

units, apartment style receptacles, mailrooms, or clusters of roadside receptacles.

3. Locations where circumstances not within the control of the Postal Service prevent extension of carrier delivery, such as town ordinances, private roads, gated communities, unimproved or poorly maintained roadways, or unsafe conditions.

4. Locations served by a delivery receptacle that a customer chooses to locate along a carrier's line of travel and to which the Postal Service makes delivery.

c. A customer must pay the applicable fee for each PO Box requested in addition to the initial free Group E PO Box.

d. The online application tools described in 4.3.1b cannot be used for free PO Box service.

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

Stanley F. Mires,
Chief Counsel, Legislative.

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BILLING CODE 7710-12-P

POSTAL SERVICE

39 CFR Part 241

Post Office Organization and Administration: Establishment, Classification, and Discontinuance

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service is amending 39 CFR part 241 to improve the administration of the Post Office closing and consolidation process. In addition, certain procedures employed for the discontinuance of Post Offices are applied to the discontinuance of other types of retail facilities operated by Postal Service employees.

DATES: *Effective date:* July 14, 2011.

FOR FURTHER INFORMATION CONTACT: Jim Boldt, (202) 268-6799.

SUPPLEMENTARY INFORMATION:

On March 31, 2011, the Postal Service published a proposed rule in the **Federal Register** (76 FR 17794) to improve the process for discontinuing Post Offices and other Postal Service-operated retail facilities. The proposed rule also reflected the Postal Service's determination, as a matter of policy, to apply the same discontinuance procedures to all retail facilities operated by Postal Service employees. The Postal Service requested comments

on the proposed rule. Analysis of the various comments received appears below.

The Postal Service is currently in the process of consultation under 39 U.S.C. 1004(b)-(d) about certain aspects of the proposed rule. Therefore, the relevant proposed changes and comments relative to those proposed changes are not included in this final rule, but may be addressed in a subsequent final rule. Under 39 U.S.C. 1004(b)-(d), the Postal Service is obliged to consult with certain supervisory and other managerial organizations about the planning and development of pay policies and schedules, fringe benefit programs, and other programs related to supervisory and other managerial employees. (The Postal Service understands "other programs" to constitute those concerning employment, of a piece with the other enumerated subjects of consultation, and not programs concerning facilities or the operating network more generally, which may have an indirect effect on employees.) Because the subject matter of this final rule does not itself comprise any program subject to 39 U.S.C. 1004(b)-(d), the Postal Service considers it to fall outside the scope of those provisions. Nevertheless, the Postal Service has taken into account comments by supervisory and other managerial organizations, as it has comments by other members of the public.

As explained in the proposed rule, this final rule is not retroactive. Therefore, any change in policy or regulations does not affect the procedures applicable to discontinuance processes initiated before the effective date of this final rule, when previous regulations may have been in effect.

The Postal Service is exempt from the notice requirements of the Administrative Procedure Act (5 U.S.C. 553(d)) regarding final rules by 39 U.S.C. 410(a). Moreover, the chief substance of this final rule is to extend to Postal Service-operated stations and branches the notice and comment procedures applicable to the discontinuance of Post Offices, thereby relieving restrictions that had previously been placed on public participation in the discontinuance process for stations and branches.

I. Response to Comments Received

The Postal Service received approximately 257 comments in response to the proposed rule. Commenters included 34 Members of Congress, the Postal Regulatory Commission ("Commission" or "PRC"), five state legislators, three postmasters'

and postal supervisors' organizations, one postal lessors' organization and various of its members, one mailing industry stakeholder, and numerous other postal customers. Although some comments were favorable about certain aspects of the proposed rule, almost all of the comments expressed concerns about various aspects of the proposed rule. Below we discuss the comments and our response to each.

A. Closure of Post Offices and Other Retail Facilities

1. Procedural Safeguards

The overwhelming majority of comments urged the Postal Service not to close Post Offices (as well as, presumably, stations and branches), especially in small and rural communities. These commenters stated that cost savings would be low, that there would be undue hardship on some customers, and other matters. Many expressed concern about a specific postal retail facility. Additionally, many appeared to believe that the proposed rule would eliminate procedures and make it easier to close retail facilities, including for reasons prohibited by statute. *See, e.g.,* 39 U.S.C. 101(b) ("No small post office shall be closed solely for operating at a deficit[.]"). To the contrary, the Postal Service has long been and remains focused on the need for customers in less populated locales to have regular and effective access to delivery and retail services, thereby helping to bind all customers and the nation together through written correspondence.

These comments seem to overlook the actual scope of the changes. This rulemaking does not reduce or abolish any transparency attained through, for example, public notice, public input, and consideration of all comments received before any Post Office may be discontinued. In fact, transparency will be enhanced. Nor does the rulemaking change any of the criteria for discontinuing a Post Office, which are set forth in the statute and include consideration of cost savings, the effects on employees and the community, and the prohibition on closing small Post Offices solely for financial reasons. It should be noted that the statutes in question apply only to the justifications for actually discontinuing a facility; they do not restrict Postal Service discretion to evaluate its retail network and identify specific facilities for formal study.

To highlight the distinction between initiation of a preliminary feasibility study and the development of an official proposal, the Postal Service is adding

language to 39 CFR 241.3(a)(4)(i) that specifies circumstances justifying a responsible Vice-President's decision to initiate a feasibility study, as specified elsewhere in 39 CFR 241.3(a)(4). At the same time, this language does not provide that officer an official decision-making role in any resulting discontinuance proposal.

An initial feasibility study need not lead to evaluation for potential discontinuance. If it does, the public will receive expanded opportunity for comment as the Postal Service considers all of the requisite factors en route to any final determination, just as it has in the past. Although this rulemaking expands the range of factors that can justify a discontinuance study, any formal discontinuance decisions must still be based upon the same considerations as before. Opportunity for public participation will actually increase, because the Postal Service will ensure broad public awareness by sending written notice in the form of a "Dear Customer" letter and questionnaire to all delivery points in the ZIP Code area served by the facility being studied.

As described in the proposed rule, the rulemaking will actually expand application of the most rigorous process for discontinuance of Postal Service-operated retail facilities beyond independent Post Offices. While Congress applied the criteria in 39 U.S.C. 101(b) and 404(d) only to independent Post Offices, and not to stations or branches, the Postal Service is making that same process applicable to the discontinuance of *all* Postal Service-operated retail facilities, thereby encompassing subordinate stations and branches. Contrary to many commenters' perception that the rulemaking would remove "due process" protections for stations and branches, the rulemaking will actually increase scrutiny and transparency for such facilities by using the process previously applicable only to independent Post Offices.

2. Role of Economic Indicators

While some commenters express concern about the possible evaluation by the Postal Service of discontinuance candidates using economic indicators like population or volume trends, applicable law (39 U.S.C. 404(d)) already requires that the Postal Service consider economic savings in any final determination to discontinue a Post Office. Of course, population and volume trends may also inform evaluation of likely impact on the community, which is another

mandatory criterion for evaluation in the discontinuance process.

To be sure, Postal Service plans to close or consolidate Post Offices must be consistent with the statutory requirement in 39 U.S.C. 101(b) that "[n]o small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities." As a result, a proposed discontinuance of a small Post Office may not proceed to a final determination if the sole reason is that the facility operates at a loss. Consistent with this statutory prohibition, the Postal Service provided in proposed 39 CFR 241.3(a)(4)(ii)(D) that no initial feasibility study of a small Post Office may commence, absent other permissible criteria, if the sole justification is that the office operates at a deficit. This provision is maintained in the final rule.

