

Postal Service, Domestic Mail Manual, for the disposal or treatment of books and sound recordings that are undeliverable-as-addressed (UAA) in their original packaging. The disposal of these items as waste will simplify handling procedures and reduce costs.

**DATES:** *Effective Date:* February 1, 2010.

**FOR FURTHER INFORMATION CONTACT:** Bert Olsen, 202-268-7276, Mary Collins, 202-268-5440.

**SUPPLEMENTARY INFORMATION:** The Postal Service published a **Federal Register** proposed rule (73 FR 39272-39273) on July 9, 2008 to remove DMM section 507.1.9.2. The intent of this section was to facilitate a process for identifying and returning books and recordings that had become undeliverable as a result of being “loose in the mail” (contents separated from packaging and other address information), to the original publisher or distributor. This standard was misinterpreted to allow some publishers and distributors to reclaim ownership of all UAA mail and not just mail that was truly identified as “loose” in the mail.

**Comments**

We received comments from three respondents on the proposed rule. One respondent represented several trade associations and two other respondents were from separate publishing companies. All comments received were in opposition to the proposal and are summarized and presented below followed by our responses:

1. *Comment:* The Postal Service did not work closely and discuss the proposal with affected mailers.

The Postal Service previously offered an opportunity for mailers to provide input well before the proposal was published. Additionally, publication of the proposed rule and requests for comments (July 9, 2008) afforded mailers an additional opportunity to contribute to the rule-making process prior to issuing a final rule.

2. *Comment:* Due to copyright concerns and privacy issues, mailers are opposed to the Postal Service selling at auction undeliverable-as-addressed books and sound recordings.

Obligations concerning privacy issues and copyright concerns are the publisher’s obligations. USPS® ancillary services allow mailers to fulfill their obligations by having undeliverable books returned to them, but only in accordance with postal services and endorsements currently available to mailers. One option when using Standard Mail® is that UAA mail can be forwarded or returned at the appropriate Media Mail or Library Mail price if the

content of the mail qualifies as Media Mail under DMM 507.1.5.3, 173, 373, or 473 or Library Mail under DMM 183, 383, or 483 and the mail is marked “Media Mail” or “Library Mail” directly below the ancillary service endorsement.

3. *Comment:* The Postal Service should recycle undeliverable-as-addressed items.

We are currently exploring a recycling offering by adding a new ancillary endorsement that mailers could use to assure undeliverable-as-addressed mail would be destroyed so it could not be used as originally intended. This potential offering is in its formative stage but if adopted may provide an attractive endorsement alternative for manufacturers and distributors of books and sound recordings who desire destruction of their undeliverable products for a fee.

4. *Comment:* Provide electronic notification for the reason a mailpiece was undeliverable as addressed when using the “Return Service Requested” endorsement.

The Return Service Requested endorsement provides the reason of nondelivery by hardcopy at the time of return of the product. However, we understand that mailers would prefer to know as quickly as possible why a piece was undeliverable via electronic data. We intend to evaluate the development of an electronic notification option with the Return Service Requested endorsement for a fee as a future service offering.

The Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations*. See 39 CFR 111.1.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

■ Accordingly, 39 CFR Part 111 is amended as follows:

**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, 414, 416, 3001-3011, 3201-3219, 3403-3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM) as follows:

\* \* \* \* \*

**500 Additional Services**

\* \* \* \* \*

**507 Mailer Services**

**1.0 Treatment of Mail**

\* \* \* \* \*

**1.9 Dead Mail**

\* \* \* \* \*

[Delete 1.9.2 in its entirety and renumber current 1.9.3 as new 1.9.2]

\* \* \* \* \*

We will publish an appropriate amendment to 39 CFR Part 111 to reflect these changes.

**Neva R. Watson,**

*Attorney, Legislative.*

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**BILLING CODE 7710-12-P**

**POSTAL SERVICE**

**39 CFR Part 601**

**Purchasing of Property and Services**

**AGENCY:** Postal Service™.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is revising its regulations governing the supplier disagreement resolution (SDR) process to clarify and explain the purposes of that process, and to remove extraneous and duplicative language.

