

April 9, 2001

JOHN E. POTTER
CHIEF OPERATING OFFICER AND
EXECUTIVE VICE PRESIDENT

KENNETH C. WEAVER
CHIEF POSTAL INSPECTOR

SUBJECT: Audit Report - Review of the Revised Rules Governing Commercial Mail Receiving Agencies (Report Number DE-AR-01-002)

This report presents the results of our audit of the revised rules governing commercial mail receiving agencies (Project Number 00PA013DS000). The audit was initiated in response to a congressional request for an independent assessment of the Postal Service's revision of rules for commercial mail receiving agencies. The audit objectives were to determine whether (1) Postal Service management fully assessed the impact of the revised rules, and (2) objections raised in opposition to the revised rules were valid.

Our audit revealed that the Postal Service complied with internal rulemaking procedures in revising rules for commercial mail receiving agencies. In some cases, the Postal Service went further in accommodating the affected parties than internal procedures required. However, the Postal Service did not fully assess the impact of the revised rules on receiving agencies and their boxholders. In addition, two of the four objections raised in opposition to the revised rules were valid. Specifically, physical location information may still be disclosed for victims of violence who have an expired civil protection order on file or have moved to a different jurisdiction, and commercial mail receiving agencies and boxholders will incur costs to implement the revised rules. However, the \$1 billion industry estimate of costs was unsupported and overstated.

Management's comments were responsive to two findings and recommendations, but nonresponsive to one finding and recommendation. They indicated they had modified the Inspection Service reporting system to identify fraud involving both private mailboxes and post office boxes. Management also stated they will reissue instructions to emphasize protective orders and clarify the actions taken after the protective order has expired or the person moves, including the need to consult counsel in these instances. However, management disagreed with our first recommendation that in the future proposed changes to the rules governing commercial mail receiving agencies address the magnitude of the problem, include a cost impact analysis, and identify

alternative solutions. We view recommendation one as unresolved and plan to pursue it through the audit resolution process. The Office of Inspector General (OIG) considers recommendations one, two, and three significant and, therefore, require OIG concurrence before closure. Consequently, the OIG requests written confirmation when corrective actions are completed. These recommendations should not be closed in the follow-up tracking system until OIG provides written confirmation that the recommendations can be closed. Management comments in their entirety are included in the appendix to this report.

We appreciate the cooperation and courtesies provided by your staff during the review. If you have questions or need additional information, please contact Tracy A. Lapoint, acting deputy assistant inspector general, Business Operations, or me at (703) 248-2300.

Debra S. Ritt
Assistant Inspector General
for Business Operations

Attachment

cc: John R. Gunnels

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EXECUTIVE SUMMARY

Introduction

We conducted an audit of the Postal Service's revisions of rules governing commercial mail receiving agencies (receiving agencies) and their boxholders. Our audit was initiated in response to a request from the then Ranking Minority Member of the Subcommittee on the Postal Service, House Committee on Government Reform. The audit objectives were to determine whether (1) Postal Service management fully assessed the impact of the revised rules, and (2) objections raised in opposition to revised rules were valid.

Results in Brief

Our audit revealed that the Postal Service complied with internal rulemaking procedures in revising rules for commercial mail receiving agencies. In some cases, the Postal Service went further in accommodating the affected parties than internal procedures required. However, the Postal Service did not fully assess the impact of the revised rules on the receiving agencies and their boxholders. In particular, the Postal Service did not demonstrate the need for regulatory change by presenting statistical or scientific data to support its claims of mail fraud conducted through private mailboxes. In addition, it did not show how the regulations would curb fraud, assess the impact of the proposed rules on receiving agencies and private boxholders, or consider alternatives to revising the rules.

The Postal Service was not legally required to perform a detailed analysis to justify proposed changes to regulations like most federal agencies. However, considering that over 10,000 receiving agencies and their boxholders were impacted by the proposed revised rules, a better business practice would have been to take into account the concerns from all sources, including all competing businesses. Enactment of the revised rules created the appearance that the Postal Service misused its regulatory authority to hinder competition and contributed to public perception that associated costs for implementing the revised rules were unnecessary and burdensome.