Many comments offer general support for the continued existence of rural Post Offices; the Postal Service itself remains committed to serving customers in all areas, including rural ones, and Post Offices constitute one key tool for doing so. The primary customer need, however, is *access to postal services* to the extent consistent with reasonable economies of postal operations, which is possible today without using rural Post Offices alone. 39 U.S.C. 403(b)(3). By no means are Post Offices the sole conduit for access to postal services. The best example, well known to customers served by non-city delivery, consists of carriers themselves, who can and do provide retail services. The Postal Service recognizes that it may not close small Post Offices solely for operating at a deficit, just as it recognizes that access options continue to expand for all customers. Alternative channels for access to retail services continue their growth in all areas; wherever retail traffic in Post Offices drops below minimal levels, it follows that customers must be obtaining the access they need without utilizing Post Offices. The Postal Service accordingly maintains its focus upon providing all customers the access they require, whether it be via Post Offices or the available alternatives.

3. Discontinuance of Specific Facilities

Many commenters articulated concerns about particular retail facilities, thus reflecting a misunderstanding of the instant rulemaking's scope. Such comments are either premature or misdirected; they may become germane when the subject facilities are studied, or should be

directed to those conducting studies affecting the subject facilities. This rulemaking concerns only nationwide criteria and procedures, not specific facilities. If and when a particular facility is evaluated in a discontinuance study, the public will have full notice and opportunity to provide input, as under the previous regulations.

B. Redefinition of "Consolidation" and Appeal Rights

Several commenters expressed concern about the proposed rule's reinterpretation of "consolidation," such that the term would no longer apply to the conversion of an independent Post Office into a Postal Service-operated station or branch. In particular, these commenters claim that this approach, combined with the fact that 39 U.S.C. 404(d)(5) does not confer appeal rights for closings or consolidations of stations and branches, could result in an effective denial of appeal rights if the Postal Service were to convert a Post Office into a station or branch and then proceed to close or consolidate the facility.

1. Definition of "Consolidation"

The Postal Service is currently in the process of consultation under 39 U.S.C. 1004(b)-(d) about the proposed reinterpretation of "consolidation," among other aspects of the proposed rule. Therefore, the Postal Service is deferring the relevant changes for the time being. Comments on this aspect of the proposed rule will be taken into consideration and may be addressed in a subsequent final rule.

2. Appeal Rights and Notice Thereof

The Commission recommended that the Postal Service provide notice of appeal rights when proposing or determining to discontinue a station or branch. This Commission noted that the Postal Service proposed to apply procedures to facilities beyond the statutory scope of applicability and suggested that the Postal Service could similarly extend appeal rights.

With respect to notice of appeal rights concerning stations and branches, the Postal Service does not believe that the authority exists to extend the Commission's grant of jurisdiction in 39 U.S.C. 404(d)(5) to the closure or consolidation of a station or branch. This is true regardless of how "consolidation" is interpreted. This rulemaking does not and can not alter the scope of the Commission's jurisdiction, so it does not change when the public is entitled to notice of appeal rights. At the same time, it should be emphasized that this rulemaking does

not affect interested persons' extant opportunity to seek any administrative appeal. The Postal Service recognizes in the proposed rule that the Commission and other stakeholders interpret 39 U.S.C. 404(d)(5) differently.

Notwithstanding the actual limits of statutory jurisdiction, discontinuances of stations and branches have been appealed to the Commission, and the Commission has entertained those appeals as though they concerned independent Post Offices subject to 39 U.S.C. 404(d)(5). *E.g.*, PRC Docket Nos. A2011-4 (University Station, Eugene, OR 97403), A2011-5 (Penobscot Station, Detroit, MI 48231); *see also* SBOC Opinion at 66 ("The Commission already believes it is required to accept such appeals.").

This rulemaking does not change Postal Service regulations as to whether discontinuances of stations or branches may be appealed, nor does it add measures to preclude such appeals from being filed. While the Postal Service maintains that the Commission does not have appeal jurisdiction over stations and branches under current law, the rulemaking does introduce an explicit recognition that the Postal Service may, in its discretion, decline to challenge the Commission's jurisdiction in certain (or even, if it chooses, all) cases, which contrasts with its previous practice of asserting jurisdictional defenses in all cases. Accordingly, to the extent that commenters believe they would lose the practical ability to seek accountability of station and branch discontinuances through appeal (or through the Postal Service's awareness of the prospect of appeal) to the Commission, such criticisms are overstated.

One commenter stated a belief that the proposed rule would make the discontinuance process more "administrative" by empowering the Commission to modify the Postal Service's final determination. In actuality, however, these aspects of the proposed rule have not changed from prior regulations. Moreover, the nature of the Commission's appeal jurisdiction and the general administrative nature of the discontinuance process were established by Congress in the Postal Reorganization Act Amendments of 1976 (Pub. L. 94-421), the Postal Service's regulations merely track this language.

Finally, one commenter agreed with the Postal Service's analysis of 39 U.S.C. 404(d)(5), but objected to the proposed rule's ultimate framing of the matter in terms of a right to object or not to object to the Commission's assertion of jurisdiction. While the commenter's views are understood and appreciated,

it is axiomatic that a party may decline to assert valid jurisdictional defenses in specific cases, without prejudicing its assertion of the same objections in other cases or contexts. To recognize Postal Service counsel's discretion over litigation strategy does not diminish the validity of the general principle that the Commission is without legal authority to entertain purported appeals of station and branch discontinuances.

C. Community Meetings

Several commenters took issue with proposed 39 CFR 241.3(d)(2), which provides that a community meeting is required unless otherwise instructed by the responsible Vice President or the Area Manager, Delivery Programs Support. These commenters expressed the belief that this would undermine a current standard of allowing public input through community meetings in all cases.

Previous Postal Service regulations, however, have not required a community meeting for every Post Office discontinuance. The most recent version of 39 CFR 241.3(d)(3) listed "meeting with community groups" as exemplifying options available if deemed "necessary" to a larger transparency effort. Moreover, sections 243 and 721 of Handbook PO-101, *Post Office Discontinuance Guide*, have provided only that community meetings are one option for public input, alongside questionnaires and other methods. The new regulations accordingly impel community meetings more forcefully than before, because community meetings will be required absent instructions to the contrary from senior management. In practice, it is expected that community meetings would be offered unless some exceptional circumstance (such as a community's demise) makes a meeting an impractical tool for gathering customer input. The final rule includes an additional clarification limiting exceptions from the community meeting requirement.

D. Role of Vice President

Several commenters also recommended against the proposed approach whereby a feasibility study could be initiated by a responsible Vice President, as well as by a District Manager. These commenters advised that a national-level Vice President is less likely than a District Manager to have an appropriately nuanced understanding of community-specific conditions.

To clarify, the Vice President's role in proposed 39 CFR 241.3(a)(2) and (a)(4) is to trigger an exploration of possible

discontinuance. Thereafter, the District Manager oversees the follow-up investigation and determines whether to proceed with a formal proposal to discontinue the facility. As noted above, the final rule includes additional language in 39 CFR 241.3(a)(4)(i) to clarify the distinction between the initial feasibility study, which a responsible Vice President or a District Manager may initiate, and the formal proposal, for which a Vice President is not responsible.

Concern about the Vice President's role may have been driven by the inclusion of an erroneous reference to a Vice President's discretion in 39 CFR § 241.3(c)(1), which might have suggested that the Vice President could directly determine whether to post a proposal, independent from the District Manager. This error has been corrected in the final rule.

The District Manager evaluates public comments on the proposal and decides whether to forward a recommended final determination to the responsible Vice President for ultimate review and decision. As such, the local knowledge vested in district postal personnel becomes a strength of the foundation for any decision to pursue discontinuance of a retail facility. As such, a Vice President's role at this latter stage extends only to a final check on a District Manager's recommendation that a discontinuance move forward.

Thus, the proposed rule and final rule recognize the importance of the District Manager's assessment of local conditions. Under the final rule, the District Manager accordingly retains significant discretion to take account of local conditions before deciding whether to proceed with a proposal or final determination to discontinue a facility.