**DATES:** *Effective Date:* January 12, 2010.

**FOR FURTHER INFORMATION CONTACT:** Paul D. McGinn, 202-268-4368, or Edward B. Halstead, 202 268-6221.

**SUPPLEMENTARY INFORMATION:** The Postal Service is revising the regulations in 39 CFR 601.107 and 601.108 that govern the supplier disagreement resolution (SDR) process in order to clarify certain SDR procedures. These changes are explained in more detail below.

**Explanation of Changes**

*Section 601.107: Initial Disagreement Resolution*

Paragraph (a) has been revised to state that the Supplier Disagreement Resolution Official (SDR Official) is a contracting officer designated by the Postal Service to perform the functions established under § 601.108.

Paragraph (b) has been revised to clarify the timelines for filing initial disagreements concerning solicitations.

Paragraph (c) is revised to inform parties that the alternative dispute resolution (ADR) process may be used to resolve disagreements and that if an agreement cannot be reached under ADR, the supplier has 10 days to lodge its disagreement with the SDR Official.

*Section 601.108: SDR Official Disagreement Resolution*

Paragraph (a) has been revised to remove language that was extraneous or duplicative of statements made in other paragraphs.

Paragraph (b) contains editorial changes and further explains the purposes of the disagreement resolution process.

Paragraph (c) clarifies the acceptable modes for submitting a disagreement under § 601.107 or contest of decision under § 601.105 and updates the dedicated fax number.

Paragraph (d) clarifies that this paragraph covers both disagreements under § 601.107 and contests of decisions under § 601.105. Paragraph (d)(3) has been revised for clarity.

Paragraph (e) is supplemented to provide examples of remedies that the SDR Official is authorized to grant.

Paragraph (g) explains when a challenged award becomes final, a status that varies depending on how the SDR Official resolves the disagreement. The grounds upon which appeals may be taken to Federal court, previously addressed in paragraph (g), are now addressed in a new paragraph (h).

Paragraph (h) clarifies the grounds upon which the Postal Service's final contract award, as described in paragraph (g), may be appealed. Paragraph (h) further clarifies that the party lodging the disagreement may seek review of the Postal Service's final contract award only after the mandatory administrative remedies provided under § 601.107 and § 601.108 have been exhausted.

Paragraph (i) is identical to the old paragraph (h), except that it now clarifies that the resolution timeframe applies not only to disagreements under § 601.107, but also to contests of decisions under § 601.105.

**List of Subjects in 39 CFR Part 601**

Government procurement, Postal Service.

■ Accordingly, 39 CFR Part 601 is amended as follows:

**PART 601—[AMENDED]**

■ 1. The authority citation for 39 CFR Part 601 continues to read as follows:

**Authority:** 39 U.S.C. 401, 404, 410, 411, 2008, 5001–5605.

■ 2. Revise §§ 601.107 and 601.108 to read as follows:

**§ 601.107 Initial disagreement resolution.**

(a) *Definitions.*

(1) *Days.* Calendar days; however, any time period will run until a day that is

not a Saturday, Sunday, or legal holiday.

(2) *Disagreements.* All disputes, protests, claims, disagreements, or demands of whatsoever nature arising in connection with the acquisition of property and services within the scope of § 601.103 of this chapter, except those:

(i) That arise pursuant to a contract under the Contract Disputes Act under § 601.109;

(ii) That concern debarment, suspension, or ineligibility under § 601.113; or

(iii) That arise out of the nonrenewal of transportation contracts containing other provisions for the review of such decisions.

(3) *Interested parties.* Actual or prospective offerors whose direct economic interests would be affected by the award of, or failure to award, the contract.

(4) *Lodge.* A disagreement is lodged on the date it is received by the contracting officer or the Supplier Disagreement Resolution Official, as appropriate.

(5) *SDR Official.* The Supplier Disagreement Resolution Official, a contracting officer designated by the Postal Service to perform the functions established under § 601.108.