Further, two of the four objections raised in opposition were valid. Specifically, the Postal Service revised the rules to further restrict public disclosure of physical location information, however, there are still concerns that information may be released on individuals who have

expired civil protection orders on file or have relocated to a different jurisdiction. Claims that receiving agencies will incur additional costs to implement the rules were also valid. However, the \$1 billion industry estimate was unsupported and resulted in overstated costs. Additionally, we were unable to substantiate claims that the revised rules treated private boxholders unfairly or that the Postal Service revised the rules to retaliate against the receiving agency industry for a complaint filed with the Postal Rate Commission.

**Summary of
Recommendations**

To avoid negative public perception of proposed changes to receiving agency rules, and to ensure better business practices, we recommend that in the future, the chief operating officer and executive vice president require supporting justification, which addresses the magnitude of the problem and cost implications associated with proposed changes.

To assess the effectiveness of the revised rules and quantify the magnitude of fraudulent activity, we recommend the chief postal inspector modify the tracking system to include both receiving agency and post office boxholders.

To ensure physical location information is not improperly disclosed, we also recommend the chief operating officer and executive vice president instruct postmasters to seek advice from field legal counsel when civil protection orders on file have expired or individuals have relocated to different jurisdictions.

**Summary of
Management's
Comment**

Management disagreed with our finding that it did not fully assess the revised rules. They also stated with regard to our first recommendation that future proposed changes should address the magnitude of the problem, include a cost impact analysis, and identify alternative solutions, that, as in the past, procedures will be decided on a case-by-case basis. Management indicated the magnitude of the problem was demonstrated by the results of Inspection Service investigations, State Attorneys General testimonies, and interaction with the law enforcement community, mailing industry, and financial institutions. They also stated the Postal Service was not able to calculate a reasonable cost estimate, because the revised rules did not create significant new requirements and only clarified existing rules. In addition, they stated that by making specific accommodations, changes and clarification to the rules as a

result of numerous meetings with industry representatives and interested groups and notice-and-comment rulemaking procedures, management had considered alternative solutions.

Management agreed with the remaining two findings and recommendations. They indicated they had modified the Inspection Service reporting system to identify fraud involving both private mailboxes and post office boxes. Management also stated they will reissue instructions to emphasize protective orders and clarify actions taken after the protective order has expired or the person moves, including the need to consult counsel in these instances. Management's comments, in their entirety, are included in the appendix to this report.

**Overall Evaluation of
Management's
Comments**

Management's comments were responsive to two findings and recommendations, but nonresponsive to one finding and recommendation. We disagree with management's assertion that they adequately demonstrated the need for revising the rules. Their basis for quantifying the magnitude of the problem did not include background studies regarding fraud involving receiving agencies and post office boxes, or any analytical studies to identify trends or determine the frequency, location, nature, or monetary loss of illegal activities. We also disagree with management's position that the revised rules would not significantly impact receiving agencies and customers. Some of the rules represented significant changes that could cost receiving agencies and their customers millions of dollars. In addition, we disagree that the Postal Service's consideration of variations to the rules equated to it considering alternatives to revising the rules. We view this recommendation as unresolved and plan to pursue it through the audit resolution process.

INTRODUCTION

Background

A commercial mail receiving agency (receiving agency) is a business that offers private mailboxes and accepts mail for customer pickup or remail to the addressee. Today, there are over 10,000 receiving agencies that serve over 800,000 customers. It is generally recognized that receiving agency customers use their boxes for legitimate purposes. However, some individuals have used receiving agencies to conduct deceptive and illegal mail scams.

To improve security of the mail and protect the interests of the general public, the Postal Service published proposed changes to receiving agency regulations. The proposed rules would also bring the receiving agencies in line with the rules that govern post office boxholders. The first notice of proposed revisions to the rules was published in the Federal Register in August 1997 for 30 days, and no comments were received. At the request of the receiving agency industry, the Postal Service republished the proposed regulations in November 1997 for an additional 30 days.

Approximately 8,000 comments opposing the changes were received from receiving agencies and their boxholders. The majority of the comments were simple form letters from boxholders complaining of:

- Use of a private mailbox designator instead of suite/apartment number.
- Disclosure of physical address location information.
- Unnecessary and burdensome costs to implement revised rules.
- Differential treatment based on the requirement to refile address information and provide two forms of identification.
- The Postal Service's use of regulatory authority to hinder competition.
- Quarterly reporting of customer information.