E. Staffing of Post Offices

Many commenters expressed the view that the Postmaster Equity Act, Public Law 108-86 (2003), precludes the proposed change to 39 CFR 241.1, such that, in their view, a Post Office may not be operated or managed by anyone but a postmaster. As codified in 39 U.S.C. 1004(i)(3), the Postmaster Equity Act defines a "postmaster" as "an individual who is the manager in charge of the operations of a post office, with or without the assistance of subordinate managers or supervisors." The Postal Service is currently in the process of consultation under 39 U.S.C. 1004(b)-(d) about this aspect of the proposed rule. Therefore, the Postal Service is deferring the relevant changes for the time being. Comments on this aspect of the proposed rule will be taken into

consideration and may be addressed in a subsequent final rule.

One commenter opined that a previous rule change required a postmaster to reside in the delivery area of the Post Office in which he or she served, and that the Postal Service's regulations should revert to that rule. It is true that local residence was a former requirement for postmaster eligibility, but this requirement did not derive from Postal Service regulations. Rather, it existed in a statute that Congress repealed when the Postal Reorganization Act established the current merit-based system for postmaster appointments. *See* Public Law 86-682, 74 Stat. 578, 710 (1960) (formerly codified at 39 U.S.C. 3312) (repealed 1970). The Postal Service does not intend to revisit such a policy in light of the Congressional repeal of the pertinent statute, so the commenter's proposed change is not included in this final rule.

F. Alternatives to Discontinuance

One commenter requested that the Postal Service include in 39 CFR 241.3 a provision to allow for the possibility that, where the financial viability of a retail facility is a factor in a discontinuance study, the local government can offer to make up the projected shortfall as a means for preserving retail service at the facility. This suggestion is already accounted for in existing discontinuance processes and practice, wherein communities have ample opportunity to offer views and alternatives that might address justifications for a specific discontinuance. The Postal Service takes that input into account as it determines whether a proposal is warranted. It is plausible that an agreement by a municipality or agency to incur certain costs or burdens can be decisive and lead the Postal Service to forgo a discontinuance study. Contractor-operated retail facilities or other arrangements are also possible. Because current practice and the proposed rule already address these concerns, no further revision to the final rule appears warranted.

Another commenter advised that customers should be ensured alternative access channels before the Postal Service proceeds with discontinuance. The Postal Service believes its processes adequately meet this concern. Under the proposed rule, the availability and use of alternative access channels would help inform local officials regarding the necessity for a fully staffed postal facility. Today, retail services are available to customers through a variety of channels beyond traditional brick-

and-mortar facilities, such as the <http://www.usps.com> Web site, Automated Postal Centers, non-city delivery carriers, stamp consignment locations such as grocery stores, and Stamps by Mail, Fax, and Phone.

Moreover, before the Postal Service can reach any final determination on a proposed discontinuance, 39 U.S.C. 404(d) requires the Postal Service to consider (among other things) the effect on the community and the statutory policy of providing a maximum degree of effective and regular postal services to rural areas, communities, and small towns where Post Offices are not self-sustaining. In virtually all cases, this means careful consideration of the utility provided by alternative access channels, including services available through letter carriers, particularly as this tends to be a focus of customer input. Therefore, the commenter and other customers may rest assured that the continued availability of retail services will remain a key point of consideration whenever the Postal Service studies a community's needs.

G. Redaction of Personally Identifiable Information

One commenter voiced suspicion that the Postal Service would impermissibly edit or conceal information in publicly available documents under cover of the proposed provision that would allow for redaction of personally identifiable information. Another commenter characterized this change as inappropriate because submitters of public comments to a public administrative record do not have a privacy interest in their identities.

Rather than being a substantive change that the Postal Service could somehow exploit to willfully edit an administrative record, the proposed provision merely updates 39 CFR 241.3 to reflect other statutes and regulations that authorize, on a discretionary basis, the withholding of personally identifiable information from public disclosure. *See* 39 U.S.C. 410(c)(1). Limited redaction, performed on a discretionary, as-needed basis to protect customers' personally identifiable information in the discontinuance and other contexts, is well-established and has been uncontroversial before the Commission. *See, e.g.,* United States Postal Service Notice of Filing and Application for Non-Public Status, PRC Docket No. A2011-1, January 6, 2011; Order Affirming Final Determination, PRC Docket No. A2011-1, February 15, 2011, at 3 n.7 (acknowledging the Postal Service's filing of administrative record with redactions of, among other things, personally identifiable information).

However, the Postal Service is mindful of the limited purpose of this important privacy protection.

H. Notice to Customers Served by Suspended Facility

One commenter suggested that customers formerly served by a suspended retail facility should be notified of discontinuance-related actions by mail, not just by posting at other retail facilities. The Postal Service intends to mail notice and a questionnaire to customers formerly served by a Postal Service-operated retail facility whose operations have undergone an emergency suspension to the same extent that it would have if the facility were not suspended. Because this intention may not have been sufficiently clear, the Postal Service incorporates the commenter's suggestion with clarifying language in new paragraph 241.3(a)(4)(iii).

I. Inapplicability of Procedures to Contractor-Operated Facilities

One commenter notes that, in at least one case, postal customers were informed that a contractor-operated Community Post Office (CPO) would provide many of the same services as a Postal Service-operated retail facility, except for some services such as permit mailing acceptance. The commenter then advises that the same discontinuance procedures should apply to contractor-operated retail facilities, particularly in locations where a CPO may be the only postal retail facility.

Another commenter opined that services provided by a contractor-operated retail facility can, in certain cases, be equivalent to or better than services provided by a Post Office or other Postal Service-operated retail facility. As a result of more flexible office hours or parking, for example, contractor-operated retail facilities may offer more ready access to essential postal services and thereby a handier method to ensure compliance with 39 U.S.C. 403(b)(3). Hence, the commenter concludes that distinctions based on the identity of the retail facility operator might not have universal validity.

The Postal Service acknowledged in the proposed rule that customers of contractor-operated retail facilities may experience and expect comparable (or better) levels of service relative to those at Postal Service-operated retail facilities. However, the Postal Service also explained that exigencies of contracting relationships make it generally impractical to harmonize their discontinuance procedures with the deliberative timeframe and procedures

required for discontinuance of Postal Service-operated facilities. For example, management's ability to negotiate reasonable terms for the operation of a contract unit, or to require satisfactory contract performance, would be harmed if parties were permitted to appeal those discontinuances for alleged procedural defects. Postal management's right of termination of a CPO operator's contract would be impaired, particularly in communities in which the CPO operator is the only person capable of operating a CPO. This would cause unnecessary delay prior to termination, and thereby force the Postal Service to continue a contract where sound business judgment and effective oversight would require otherwise.

CPO operators would also gain substantial bargaining leverage against the Postal Service, if the Postal Service's ability to change the contractual provision of postal services in the affected community were subject to the lengthy and costly discontinuance study, if not also litigation. Moreover, assuming a formal discontinuance study were required, the CPO operator might demand additional compensation for participating in the study. If a study were not conducted because replacement services would not provide the maximum degree of regular and effective service, a CPO operator might also gain a significant bargaining advantage for negotiating a price increase.

As noted throughout this rulemaking, the legislative history and text of 39 U.S.C. 404(d) limit that statute's scope to independent Post Offices. The Postal Service does not currently believe that it would be prudent to apply the same procedures, as a policy matter, to contractor-operated retail facilities. This policy distinction does not cast a value judgment on the quality of service available from contractor-operated retail facilities or on whether such facilities may be suitable replacements for Postal Service-operated retail facilities.

J. Status of Postmasters Affected by Facility Type Conversion

Two commenters asked whether a postmaster of an independent Post Office would become a station or branch manager where the Post Office is converted into another Postal Service-operated retail facility type, or whether the Postal Service would use such conversions to eliminate postmaster positions. Facility-specific staffing is outside the scope of this rulemaking and is subject to local management discretion, as guided by any applicable laws, regulations, policies and agreements.

K. Emergency Suspensions

One commenter recommended that, where a discontinuance study is related to expiration or cancellation of a lease without suitable alternative quarters in the community, the Postal Service should initiate the discontinuance study sufficiently in advance of the lease's end date to allow the lessor and customers an opportunity to explore alternatives and provide input. Alternatively, the commenter suggested that the retail facility in question could be kept open as long as necessary to gather information in a discontinuance study. The Postal Service agrees with the general thrust of this comment and includes a new paragraph 241.3(a)(4)(iii) in the final rule to encourage local management accordingly. This new provision is framed as guidance to be followed wherever possible, rather than a universal requirement, because a single solution can never be made to fit every challenge or suspension.