(b) *Policy.* It is the policy of the Postal Service and in the interest of its suppliers to resolve disagreements by mutual agreement between the supplier and the responsible contracting officer. All disagreements must be lodged with the responsible contracting office in writing via facsimile, e-mail, hand delivery, or U.S. Mail. For disagreements that concern the award of a contract, the disagreement shall be lodged within 10 days of the date the supplier received notification of award or 10 days from the date the supplier received a debriefing, whichever is later. For disagreements that concern alleged improprieties in a solicitation, the contracting officer must receive the disagreement before the time set for the receipt of proposals, unless the disagreement concerns an alleged impropriety that does not exist in the initial solicitation but which is subsequently incorporated into the solicitation, in which event the contracting officer must receive the disagreement no later than the next closing time for the receipt of proposals following the incorporation. The resolution period shall last 10 days from the date when the disagreement is lodged with the contracting officer. During the supplier-contracting officer 10-day resolution period, the responsible contracting officer's

management may help to resolve the disagreement. At the conclusion of the 10-day resolution period, the contracting officer must communicate, in writing, to the supplier his or her resolution of the disagreement.

(c) *Alternative dispute resolution.* Alternative dispute resolution (ADR) procedures may be used to resolve a disagreement. If the use of ADR is agreed upon, the 10-day limitation is suspended. If agreement cannot be reached, the supplier has 10 days to lodge its disagreement with the SDR Official.

**§ 601.108 SDR Official disagreement resolution.**

(a) *General.* If a disagreement under § 601.107 is not resolved within 10 days after it was lodged with the contracting officer, if the use of ADR fails to resolve it at any time, if the supplier is not satisfied with the contracting officer's resolution of the disagreement, or if the decision not to accept or consider proposals under § 601.105 is contested, the SDR Official is available to provide final resolution of the matter. The Postal Service desires to resolve all such matters quickly and inexpensively in keeping with the regulations in this part.

(b) *Scope and applicability.* This procedure is established as the sole and exclusive means to resolve disagreements under § 601.107 and contests of decisions under § 601.105. This procedure is intended to expeditiously resolve disagreements that are not resolved at the responsible contracting officer level; to reduce litigation expenses, inconvenience, and other costs for all parties; to facilitate successful business relationships with Postal Service suppliers, the supplier community, and other persons; and to develop further the basis for the Postal Service's purchasing decisions and the administrative records concerning those decisions. All disagreements under § 601.107 and contests of decisions under § 601.105 will be lodged with and resolved, with finality, by the SDR Official under and in accordance with the sole and exclusive procedure established in this section.

(c) *Lodging.* The disagreement under § 601.107 or contest of decision under § 601.105 must be lodged with the SDR Official in writing via facsimile, e-mail, hand delivery, or U.S. Mail. The disagreement under § 601.107 or contest of decision under § 601.105 must state the factual circumstances relating to it and the remedy sought. A disagreement under § 601.107 must also state the scope and outcome of the initial disagreement resolution attempt with

the contracting officer. The address of the SDR Official is: Room 4130 (Attn: SDR Official), United States Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC 20260-4130. e-mail Address: *SDROfficial@usps.gov*. Fax Number: (202) 268-0075.

(d) *Lodging timeframes.*

Disagreements under § 601.107 or contests of decisions under § 601.105 must be lodged with the SDR Official within the following timeframes:

(1) Disagreements under § 601.107 not resolved with the contracting officer must be lodged with the SDR Official within 20 days after they were lodged with the contracting officer (unless ADR had been used to attempt to resolve them);

(2) Disagreements under § 601.107 for which ADR had been agreed to be used must be lodged with the SDR Official within 10 days after the supplier knew or was informed by the contracting officer or otherwise that the matter was not resolved;

(3) Where a supplier is dissatisfied with the contracting officer's resolution of a disagreement under § 601.107, the supplier must lodge the disagreement with the SDR Official within 10 days after the supplier first receives notification of the contracting officer's resolution; and

(4) Contests of decisions under § 601.105 to decline to accept or consider proposals must be lodged with the SDR Official within 10 days of the supplier's receipt of the written notice explaining the decision.

