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POSTAL SERVICE

39 CFR Part 233

Screening of Mail Reasonably Suspected of Containing Nonmailable Firearms

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: On February 28, 1996, the Postal Service published in the Federal Register a proposed regulation outlining the treatment of mail which is reasonably suspected of being dangerous to persons or property. The rule also contains language which allows for the screening of mail reasonably suspected of containing nonmailable firearms. The proposed rule requested comments, but none were received. Consequently, the Postal Service hereby publishes this final rule.

EFFECTIVE DATE: June 4, 1996.

FOR FURTHER INFORMATION CONTACT: George C. Davis, (202) 268-3076.

SUPPLEMENTARY INFORMATION: This document creates a new subsection

233.11 of title 39, Code of Federal Regulations, to include the requirements for the treatment of mail which is reasonably suspected of being dangerous to persons or property. This

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rule is currently contained in the Administrative Support Manual (ASM) as part 274, but this publication will make it more widely available to the public.

Sections 233.11 (a) and (a)(4) contain new language which allows for the screening of mail reasonably suspected of containing nonmailable firearms. Formerly, part 274 of the Administrative Support Manual allowed the examination of mail only to identify explosives or other materials that would pose a danger to life or property. This rule would expand the existing rule to permit screening for nonmailable firearms under the same restrictions respecting mail privacy and delay.

The Postal Service has been advised by the Honorable Pedro Rosello, Governor of Puerto Rico, that illegal firearms entering Puerto Rico by various means, including the mails, pose a serious threat to the safety of citizens of Puerto Rico. This information has been confirmed in meetings with the Attorney General of Puerto Rico, local and federal law enforcement officials, and officials of the United States Department of Justice.

Practical and legal constraints limit our ability to ensure that the mails are free of nonmailable firearms. These constraints were summarized in the Federal Register at the time the rule permitting limited screening of mail reasonably suspected of containing dangerous matter was initially proposed and they remain applicable today. See 55 FR 29637 (July 20, 1990).

Taking these constraints into account, this rule authorizes the least intrusive, least dilatory response to credible situations where firearms already declared "nonmailable" by statute or regulation are reasonably suspected of being in the mails. Nonmailable firearms are defined in Section C024.1.0 of the Domestic Mail Manual. They consist, primarily, of pistols, revolvers, and other concealable firearms. Unloaded rifles and shotguns are mailable although the provisions of the Gun Control Act of 1968, 18 U.S.C. 921, et seq., and regulations of the Bureau of Alcohol, Tobacco, and Firearms apply to the shipment of such weapons by mail or otherwise.

This rule balances the need to protect personal safety with the need to enforce existing laws and regulations against the mailing of nonmailable firearms, and protects personal privacy in the use of the mails. As envisioned by the rule, when the Chief Postal Inspector determines that a credible threat exists that certain mail may contain nonmailable firearms, the Chief may authorize the use of technology

that is capable of identifying mail containing such firearms in order to obtain probable cause for the issuance of a Federal warrant to search and seize such mail. The rule would not permit any screening method that would involve opening of sealed mail, or the reading of the contents of correspondence in sealed mail, without the consent of the sender or addressee or under authority of a Federal warrant. Moreover, the only screening which may be authorized must be limited to the least quantity of mail necessary to respond to the threat and the screening must be performed without avoidable delay of the mail. Any mail not of sufficient weight, for example, to contain a nonmailable firearm will not be screened. In addition, international transit mail will not be screened unless the postal treaties are appropriately amended. Sworn reports of all screening methods conducted by, or under supervision of, the Postal Service would be reported to senior postal managers. In view of these factors, the Postal Service has determined that this change in its regulations is a matter of internal practice and procedure that will not substantially affect the rights or obligations of private parties.

List of Subjects in 39 CFR Part 233

Law enforcement, Postal Service.

Accordingly, title 39 CFR, Part 233, is amended as follows:

PART 233--INSPECTION SERVICE/INSPECTOR GENERAL AUTHORITY

1. The authority citation for part 233 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 402, 403, 404, 406, 410, 411, 3005(e)(1); 12 U.S.C. 3401-3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; 21 U.S.C. 881; Inspector General Act of 1978, as amended (Pub. L. No. 95-452, as amended), 5 U.S.C. App. 3.

2. Part 233 is amended by adding Sec. 233.11 as follows:

233.11. Mail reasonably suspected of being dangerous to persons or property.

(a) Screening of mail. When the Chief Postal Inspector determines that there is a credible threat that certain mail may contain a bomb, explosives, or other material that would endanger life or property, including firearms which are not mailable under Section C024 of the Domestic Mail Manual, the Chief Postal Inspector may, without a search warrant or the sender's or addressee's consent, authorize the screening of such mail by any means capable of identifying explosives,

nonmailable firearms, or other dangerous contents in the mails. The screening must be within the limits of this section and without opening mail that is sealed against inspection or revealing the contents of correspondence within mail that is sealed against inspection. The screening is conducted according to these requirements.

(1) Screening of mail authorized by paragraph (a) of this section must be limited to the least quantity of mail necessary to respond to the threat.

(2) Such screening must be done in a manner that does not avoidably delay the screened mail.

(3) The Chief Postal Inspector may authorize screening of mail by postal employees and by persons not employed by the Postal Service under such instruction that require compliance with this part and protect the security of the mail. No information obtained from such screening may be disclosed unless authorized by this part.

(4) Mail of insufficient weight to pose a hazard to air or surface transportation, or to contain firearms which are not mailable under Section C024 of the Domestic Mail Manual, and international transit mail must be excluded from such screening.

(5) After screening conducted under paragraph (a) of this section, mail that is reasonably suspected of posing an immediate and substantial danger to life or limb, or an immediate and substantial danger to property, may be treated by postal employees as provided in paragraph (b) of this section.

(6) After screening, mail sealed against inspection that presents doubts about whether its contents are hazardous, that cannot be resolved without opening, must be reported to the Postal Inspection Service. Such mail must be disposed of under instructions promptly furnished by the Inspection Service.

(b) Threatening pieces of mail. Mail, sealed or unsealed, reasonably suspected of posing an immediate danger to life or limb or an immediate and substantial danger to property may, without a search warrant, be detained, opened, removed from postal custody, and processed or treated, but only to the extent necessary to determine and eliminate the danger and only if a complete written and sworn statement of the detention, opening, removal, or treatment, and the circumstances that prompted it, signed by the person purporting to act under this section, is promptly forwarded to the Chief Postal Inspector.

(c) Reports. Any person purporting to act under this section who does not report his or her action to the Chief Postal Inspector under the requirements of this section, or whose action is determined after investigation not to

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have been authorized, is subject to disciplinary action or criminal prosecution or both.

Stanley F. Mires,

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