One commenter asserted numerous allegations about the Postal Service's handling of emergency suspensions: Disregard for existing rules, manipulation of lease renewal and termination processes, and maintenance of facilities in suspended status without undergoing a formal discontinuance. Allegations of failure to comply with regulations are beyond the scope of this rulemaking. The improved process for discontinuance actions provided in this final rule may, however, address the timely and final disposition of many suspended offices and diminish pressure to seek solutions outside current policy.

One commenter also noted that the emergency suspension form in Handbook PO-101, *Post Office Discontinuance Guide*, currently does not include a line item indicating that Postal Service management actually considered alternative access channels. The Postal Service is issuing a revised version of Handbook PO-101 that will, among other things, direct identification of available alternative access channels when conducting any emergency suspension and notification of customers about their availability. Additional tools may also be brought to bear on this set of issues.

L. Comment Periods and Waiting Periods

One commenter objected to the change from a 90-day waiting period to a 60-day waiting period after posting of the final determination. This commenter opined that the change would diminish the public's opportunity to provide input. The pertinent change to 39 CFR

251.3(g)(2) concerns the period between posting by the Postal Service of its final determination and when operational discontinuance takes effect (barring an appeal to the Commission). At that point, two rounds of public input on a possible discontinuance, and responses to each, will already have been undertaken before the Postal Service reached a final decision. Therefore, the need for additional public input does not affect, and is unrelated to, the length of time the final determination is posted or the duration before final action. This change by the Postal Service merely harmonizes the waiting period with the 60-day statutory posting requirement established by Congress in 39 U.S.C. 404(d)(4).

Three other commenters asked more generally that the Postal Service reverse proposed changes believed to shorten time periods for comment. Aside from the revision of the final determination posting period discussed above (which does not concern comment periods), the Postal Service has not proposed any adjustment to comment periods in 39 CFR 241.3. Nor is it evident that the existing 60-day comment period on discontinuance proposals, which has been in effect for decades, provides insufficient opportunity for public participation as envisioned by 39 U.S.C. 404(d). See 39 U.S.C. 404(d)(1) ("The Postal Service, prior to making a determination * * * as to the necessity for the closing or consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office at least 60 days prior to the proposed date of such closing or consolidation[.]"). While the proposed rule and final rule are aimed at enhancing opportunities for public input, there does not appear to be a need to expand comment periods at this time.

Finally, one commenter stated a belief that the 30-day period for appeals of Post Office discontinuances is too short and should be extended to a 60-day period. Congress has provided that a final determination to discontinue a Post Office can be appealed only within 30 days after the final determination is made available. 39 U.S.C. 404(d)(5). The Postal Service does not have the power to change a jurisdictional limitation set by Congress.

M. Relocations

One commenter urged the Postal Service to end relocations of retail facilities, which the commenter advised could result in curtailed services to customers near the original location. Relocations of existing facilities that do not result in an actual closure or

consolidation are not subject to 39 U.S.C. 404(d). The Postal Service regulations for relocations are at 39 CFR 241.4, and they include requirements for public outreach and input comparable to those applicable to discontinuance actions. Accordingly, the Postal Service finds that its relocation regulations are beyond the scope of this rulemaking.

N. Effect of Discontinuances on Overall Service Network

Two postal supervisors' organizations cautioned that extensive closures of Post Offices could result in gaps and delays in service and could erode public confidence in the Postal Service generally. In offering this advice, the commenters assume that the intent of the rulemaking is to usher in sweeping closures of small and rural Post Offices.

The rulemaking establishes and updates procedures and considerations for discontinuance of all Postal Service-operated retail facilities, not just small and rural Post Offices. The Postal Service does not believe that the proposed rule's innovations, such as allowing an initial feasibility study to commence on the basis of volume trends or upon the identification of a facility by a Headquarters Vice President, necessarily target small or rural Post Offices. A large or medium-sized urban Post Office can be equally subject to declining volume or population trends that warrant reconsideration of its role in the postal retail network.

Even if the Postal Service were, in the future, to develop a program to study the discontinuance of large numbers of retail facilities that had the potential to effect a nationwide or substantially nationwide change in service, the Postal Service would intend to seek an advisory opinion from the Commission under 39 U.S.C. 3661(b)–(c). Parties would have a full opportunity to raise their concerns and assess the impact of such a program on service levels and public confidence at that time. Unless and until such a program is developed and presented to the Commission, however, such concerns are speculative and premature. In the meantime, impact on service is necessarily taken into account in each discontinuance study.

O. Procedural Recommendations

In its comments, the Commission incorporated by reference all of the detailed recommendations in its SBOC Opinion, while highlighting certain of them. The Commission's recommendations have indeed had a major influence on the Postal Service's larger effort to revise its discontinuance

procedures, of which this rulemaking is a part. Most of the resulting changes will be reflected in a corresponding revision to Handbook PO–101, which contains detailed internal regulations; the Postal Service does not necessarily consider 39 CFR part 241 to be a suitable repository for such extensive and fine-grained rules. As a more specific response to the Commission's comments, the Postal Service provides the following summation:

Commission recommendation: The Postal Service should mail actual notice to all potential retail customers in the vicinity of a facility under consideration for discontinuance, in addition to P.O. Box customers and customers that receive carrier delivery service based out of the facility.

Postal Service response: In consonance with the Commission's recommendation, the Postal Service is adding a new 39 CFR 241.3(a)(4)(iii) to broaden customer notice that the feasibility of a possible discontinuance is being explored. The rule requires that customer notices and questionnaires be mailed to all delivery addresses physically located in the ZIP Code of the retail facility under study, as well as any delivery addresses served by the studied facility for allied delivery services such as mail pick-up. For those retail customers who might visit the studied facility, notices and questionnaires will continue to be available in the facility lobby. Local management will also have the discretion to provide notice via local media outlets, where appropriate.

Commission recommendation: Notice should be posted at nearby retail facilities, not just the facility subject to potential discontinuance.

Postal Service response: Under the revised Handbook PO–101, the proposal and final determination will be posted at the retail facility under study, the retail facility proposed to serve as the supervising facility, and any facility likely to serve a significant number of customers of the retail facility under study.

Commission recommendation: Questionnaire forms should be posted online for customers to download and print.

Postal Service response: The Postal Service is exploring the feasibility of various electronic access tools for public input.

Commission recommendation: Discontinuance study notices or proposal notices should contain information about distance to nearby retail facilities, their hours, alternative access channels, and how to request curbside delivery.

Postal Service response: Information of this sort will become a standard feature of initial feasibility study notices and proposal notices. The Postal Service recently introduced online tools, to which affected customers will be directed, that provide more detailed information about alternate access channels in the vicinity of a customer's location.

Commission recommendation: The methodology for evaluating cost savings should be revised to address personnel costs not eliminated, revenue leakage, and costs inherent to the facility's discontinuance (e.g., equipment disposal).

Postal Service response: The cost savings methodology used by management will be upgraded. The Postal Service is still examining the feasibility of including net labor cost savings and equipment disposal costs. The inclusion of these factors could be implemented without further change in the regulations at issue in this rulemaking. Although the Commission's input on these factors has been helpful, situation-dependent and speculative factors like revenue leakage are difficult to quantify.

Commission recommendation: The Postal Service should provide more information in its public notices about the analysis that management will use to evaluate discontinuance criteria.

Postal Service response: Because of the mixed qualitative and quantitative nature of local management's evaluation, it is difficult to determine how much analytical detail can reasonably be provided in a written notice while retaining the reader's interest and attention. However, the Postal Service's standard community meeting presentation materials will include a list of factors that local management will analyze, such as current office needs, proximity to other retail facilities and alternate access locations, lease terms and real estate market conditions, retail revenue, community input, impact on customers and the community, effect on employees, cost savings, environmental impact, and the long-term needs of the Postal Service. It should be noted that, as explained above, community meetings should be held in virtually all instances.