(5) The SDR Official may grant an extension of time to lodge a disagreement under § 601.107 or contest of decision under § 601.105 or to provide supporting information when warranted. Any request for an extension must set forth the reasons for the request, be made in writing, and be delivered to the SDR Official on or before the time to lodge a disagreement lapses.

(e) *Disagreement decision process.*

The SDR Official will promptly provide a copy of a disagreement to the contracting officer, who will promptly notify other interested parties. The SDR Official will consider a disagreement and any response by other interested parties and appropriate Postal Service officials within a time frame established by the SDR Official. The SDR Official may also meet individually or jointly with the person or organization lodging the disagreement, other interested parties, and/or Postal Service officials, and may undertake other activities in order to obtain materials, information, or advice that may help to resolve the

disagreement. The person or organization lodging the disagreement, other interested parties, or Postal Service officials must promptly provide all relevant, nonprivileged materials and other information requested by the SDR Official. If a submission contains trade secrets or other confidential information, it should be accompanied by a copy of the submission from which the confidential matter has been redacted. The SDR Official will determine whether any redactions are appropriate and will be solely responsible for determining the treatment of any redacted materials. After obtaining such information, materials, and advice as may be needed, the SDR Official will promptly issue a written decision resolving the disagreement and will deliver the decision to the person or organization lodging the disagreement, other interested parties, and appropriate Postal Service officials. When resolving a disagreement raised under § 601.107, the SDR Official may grant remedies including, but not limited to, the following:

(1) Directing the contracting officer to revise the solicitation or to issue a new solicitation;

(2) Directing the contracting officer to recompile the requirement;

(3) Directing the contracting officer to reevaluate the award on the basis of current proposals and the evaluation factors contained in the solicitation; and

(4) Directing the contracting officer to terminate the contract or to refrain from exercising options under the contract.

(f) *Guidance.* The SDR Official will be guided by the regulations contained in this part and all applicable public laws enacted by Congress. Non-Postal Service procurement rules or regulations and revoked Postal Service regulations will not apply or be taken into account. Failure of any party to provide requested information may be taken into account by the SDR Official in the decision.

(g) *Final resolution by the SDR Official and final contract award of the Postal Service.* A resolution by the SDR Official will be final and binding. If the SDR Official's final resolution affirms the original contract award of the contracting officer, the contracting officer's original contract award becomes the Postal Service's final contract award, and may be subject to judicial review as described in paragraph (h) of this section. If the SDR Official's final resolution directs that the Postal Service terminate the contract award and issue a new solicitation, recompile the requirement, or reevaluate the current award, the

contracting officer shall implement promptly the SDR Official's final resolution. However, any contract award made by the contracting officer after a resolicitation, recompetition, or reevaluation directed by the SDR Official is not a final contract award of the Postal Service that may be subject to judicial review unless and until disagreements concerning that contract award have been lodged and resolved with finality by the SDR Official.

(h) *Judicial review.* The Postal Service's final contract award, as described in paragraph § 601.108(g), may be appealed to a Federal court with jurisdiction based only upon an alleged violation of the regulations contained in this part or an applicable public law enacted by Congress. The party lodging the disagreement may seek review of the Postal Service's final contract award only after the mandatory administrative remedies provided under § 601.107 and § 601.108 have been exhausted.

(i) *Resolution timeframe.* It is intended that this procedure generally will resolve disagreements under § 601.107 or contests of decisions under § 601.105 within approximately 30 days after receipt by the SDR Official. The time may be shortened or lengthened depending on the complexity of the issues and other relevant considerations.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 81

[Docket: EPA-R02-OAR-2009-0508; FRL-9091-4]

### Approval and Promulgation of Implementation Plans; Puerto Rico; Guaynabo PM<sub>10</sub> Limited Maintenance Plan and Redesignation Request

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

**ACTION:** Final rule.

**SUMMARY:** EPA is approving the Limited Maintenance Plan for the Municipality of Guaynabo nonattainment area in Puerto Rico and the request by the Commonwealth of Puerto Rico to redesignate the area from nonattainment to attainment for the National Ambient Air Quality Standards for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>). On March 31, 2009,