In the October 1999 testimony before the House Subcommittee on Regulatory Reform and Paperwork

Reduction, concerns from the receiving agency industry were expressed about the Postal Service's exemption from federal rulemaking requirements.

About a dozen responses from mailing and financial industry associations, consumer groups, state offices of attorney general, and law enforcement organizations supported the rules.

The final rules were published on March 25, 1999, and were to be effective April 26, 1999. However, based on comments from the receiving agencies and their boxholders, elements of the requirements were phased in at later dates to facilitate implementation. Opposition to the final rule, however, continued from various interest groups, such as the National Coalition Against Domestic Violence, National Association for the Self-Employed, and the Cato Institute. In addition, Congress held hearings on the revised rules, and Postal Service officials repeatedly met with receiving agencies and their boxholders. This resulted in a joint receiving agency industry and Postal Service working group to modify and clarify the final rules. Currently, the rules provide that receiving agencies:

- Register with the Postal Service within ten days of the April 26, 1999, implementation date. This was a one-time requirement.
- Require two forms of identification from boxholders, one of which must include a photograph.
- Are not authorized to deliver mail unless a current customer application form was on file beginning June 26, 1999. This requirement was later extended to August 1999.
- Are not authorized to accept registered mail.
- Submit quarterly lists of their boxholders to the Postal Service.
- Add new postage to remail items for at least six months, rather than indefinitely. After six months, the receiving agency will endorse and return First-Class Mail to the post office without new postage for subsequent return to sender.

- Endorse and return First-Class Mail to the post office if the receiving agency does not have a current customer application form on file.
- Are subject to suspension for failure to correct infractions in a timely manner.

Further, the Postal Service strengthened the requirements that it may only release a boxholder's address pursuant to a written request from government or law enforcement agencies, or a court order.

The March 25, 1999, final rule made the use of the designation "PMB" (private mailbox) in customer mailing addresses mandatory. On March 13, 2000, the Postal Service published the rule proposing the "#" sign as an alternative to use of "PMB" designation. On August 16, 2000, the Postal Service published the final rule allowing the use of the "#" sign or the "PMB" designation.

**Objectives, Scope,
and Methodology**

This audit was initiated in response to a request from the then Ranking Minority Member of the Subcommittee on the Postal Service, House Committee on Government Reform. Our audit objectives were to determine whether (1) Postal Service management fully assessed the impact of the revised rules and, (2) objections raised in opposition to revised rules were valid.

To determine if the Postal Service fully assessed the impact on the receiving agencies and their boxholders, we reviewed internal rulemaking procedures for developing and implementing rules. We also evaluated the written justification for revising the rules and analyzed public comments received in response to publication of the proposed rules in the Federal Register.

In addition, we reviewed four of the six objections raised in opposition to the revised rules to ascertain if they were valid. These included public disclosure of physical location information, potential cost of implementing the revised rules, unfair treatment of private boxholders, and alleged retaliation. We did not assess objections to use of the private mailbox designator because the Postal Service was considering an alternative to this requirement. We also did

not review objections to quarterly reporting of customer listings because annual reporting was already required.

We also analyzed a cost assessment--The U.S. Postal Service War on Private Mailboxes and Privacy Rights--published by the Cato Institute and PostalWatch Incorporated¹ on July 30, 1999, to inform the public of the new rules governing receiving agencies and the costs incurred to implement these new rules. We focused our analysis on the adequacy of supporting documentation and reasonableness of assumptions.

Finally, we interviewed Postal Service management and ten panelists who testified on the revised rules on October 19, 1999, before the Subcommittee on Regulatory Reform and Paperwork Reduction.

We performed our audit at Postal Service Headquarters between December 1999 and March 2001. The audit was performed in accordance with generally accepted government auditing standards, and included such test of internal controls as were considered necessary under the circumstances.

Prior Audit Coverage

We did not identify any prior audits or reviews related to the objectives of this audit.

¹The Cato Institute and PostalWatch Incorporated are two nonpartisan organizations whose missions are to achieve greater involvement of the general public in questions of policy and the proper role of government.

AUDIT RESULTS

Need for Revised Rules

Our audit revealed that the Postal Service complied with internal rulemaking procedures in revising rules for commercial mail receiving agencies. In some cases, the Postal Service went further in accommodating the affected parties than internal procedures required. For example, the Postal Service publicized the proposed rules in the Federal Register for public comment and worked with law enforcement agencies, the mailing industry, and financial institutions to modify the rules. Furthermore, rule implementation dates were extended to reduce the financial impact on receiving agencies and their customers.