Commission recommendation: Discontinuance processes should be coordinated with evaluation of replacement retail options, and the availability of replacement retail options should be an express factor in discontinuance studies.

Postal Service response: Consideration of replacement retail and

other alternate access channels will be expressly incorporated in the processes set forth in Handbook PO-101.

Commission recommendation: Management should use uniform information-gathering and analysis tools.

Postal Service response: The discontinuance study process will be standardized through use of new electronic tools.

Commission recommendation: Community needs should be evaluated separately from "other needs."

Postal Service response: The final rule maintains the requirements in 39 CFR 241.3(c)(4)(i), (ii), and (v) for separate consideration of community needs, the effect on the community, and other factors. These distinct requirements will be reflected in the updated instructions in Handbook PO-101 as well. The updated customer questionnaire will solicit input on specific community factors, such as concentrations of senior citizens and proximity to bus stops.

Commission recommendation: Management should be instructed to conduct outreach with local elected officials, military and educational installation representatives, and community development organizations.

Postal Service response: The standard communications package provided to management will contain specific outreach materials for local elected officials. Other groups will receive notice in their capacity as local retail and delivery customers.

II. Explanation of Changes From Proposed Rule

The final rule includes the following changes to the proposed rule.

As explained in the preceding sections, certain issues are currently subject to consultation under 39 U.S.C. 1004(b)-(d) and further consideration by the Postal Service. These include the types of personnel that may be responsible for operations in a Post Office, and the definition of consolidation as not pertaining to personnel changes or to reclassification of Post Offices as other types of Postal Service-operated retail facilities. Therefore, the second sentence of 39 CFR 241.1(a) and the entirety of 39 CFR 241.3(a)(1)(iii), as proposed or modified, are not included in the final rule at this time. Other provisions pertinent to consolidations will, for the time being, remain as they were under previous regulations, with modifications only to reflect the inclusion of Postal Service-to-contractor conversions in the meaning of "consolidation." The initially proposed modifications, or modifications thereto, may be included

in the regulations upon the conclusion of the ongoing deliberations, in which case the Postal Service will issue a further final rule. Until then, the Postal Service will continue applying existing discontinuance procedures according to 39 CFR 241.3. A new clause 241.3(a)(1)(i)(D) is added to reflect this interim state of affairs.

Consistent with disclaimers in the proposed rule and this final rule, a new paragraph 241.3(a)(1)(iii) is added to clarify that the revised regulations are mandatory only for discontinuance actions commenced on or after the regulations' effective date. The previous regulations shall continue to apply to discontinuance actions initiated earlier, unless management directs utilization of the new rules.

For reference, a new paragraph 241.3(a)(2) is added to provide definitions of "USPS-operated retail facility," "contractor-operated retail facility," "closing," "consolidation," and "discontinuance." "USPS-operated retail facility" and "contractor-operated retail facility" are defined as in the proposed rule. "Closing" and "discontinuance" are defined in accordance with the definitions in the most recent version of Handbook PO-101; these definitions do not represent a substantive change from previous regulations. "Consolidation" incorporates the meaning under both the previous regulations (conversion of a Post Office into a Classified Station or Classified Branch) and the proposed rule (conversion of a USPS-operated retail facility into a contractor-operated retail facility). The remaining paragraphs in subsection 241.3(a) are renumbered accordingly.

The introductory language to paragraph 241.3(a)(4) (renumbered as (a)(5)) has been reorganized and revised to clarify that the initial feasibility study constitutes a distinct phase preliminary to any development of a written proposal. The justification for initiating a feasibility study, and the Vice-President's discretion to direct such action, therefore pertain only to the initial phase. Other references throughout 39 CFR 241.3 have been changed to "initial feasibility study," where appropriate, in order to clarify the intended scope of the relevant provision.

The phrase "severe safety and health hazards" in proposed clause 241.3(a)(4)(i)(B) (renumbered as (a)(5)(i)(B)) has been restated as "irreparable damage when no suitable alternate quarters are available in the community," in order to avoid potentially conflicting implications under § 241.3(a)(5)(ii).

Section 241.3(a)(4)(ii) (renumbered as § 241.3(a)(5)(ii)) has been revised somewhat to express more clearly the distinction between the circumstances in clauses (A) through (C), none of which can justify an initial feasibility study, and those in clause (D), which can justify an initial feasibility study but only in the presence of one or more of the permissible circumstances listed in § 241.3(a)(5)(i). This distinction tracks that in the governing statute. *Compare* 39 U.S.C. 404(d)(2)(B) (barring the Postal Service from considering compliance with any provision of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) in making a determination to discontinue a Post Office), *with* 39 U.S.C. 101(b) (providing that no small post office may be closed *solely* for operating at a deficit).

A new § 241.3(a)(5)(iii) has been added to specify how customers will receive notice and questionnaires for the initial feasibility study. Notice and questionnaires will be provided to retail customers at the Postal Service-operated retail facility under study, as well as by mail to customers in the five-digit ZIP Code delivery area of the facility and to certain other customers. In addition, local management may determine whether notification through media outlets is appropriate.

A new § 241.3(a)(5)(iv) has been added with guidance to the effect that when an initial feasibility study is to be initiated due to an emergency suspension (for example, when it is anticipated that a lease or rental agreement will be cancelled with no suitable alternate quarters available in the community), responsible personnel should, wherever possible, initiate the discontinuance process sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account prior to the suspension taking effect. If necessary to continue gathering information, responsible personnel should also seek to extend operations for the necessary duration, to the extent possible. Paragraph 241.3(a)(5)(iv) also clarifies that customers formerly served by a Postal Service-operated retail facility in suspension status should receive the same level of notice throughout the discontinuance process, including notice by mail, as they would have if the facility were not in suspension status.

Paragraph 241.3(b)(4) has been revised to acknowledge that a contractor-operated retail facility can, but need not necessarily, retain the name of the pre-consolidation Postal Service-operated retail facility, if appropriate. For example, some

contractor-operated retail facilities may be integrated into the contractor's business establishment, and the nature of the contract and level of service provided to customers might not be consistent with a separate name for the postal retail facility.

Paragraph 241.3(c)(1) has been amended to delete the reference to the responsible Vice President as having discretion to initiate a discontinuance proposal. This phrase had been erroneously included in the proposed rule.

Paragraph 241.3(c)(3) has been revised such that postmasters and officers in charge must be invited to submit comments, rather than indicating that they must do so. The previous phrasing gave rise to confusion as to whether such personnel have the option of avoiding submission of comments.

Paragraph 241.3(d)(1) has been revised to specify in greater detail the Postal Service-operated retail facilities at which the proposal and comment notice must be posted, and to require additional copies of the proposal and comment notice to be given to customers upon request. The description of the comment notice, which had also been in paragraph 241.3(d)(1), has been moved to a new paragraph 241.3(d)(2), and the succeeding paragraphs have been renumbered accordingly.

Paragraph 241.3(d)(2) (renumbered as (d)(3)) has been revised to clarify that a community meeting should be forgone only when exceptional circumstances make a community meeting infeasible, such as where the community no longer exists because of a natural disaster or because residents have moved elsewhere. The revised paragraph also explains that the purpose of the community meeting is to provide public outreach and to gain public input, and that it should occur during the comment period after a proposal has been posted. Finally, one class of personnel authorized to make exceptions to the community meeting requirement is changed from the Manager, Delivery Programs Support, to the applicable Vice President, Area Operations.

In the interest of consistency and clarity, references to locations where materials are to be posted in § 241.3(d)(3)(v) (renumbered as (d)(4)(v)), (e)(2)(i), (f)(3), (g)(1)(i), (g)(1)(ii)(A), and (g)(1)(ii)(B) have been revised to refer back to the locations now specified in § 241.3(d)(1).

References throughout the proposed rule to "responsible Vice President" have been changed to "responsible Headquarters Vice President," in order

to avoid confusion with Vice Presidents, Area Operations.

