – False representation and lottery penalties in lieu of or as part of an order.

In lieu of or as part of an order issued under 39 U.S.C. 3005(a)(1)-(3), the Postal Service may assess a civil penalty. Currently, the amount of this penalty, set in 39 U.S.C. 3012(c)(1), is \$25,000 for each mailing that is less than 50,000 pieces, \$50,000 for each mailing of 50,000 to 100,000 pieces, and an additional \$5,000 for every additional 10,000 pieces above 100,000 not to exceed \$1,000,000. These penalties were last adjusted in 2000. Based on OMB guidance, an adjustment multiplier of 1.36689 will be used. The new penalties will be \$34,172 for each mailing that is less than 50,000 pieces, \$68,345 for each mailing of 50,000 to 100,000 pieces, and an additional \$6,834 for every additional 10,000 pieces above 100,000 not to exceed \$1,366,890.

39 U.S.C. 3012(d) – Misleading references to the United States Government; Sweepstakes and deceptive mailings.

Persons sending certain deceptive mail matter described in 39 U.S.C. 3001((h)-(k)), including:

- Solicitations making false claims of Federal Government connection or approval;
- Certain solicitations for the purchase of a product or service that may be obtained without cost from the Federal Government;

- Solicitations containing improperly prepared “facsimile checks”; and
- Certain solicitations for “skill contests” and “sweepstakes” sent to individuals who, in accordance with 39 U.S.C. 3017(d), have requested that such materials not be mailed to them);

may be liable to the United States for a civil penalty under 39 U.S.C. 3012(d). Currently, this penalty is not to exceed \$10,000 for each mailing. The penalty was last adjusted in 2000.

Based on OMB guidance, an adjustment multiplier of 1.36689 will be used. The new penalty will be \$13,669.

39 U.S.C. 3017(g)(2) – Commercial use of lists of persons electing not to receive skill contest or sweepstakes mailings.

Under 39 U.S.C. 3017(g)(2), the Postal Service may impose a civil penalty against a person who provides information for commercial use about individuals who, in accordance with 39 U.S.C. 3017(d), have elected not to receive certain sweepstakes and contest information. Currently, this civil penalty may not exceed \$2,000,000 per violation. The penalty was last adjusted in 2000. Based on OMB guidance, an adjustment multiplier of 1.36689 will be used. The new penalty may not exceed \$2,733,780 per violation.

39 U.S.C. 3017(h)(1)(A) – Reckless mailing of skill contest or sweepstakes matter.

Currently, under 39 U.S.C. 3017(h)(1)(A), any promoter who recklessly mails nonmailable skill contest or sweepstakes matter may be liable to the United States in the amount of \$10,000 per violation for each mailing to an individual. The penalty was last adjusted in 2000. Based on OMB guidance, an adjustment multiplier of 1.36689 will be used. The new penalty is \$13,669 per violation.

39 U.S.C. 3018(c)(1)(A) – Hazardous material.

Under 39 U.S.C. 3018(c)(1)(A), the Postal Service may impose a civil penalty payable into the Treasury of the United States on a person who knowingly mails nonmailable hazardous

materials or fails to follow postal laws on mailing hazardous materials. Currently, this civil penalty is at least \$250, but not more than \$100,000 for each violation. The penalty amounts were last adjusted in 2006. Based on OMB guidance, an adjustment multiplier of 1.17858 will be used. The new penalty is at least \$295, but not more than \$117,858 for each violation.

List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Banks, Banking, Credit, Crime, Infants and children, Law enforcement, Penalties, Privacy, Seizures and forfeitures.

For the reasons set out in this document, the Postal Service amends 39 CFR part 233 as follows:

PART 233—INSPECTION SERVICE AUTHORITY

1. The authority citation for 39 CFR part 233 is revised to read as follows:

Authority: 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005, 3012, 3017, 3018; 12 U.S.C. 3401–3422; 18 U.S.C. 981, 983, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Pub. L. 101-410, 104 Stat. 890; Pub.L. 104–208, 110 Stat. 3009-378; Pub. L. 106-168, 113 Stat. 1806; Pub. L. 114-74, 129 Stat. 584.

2. Revise § 233.12 to read as follows:

§ 233.12 Civil penalties.

(a) *False representations and lottery orders.* Under 39 U.S.C. 3005(a)(1)-(3), the Postal Service may issue administrative orders prohibiting persons from using the mail to obtain money through false representations or lotteries. Persons who evade, attempt to evade, or fail to comply with an order to stop such prohibited practices may be liable to the United States for a civil penalty under 39 U.S.C. 3012(a). As adjusted under Pub. L. 114-74, the penalties are as follows: \$68,345 for each mailing less than 50,000 pieces, \$136,689 for each mailing of 50,000 to \$100,000 pieces, and \$13,669 for each piece above 100,000 not to exceed \$2,733,780.

(b) *False representation and lottery penalties in lieu of or as part of an order.* In lieu of or as part of an order issued under 39 U.S.C. 3005(a)(1)-(3), the Postal Service may assess a civil penalty payable under 39 U.S.C. 3012(c)(1). As adjusted under Pub. L. 114-74, the penalties are as follows: \$34,172 for each mailing that is less than 50,000 pieces, \$68,345 for each mailing of 50,000 to 100,000 pieces, and an additional \$6,834 for every additional 10,000 pieces above 100,000 not to exceed \$1,366,890.

(c) *Misleading references to the United States Government; Sweepstakes and deceptive mailings.* Persons sending certain deceptive mail matter described in 39 U.S.C. 3001(h)-(k), including:

(1) Solicitations making false claims of Federal Government connection or approval;

(2) Certain solicitations for the purchase of a product or service that may be obtained without cost from the Federal Government;

(3) Solicitations containing improperly prepared “facsimile checks”; and

(4) Solicitations for “skill contests” and “sweepstakes” sent to individuals who, in accordance with 39 U.S.C. 3017(d), have requested that such materials not be mailed to them; may be liable to the United States for a civil penalty under 39 U.S.C. 3012(d). As adjusted under Pub. L. 114-74, this penalty is not to exceed \$13,669 for each mailing.

(d) *Commercial use of lists of persons electing not to receive skill contest or sweepstakes mailings.* Under 39 U.S.C. 3017(g)(2), the Postal Service may impose a civil penalty against a person who provides information for commercial use about individuals who, in accordance with 39 U.S.C. 3017(d), have elected not to receive certain sweepstakes and contest information. As adjusted under Pub. L. 114-74, the penalty may not exceed \$2,733,780 per violation.

(e) *Reckless mailing of skill contest or sweepstakes matter.* Under 39 U.S.C. 3017(h)(1)(A), any promoter who recklessly mails nonmailable skill contest or sweepstakes

matter may be liable to the United States for a civil penalty for each mailing to an individual. As adjusted under Pub. L. 114-74, the penalty is \$13,669 per violation.

(f) *Hazardous material.* Under 39 U.S.C. 3018(c)(1)(A), the Postal Service may impose a civil penalty payable into the Treasury of the United States on a person who knowingly mails nonmailable hazardous materials or fails to follow postal laws on mailing hazardous materials. As adjusted under Pub. L. 114-74, the penalty is at least \$295, but not more than \$117,858 for each violation.

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