However, the Postal Service did not fully assess the impact on the receiving agencies and their boxholders. In particular, the Postal Service did not demonstrate the need for regulatory change by presenting statistical or scientific data to support its claims of mail fraud conducted through private mailboxes or show how the regulations would curb fraud, assess the impact of the proposed rules on receiving agencies and boxholders, or consider alternatives to revising the rules. According to Postal Service officials, the magnitude of the problem was demonstrated by the results of Inspection Service investigations, States Attorney General testimony, and interaction with the law enforcement community, mailing industry, and financial institutions. They also stated that the Postal Service was not able to calculate a reasonable cost estimate, but that was not unreasonable because the revised rules did not create significant new requirements and only clarified existing rules. In addition, they stated that by making specific accommodations, changes, and clarification to the rules as a result of numerous meetings with industry representatives and interested groups and notice-and-comment rulemaking procedures, management had considered alternative solutions.

However, considering that over 10,000 receiving agencies and their boxholders were impacted, a better business practice would have been to take into account the concerns from all sources, including competing businesses. The manner in which the rules were revised gave the impression that Postal Service did not consider the financial impact. Enactment of the revised rules created the appearance that the Postal Service misused its regulatory authority to hinder

competition and contributed to public perception that associated costs to implement the revised rules were unnecessary and burdensome.

Magnitude of the
Problem and Ability to
Curb Fraud

The Postal Service did not demonstrate the magnitude of the problem it sought to alleviate through its regulations. In the October 1999 testimony before the House Subcommittee on Regulatory Reform and Paperwork Reduction, the Postal Service indicated the revised rules were intended to deter and prevent mail fraud in receiving agencies. According to 21 Inspection Service investigations, fraudulent activities involving receiving agencies increased dramatically over the last decade. For example, the Postal Service reported that during a six-year period in the 1990s an individual used private mailboxes to defraud 880 elderly Americans in 14 states out of \$128 million.

While this was a legitimate concern, the Postal Service did not establish the nature and magnitude of the problem through the use of statistical or scientific data, or detailed studies. For example, the Postal Service did not provide or conduct any background studies regarding fraud involving receiving agencies and post office boxes, or any analytical studies to determine the frequency, location, nature, or monetary loss of illegal activities involving receiving agencies. Such an analysis might have demonstrated the need for the revised regulations. Also in the October 1999 testimony, an Inspection Service official indicated the Inspection Service could not determine the magnitude of the problem because investigative results are tracked by type of crime and not by postal or private mailbox. The Inspection Service since has modified its tracking system to include the identification of fraud involving postal and private mail boxes.

The Postal Service did not demonstrate how the new regulations would deal with mail fraud, or how much of the problem the regulations would eliminate. For example, the Postal Service maintained that eliminating the use of the address designation “suite” or “apartment” for mail that goes to private mailboxes would reduce the risk of mail fraud and that the use of the delivery address designator of “PMB” for private mailboxes would establish the true address identity of mail delivered to receiving agencies. However, the Postal Service was not able to determine how many cases of mail fraud involve the use of “suite” or “apartment” designations.

Regulatory Impact
Analysis and
Alternatives

The Postal Service did not conduct a regulatory impact analysis or consider alternatives to revising the rules. Since the Postal Service is exempt from various federal requirements, including Executive Order Number 12866,² it is not required to conduct a regulatory analysis mandated for other federal agencies. Such an analysis includes determining the justification for the rules, assessing the cost impact, identifying various options, and evaluating the effectiveness of proposed actions.

In revising the rules, the Postal Service followed its internal rulemaking procedures. These procedures require that a written justification for the proposed rules be prepared and routed to the relevant vice presidents, and the chief counsel for concurrence. However, while concurrence was obtained, the director of Regulatory Studies for the Cato Institute testified that the written justification for the proposed rules was not compelling because it failed to demonstrate the magnitude of the problem or whether the proposed solution represented an appropriate level of action for the problem identified.