The Postal Service has determined that the changes described herein are necessary to standardize and clarify the procedures of Part 241 with regard to the discontinuance of USPS-operated retail facilities and to eliminate potential confusion regarding the policies governing these matters. Accordingly, the Postal Service has determined that this final rule should take effect upon publication. The Postal Service hereby adopts the following changes to 39 CFR part 241.

List of Subjects in 39 CFR Part 241

Organization and functions (government agencies), Postal Service.

Accordingly, 39 CFR Part 241 is amended as follows:

PART 241—RETAIL ORGANIZATION AND ADMINISTRATION: ESTABLISHMENT, CLASSIFICATION, AND DISCONTINUANCE

■ 1. The authority citation for 39 CFR Part 241 is revised to read as follows:

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

■ 2. Revise § 241.1 to read as follows:

§ 241.1 Post offices.

(a) *Establishment.* Post offices are established and maintained at locations deemed necessary to ensure that regular and effective postal services are available to all customers within specified geographic boundaries.

(b) *Classification.* As of October 1 of each year, Post Offices are categorized through a cost ascertainment grouping (CAG) process based on allowable postal revenue units for the second preceding fiscal year as follows:

(1) *CAG A–G.* Post offices having 950 or more revenue units.

(2) *CAG H–J.* Post offices having 190 but less than 950 revenue units.

(3) *CAG K.* Post offices having 36 but less than 190 revenue units.

(4) *CAG L.* Post offices having less than 36 revenue units.

■ 3. Revise § 241.3 to read as follows:

§ 241.3 Discontinuance of USPS-operated retail facilities.

(a) *Introduction—(1) Coverage.* (i) This section establishes the rules governing the Postal Service's consideration of whether an existing retail Post Office, station, or branch should be discontinued. The rules cover any proposal to:

(A) Replace a USPS-operated post office, station, or branch with a contractor-operated retail facility;

(B) Consolidate a USPS-operated post office, station, or branch by combining it with another USPS-operated retail facility; or

(C) Discontinue a USPS-operated post office, station, or branch without providing a replacement facility.

(ii) The regulations in this section are mandatory only with respect to discontinuance actions for which initial feasibility studies have been initiated on or after July 14, 2011. Unless otherwise provided by responsible personnel, the rules under section 241.3 as in effect prior to July 14, 2011 shall apply to discontinuance actions for which initial feasibility studies have been initiated prior to July 14, 2011.

(2) *Definitions.* As used in this section, the following terms have the following meanings:

(i) "*USPS-operated retail facility*" includes any Postal Service employee-operated post office, station, or branch, but does not include any station, branch, community post office, or other retail facility operated by a contractor.

(ii) "*Contractor-operated retail facility*" includes any station, branch, community post office, or other facility, including a private business, offering retail postal services that is operated by a contractor, and does not include any USPS-operated retail facility.

(iii) "*Closing*" means an action in which Post Office operations are permanently discontinued without providing a replacement facility in the community.

(iv) "*Consolidation*" means either an action that converts a Postal Service-operated retail facility into a contractor-operated retail facility, or an action that converts an independent Post Office into a Classified Station or Classified Branch. A resulting contractor-operated retail facility reports to a Postal Service-operated retail facility; a resulting Classified Station or Classified Branch reports to an administrative Post Office.

(v) "*Discontinuance*" means either a closure or a consolidation.

(3) *Requirements.* A District Manager or the responsible Headquarters Vice President, or a designee of either, may initiate a feasibility study of a USPS-operated facility for possible discontinuance. Any decision to close or consolidate a USPS-operated retail facility may be effected only upon the consideration of certain factors. These include the effect on the community served; the effect on employees of the USPS-operated retail facility; compliance with government policy established by law that the Postal Service must provide a maximum degree of effective and regular postal services to rural areas, communities,

and small towns where post offices are not self-sustaining; the economic savings to the Postal Service; and any other factors the Postal Service determines necessary. In addition, certain mandatory procedures apply as follows:

(i) The public must be given 60 days' notice of a proposed action to enable the persons served by a USPS-operated retail facility to evaluate the proposal and provide comments.

(ii) After public comments are received and taken into account, any final determination to close or consolidate a USPS-operated retail facility must be made in writing and must include findings covering all the required considerations.

(iii) The written determination must be made available to persons served by the USPS-operated retail facility at least 60 days before the discontinuance takes effect.

(iv) Within the first 30 days after the written determination is made available, any person regularly served by a Post Office subject to discontinuance may appeal the decision to the Postal Regulatory Commission. Where persons regularly served by another type of USPS-operated retail facility subject to discontinuance file an appeal with the Postal Regulatory Commission, the General Counsel reserves the right to assert defenses, including the Commission's lack of jurisdiction over such appeals. For purposes of

determining whether an appeal is filed within the 30-day period, receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(v) The Commission may only affirm the Postal Service determination or return the matter for further consideration but may not modify the determination.

(vi) The Commission is required to make any determination subject to 39 U.S.C. 404(d)(5) no later than 120 days after receiving the appeal.

(vii) The following table summarizes the notice and appeal periods defined by statute.

PUBLIC NOTICE OF PROPOSAL

60-day notice

PUBLIC NOTICE OF FINAL DETERMINATION

30 days for filing any appeal Up to 120 days for appeal consideration and decision	Wait at least 60 days from first day after posting final determination before closing or consolidating USPS-operated retail facility.
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(4) *Additional requirements.* This section also includes:

(i) Rules to ensure that the community's identity as a postal address is preserved.

(ii) Rules for consideration of a proposed discontinuance and for its implementation, if approved. These rules are designed to ensure that the reasons leading to discontinuance of a particular USPS-operated retail facility are fully articulated and disclosed at a stage that enables customer participation to make a helpful contribution toward the final decision.

(5) *Initial feasibility study.* A District Manager, the responsible Headquarters Vice President, or a designee of either may initiate a feasibility study of a USPS-operated retail facility's potential discontinuance, in order to assist the District Manager in determining whether to proceed with a written proposal to discontinue the facility.

(i) *Permissible circumstances.* The initial feasibility study may be based upon circumstances including, but not limited to, the following:

(A) A postmaster vacancy;

(B) Emergency suspension of the USPS-operated retail facility due to cancellation of a lease or rental agreement when no suitable alternate quarters are available in the community, a fire or natural disaster, irreparable damage when no suitable alternate quarters are available in the community,

challenge to the sanctity of the mail, or similar reasons;

(C) Earned workload below the minimum established level for the lowest non-bargaining (EAS) employee grade;

(D) Insufficient customer demand, evidenced by declining or low volume, revenue, revenue units, local business activity, or local population trends;

(E) The availability of reasonable alternate access to postal services for the community served by the USPS-operated retail facility; or

(F) The incorporation of two communities into one or other special circumstances.

(ii) *Impermissible circumstances.* The following circumstances may not be used to justify initiation of an initial feasibility study:

(A) Any claim that the continued operation of a building without handicapped modifications is inconsistent with the Architectural Barriers Act (42 U.S.C. 4151 et seq.);

(B) The absence of running water or restroom facilities;

(C) Compliance with the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.); or

(D) In the absence of any circumstances identified in paragraph (a)(5)(i) of this section, the operation of a small Post Office at a deficit.

(iii) *Notice to customers.* Local management must provide notification and questionnaires to customers at the

USPS-operated retail facility under study. Local management may determine whether notification is appropriate through media outlets. In addition, the following customers that receive delivery service from the USPS-operated retail facility must receive notification and questionnaires by mail:

(A) Post Office Box customers at the USPS-operated retail facility under study;

(B) Customers whose delivery carrier is stationed out of the USPS-operated retail facility under study;

(C) Customers in the delivery area of the same ZIP Code as the retail facility under study, regardless of whether the delivery carriers for those customers are stationed out of the retail facility under study or out of a nearby facility; and

(D) Customers whom the retail facility under study serves for allied delivery services such as mail pick-up.

(iv) *Initial feasibility study due to emergency suspension.* Wherever possible when an initial feasibility study is to be initiated under § 241.3(a)(4)(i)(B) (for example, when it is anticipated that a lease or rental agreement will be cancelled with no suitable alternate quarters available in the community), responsible personnel should initiate the initial feasibility study sufficiently in advance of the circumstance prompting the emergency suspension to allow a meaningful opportunity for public input to be taken into account. If public input cannot be

sought sufficiently in advance of the end date of the lease or rental agreement, responsible personnel should endeavor, to the extent possible, to continue operation of the USPS-operated retail facility for the duration necessary to gather public input and make a more fully informed decision on whether to proceed with a discontinuance proposal. Customers formerly served by the suspended facility should receive notice under paragraph (a)(4)(iii) of this section, including by mail, to the same extent that they would have if the facility were not in suspended status at the time of the initial feasibility study, proposal, or final determination.

(b) *Preservation of community address*—(1) *Policy*. The Postal Service permits the use of a community's separate address to the extent practicable.

(2) *ZIP Code assignment*. The ZIP Code for each address formerly served from the discontinued USPS-operated retail facility should be kept, wherever practical. In some cases, the ZIP Code originally assigned to the discontinued USPS-operated retail facility may be changed if the responsible District Manager receives approval from his or her Vice President, Area Operations, before any proposal to discontinue the USPS-operated retail facility is posted.

(i) In a consolidation, the ZIP Code for the replacement contractor-operated retail facility, classified station, or classified branch is the ZIP Code originally assigned to the discontinued facility.

(ii) If the ZIP Code is changed and the parent or gaining USPS-operated retail facility covers several ZIP Codes, the ZIP Code must be that of the delivery area within which the facility is located.

(3) *USPS-operated retail facility's city name in address*. If all the delivery addresses using the city name of the USPS-operated retail facility being discontinued continue to use the same ZIP Code, customers may continue to use the discontinued facility's city name in their addresses, instead of that of the new delivering USPS-operated retail facility.

(4) *Name of facility established by consolidation*. If a post office is to be consolidated with one or more other post offices by establishing in its place a classified station or classified branch affiliated with another post office, the replacement unit is usually given the same name of the facility that is replaced. If a USPS-operated retail facility is to be consolidated by establishing in its place a contractor-operated retail facility, the replacement unit can be given the same name of the

facility that is replaced, if appropriate in light of the nature of the contract and level of service provided.

(c) *Initial proposal*—(1) *In general*. If a District Manager believes that the discontinuance of a USPS-operated retail facility within his or her responsibility may be warranted, the District Manager:

(i) Must use the standards and procedures in § 241.3(c) and (d).

(ii) Must investigate the situation.

(iii) May propose the USPS-operated retail facility be discontinued.

(2) *Consolidation*. The proposed action may include a consolidation by replacement of a USPS-operated retail facility with a contractor-operated retail facility. The proposed action may also include a consolidation by replacement of a post office with a classified station or classified branch if:

(i) The communities served by two or more post offices are being merged into a single incorporated village, town, or city; or

(ii) A replacement facility is necessary for regular and effective service to the area served by the post office considered for discontinuance.

(3) *Views of postmasters*. Whether the discontinuance under consideration involves a consolidation or not, the District Manager must discuss the matter with the postmaster (or the officer in charge) of the USPS-operated retail facility considered for discontinuance, and with the postmaster of any other USPS-operated retail facility affected by the change. The District Manager should make sure that these officials are invited to submit written comments and suggestions as part of the record when the proposal is reviewed.

(4) *Preparation of written proposal*. The District Manager, or a designee, must gather and preserve for the record all documentation used to assess the proposed change. If the District Manager thinks the proposed action is warranted, he or she, or a designee, must prepare a document titled "Proposal to (Close) (Consolidate) the (Facility Name)." This document must describe, analyze, and justify in sufficient detail to Postal Service management and affected customers the proposed service change. The written proposal must address each of the following matters in separate sections:

(i) *Responsiveness to community postal needs*. It is the policy of the Government, as established by law, that the Postal Service will provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where

post offices are not self-sustaining. The proposal should:

(A) Contrast the services available before and after the proposed change;

(B) Describe how the changes respond to the postal needs of the affected customers; and

(C) Highlight particular aspects of customer service that might be less advantageous as well as more advantageous.

(ii) *Effect on community*. The proposal must include an analysis of the effect the proposed discontinuance might have on the community served, and discuss the application of the requirements in § 241.3(b).

(iii) *Effect on employees*. The written proposal must summarize the possible effects of the change on postmasters and other employees of the USPS-operated retail facility considered for discontinuance.

(iv) *Savings*. The proposal must include an analysis of the economic savings to the Postal Service from the proposed action, including the cost or savings expected from each major factor contributing to the overall estimate.

(v) *Other factors*. The proposal should include an analysis of other factors that the District Manager determines are necessary for a complete evaluation of the proposed change, whether favorable or unfavorable.

(vi) *Summary*. The proposal must include a summary that explains why the proposed action is necessary, and assesses how the factors supporting the proposed change outweigh any negative factors. In taking competing considerations into account, the need to provide regular and effective service is paramount.

(vii) *Notice*. The proposal must include the following notices:

(A) *Supporting materials*. "Copies of all materials on which this proposal is based are available for public inspection at (Facility Name) during normal office hours."

(B) *Nature of posting*. "This is a proposal. It is not a final determination to (close) (consolidate) this facility."

(C) *Posting of final determination*. "If a final determination is made to close or consolidate this facility, after public comments on this proposal are received and taken into account, a notice of that final determination will be posted in this facility."

(D) *Appeal rights*. "The final determination will contain instructions on how affected customers may appeal a decision to close or consolidate a post office to the Postal Regulatory Commission. Any such appeal must be received by the Commission within 30 days of the posting of the final

determination.” The notice in this clause is provided when the USPS-operated retail facility under study is a post office. For purposes of this clause, the date of receipt by the Commission is based on the postmark of the appeal, if sent through the mail, or on other appropriate documentation or indicia, if sent through another lawful delivery method.

(d) *Notice, public comment, and record*—(1) *Posting proposal and comment notice.* A copy of the written proposal and a signed invitation for comments must be posted prominently, with additional copies to be given to customers upon request, in the following locations:

(i) The USPS-operated retail facility under study, unless service at the facility has been suspended;

(ii) The USPS-operated retail facility proposed to serve as the supervising facility;

(iii) Any USPS-operated retail facility likely to serve a significant number of customers of the USPS-operated retail facility under study; and

(iv) If service at the facility under study has been suspended, any USPS-operated retail facility providing alternative service for former customers of the facility under study.

(2) *Contents of comment notice.* The invitation for comments must:

(i) Ask interested persons to provide written comments within 60 days, to a stated address, offering specific opinions and information, favorable or unfavorable, on the potential effect of the proposed change on postal services and the community.

(ii) State that copies of the proposal with attached optional comment forms are available in the affected USPS-operated retail facilities.

(iii) Provide a name and telephone number to call for information.

(3) *Other steps.* In addition to providing notice and inviting comment, the District Manager must take any other steps necessary to ensure that the persons served by affected USPS-operated retail facilities understand the nature and implications of the proposed action. A community meeting must be held to provide outreach and gain public input after the proposal is posted, unless otherwise instructed by the responsible Headquarters Vice President or the applicable Vice President, Area Operations. Authorization to forgo a community meeting should issue only where exceptional circumstances make a community meeting infeasible, such as where the community no longer exists because of a natural disaster or because residents have moved elsewhere.

(i) If oral contacts develop views or information not previously documented, whether favorable or unfavorable to the proposal, the District Manager should encourage persons offering the views or information to provide written comments to preserve them for the record.

(ii) As a factor in making his or her decision, the District Manager may not rely on communications received from anyone unless submitted in writing for the record.

(4) *Record.* The District Manager must keep, as part of the record for consideration and review, all documentation gathered about the proposed change.

(i) The record must include all information that the District Manager considered, and the decision must stand on the record. No written information or views submitted by customers may be excluded.

(ii) The docket number assigned to the proposal must be the ZIP Code of the office proposed for closing or consolidation.

(iii) The record must include a chronological index in which each document contained is identified and numbered as filed.

(iv) As written communications are received in response to the public notice and invitation for comments, they are included in the record.

(v) A complete copy of the record must be available for public inspection during normal office hours at the USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, beginning no later than the date on which notice is posted and extending through the posting period. When appropriate, certain personally identifiable information, such as individual names or residential addresses, may be redacted from the publicly accessible copy of the record.

(vi) Copies of documents in the record (except the proposal and comment form) are provided on request and on payment of fees as noted in chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management.*

(e) *Consideration of public comments and final local recommendation*—(1) *Analysis of comments.* The District Manager or a designee must prepare an analysis of the public comments received for consideration and inclusion in the record. If possible, comments subsequently received should also be included in the analysis. The analysis should list and briefly describe each point favorable to the proposal and each point unfavorable to the proposal. The analysis should identify to the extent

possible how many comments support each point listed.

(2) *Re-evaluation of proposal.* After completing the analysis, the District Manager must review the proposal and re-evaluate all the tentative conclusions previously made in light of additional customer information and views in the record.

(i) *Discontinuance not warranted.* If the District Manager decides against the proposed discontinuance, he or she must post, in the USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, a notice stating that the proposed closing or consolidation is not warranted.

(ii) *Discontinuance warranted.* If the District Manager decides that the proposed discontinuance is justified, the appropriate sections of the proposal must be revised, taking into account the comments received from the public. After making necessary revisions, the District Manager must:

(A) Transmit the revised proposal and the entire record to the responsible Headquarters Vice President.

(B) Certify that all documents in the record are originals or true and correct copies.

(f) *Postal Service decision*—(1) *In general.* The responsible Headquarters Vice President or a designee must review the proposal of the District Manager and decide on the merits of the proposal. This review and the decision must be based on and supported by the record developed by the District Manager. The responsible Headquarters Vice President can instruct the District Manager to provide more information to supplement the record. Each instruction and the response must be added to the record. The decision on the proposal of the District Manager, which must also be added to the record, may approve or disapprove the proposal, or return it for further action as set forth in this paragraph (f).

(2) *Approval.* The responsible Headquarters Vice President or a designee may approve the proposed discontinuance, with or without further revisions. If approved without further revision, the term “Final Determination” is substituted for “Proposal” in the title. A copy of the Final Determination must be provided to the District Manager. The Final Determination constitutes the Postal Service determination for the purposes of 39 U.S.C. 404(d).

(i) *Supporting materials.* The Final Determination must include the following notice: “Copies of all materials on which this Final Determination is based are available for

public inspection at the (Facility Name) during normal office hours.”

(ii) *Appeal rights.* If the USPS-operated retail facility subject to discontinuance is a post office, the Final Determination must include the following notice: “Pursuant to Public Law 94-421 (1976), this Final Determination to (close) (consolidate) the (Facility Name) may be appealed by any person served by that office to the Postal Regulatory Commission, 901 New York Avenue, NW., Suite 200, Washington, DC 20268-0001. Any appeal must be received by the Commission within 30 days of the first day this Final Determination was posted. If an appeal is filed, copies of appeal documents prepared by the Postal Regulatory Commission, or the parties to the appeal, must be made available for public inspection at the (Facility Name) during normal office hours.”

(3) *Disapproval.* The responsible Headquarters Vice President or a designee may disapprove the proposed discontinuance and return it and the record to the District Manager with written reasons for disapproval. The District Manager or a designee must post, in each affected USPS-operated retail facility where the proposal was posted under paragraph (d)(1) of this section, a notice that the proposed closing or consolidation has been determined to be unwarranted.

(4) *Return for further action.* The responsible Headquarters Vice President or a designee may return the proposal of the District Manager with written instructions to give additional consideration to matters in the record, or to obtain additional information. Such instructions must be placed in the record.

(5) *Public file.* Copies of each Final Determination and each disapproval of a proposal by the responsible Headquarters Vice President must be placed on file in the Postal Service Headquarters library.

(g) *Implementation of final determination—(1) Notice of final determination to discontinue USPS-operated retail facility.* The District Manager must:

(i) Provide notice of the Final Determination by posting a copy prominently in the USPS-operated retail facilities in each affected USPS-operated retail facilities where the proposal was posted under paragraph (d)(1) of this section, including the USPS-operated retail facilities likely to be serving the affected customers. The date of posting must be noted on the first page of the posted copy as follows: “Date of posting.”

(ii) Ensure that a copy of the completed record is available for public inspection during normal business hours at each USPS-operated retail facility where the Final Determination is posted for 30 days from the posting date.

(iii) Provide copies of documents in the record on request and payment of fees as noted in chapter 4 of Handbook AS-353, *Guide to Privacy, the Freedom of Information Act, and Records Management.*

(2) *Implementation of determinations not appealed.* If no appeal is filed, the official closing date of the office must be published in the *Postal Bulletin* and effective, at the earliest, 60 days after the first day that Final Determination was posted. A District Manager may request a different date for official discontinuance in the Retail Change Announcement document submitted to the responsible Headquarters Vice President or a designee. However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(3) *Actions during appeal—(i) Implementation of discontinuance.* If an appeal is filed, only the responsible Headquarters Vice President may direct a discontinuance before disposition of the appeal. However, the USPS-operated retail facility may not be permanently discontinued sooner than 60 days after the first day of the posting of the notice required by paragraph (g)(1) of this section.

(ii) *Display of appeal documents.* The Office of General Counsel must provide the District Manager with copies of all pleadings, notices, orders, briefs, and opinions filed in the appeal proceeding.

(A) The District Manager must ensure that copies of all these documents are prominently displayed and available for public inspection in the USPS-operated retail facilities where the Final Determination was posted under paragraph (g)(1)(i) of this section. If the operation of that USPS-operated retail facility has been suspended, the District Manager must ensure that copies are displayed in the USPS-operated retail facilities likely to be serving the affected customers.

(B) All documents except the Postal Regulatory Commission’s final order and opinion must be displayed until the final order and opinion are issued. The final order and opinion must be displayed at the USPS-operated retail facility to be discontinued for 30 days or until the effective date of the discontinuance, whichever is earlier. The final order and opinion must be

displayed for 30 days in all other USPS-operated retail facilities where the Final Determination was posted under paragraph (g)(1)(i) of this section.

(4) *Actions following appeal decision*

—(i) *Determination affirmed.* If the Commission dismisses the appeal or affirms the Postal Service’s determination, the official closing date of the office must be published in the *Postal Bulletin*, effective anytime after the Commission renders its opinion, if not previously implemented under § 241.3(g)(3)(i). However, the USPS-operated retail facility may not be discontinued sooner than 60 days after the first day of the posting of the notice required under § 241.3(g)(1).

(ii) *Determination returned for further consideration.* If the Commission returns the matter for further consideration, the responsible Headquarters Vice President must direct that either:

(A) Notice be provided under paragraph (f)(3) of this section that the proposed discontinuance is determined not to be warranted or

(B) The matter be returned to an appropriate stage under this section for further consideration following such instructions as the responsible Headquarters Vice President may provide.

Stanley F. Mires,

Chief Counsel, Legislative.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R07-OAR-2010-1083; FRL-9434-7]

Finding of Substantial Inadequacy of Implementation Plan; Call for Iowa State Implementation Plan Revision

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Pursuant to the Environmental Protection Agency’s (EPA) authority in the Clean Air Act (CAA or Act), section 110(k)(5), to call for plan revisions, EPA is making a finding that the Iowa State Implementation Plan (SIP) is substantially inadequate to maintain the 2006 24-hour National Ambient Air Quality Standard (NAAQS) for Fine Particulate Matter (PM_{2.5}) in Muscatine County, Iowa. The specific SIP deficiencies needing revision are described below. EPA is also finalizing