Also, the Postal Service considered several variations to the rules, but did not consider alternatives other than revising the rules. For example, the Cato Institute believed that better education by local postmasters of receiving agencies would help deter 90 percent of mail fraud, thus eliminating the need to revise the rules. Further, the Postal Service's internal process does not provide for an assessment of the cost impact. Postal Service officials indicated the variances in the size of affected receiving agencies, and the length of time to replace stationery products prevented a cost assessment from being made. The Postal Service was not required to perform a detailed cost/benefit analysis of the proposed revisions and stated the various cost factors could not be accurately quantified for such an assessment in any event.

² Executive Order Number 12866, was issued on September 30, 1993, to reform and improve the efficiency of the regulatory process. The objectives of the executive order were to enhance planning and coordination for new and existing regulations, reaffirm the primacy of federal agencies in the regulatory decision making process, restore the integrity and legitimacy of regulatory review and oversight, and make the process more accessible and open to the public.

Nevertheless, the Postal Service extended a longer grace period for compliance with the rules in order to minimize the cost impact the revisions could impose on private mailbox users.

Although the Postal Service complied with its internal process and procedures for rulemaking, the nature of the revised rules and their impact on a competitor industry indicated a deviation from the Postal Service's normal practice was warranted. Considering the financial impact that regulations can have, rules must be adequately justified to avoid negative public perception. For this reason, the

Postal Service should have analyzed the potential costs of the rules and identified alternatives to revising them.

Recommendation

To avoid the perception that the Postal Service misused its authority to hinder competition, and that associated costs to implement the revised rules were unnecessary and burdensome, we recommend the chief operating officer and executive vice president:

1. Ensure that in the future written justification supporting proposed changes to rules governing commercial mail receiving agencies address the magnitude of the problem, include a cost impact analysis, and identify the various options considered.

**Management's
Comments**

Management disagreed with our finding that it did not fully assess the revised rules and stated, with regard to our recommendation, that procedures for changes to rules governing receiving agencies will be decided on a case-by-case basis.

Management indicated the magnitude of the problem was demonstrated by the results of Inspection Service investigations, State Attorneys General testimonies, and interaction with the law enforcement community, mailing industry, and financial institutions.

They also stated that the Postal Service was not able to calculate a reasonable cost estimate, because the revised rules did not create significant new requirements and only clarified existing rules. However, although a cost estimate

was not done, management extended regulation compliance dates to minimize the cost impact.

In addition, they stated that by making specific accommodations, changes and clarification to the rules as a result of numerous meetings with industry representatives and interested groups and notice-and-comment rulemaking procedures, management had considered alternative solutions

**Evaluation of
Management's
Comments**

Management's actions are nonresponsive to the recommendation. During the audit, we reviewed all data provided by the Postal Service including Inspection Service audit reports. The Postal Service stated they provided us with hundreds of cases involving identify theft in support of the rulemaking. However, the Postal Service only provided us with a synopsis of 21 investigations that identified individual fraud cases in 13 states and Washington D.C. Although, this information did show that fraud was a problem it did not sufficiently demonstrate the magnitude of the problem or identify trends. For example, the Postal Service could not demonstrate the rate at which fraudulent activity had increased since 1992, which was the basis for revising the rules.

We were also aware that that the Postal Service interacted extensively with the law enforcement community, mailing industry, and financial institutions. However, these actions, while indicative of the Inspection Service's efforts to coordinate a response to fraudulent activity, did not demonstrate the magnitude of the problem.

We also disagree with management's position that the revised rules would not significantly impact receiving agencies and customers. Some of the rules constituted new requirements. For example, the revised rules prohibited the used of "suite" or apartment" and required the use of a "PMB" designator. This would require receiving agency customers to send change of address notifications. An independent estimate computed this cost at \$94 million. Although our analysis found this estimate to be overstated, we concluded that costs nonetheless would total \$20 million. Therefore, we maintain that a cost assessment should have been done. The Postal Service stated that a cost estimate was not completed because of the number of receiving agencies and customer turnover rates were unknown. To determine the

universe, the Postal Service could have considered techniques such as inquiring with Postal Service district offices, performing a market analysis, obtaining data from the Small Business Administration and Better Business Bureau, and using application forms submitted by receiving agencies. Additionally, customer turnover rates could have been estimated from customer listings provided by receiving agencies.

Finally, we disagree that the Postal Service sought to identify alternative solutions. The Postal Service considered several variations to the rules rather than considering alternatives to revising the rules.

We view the disagreement on this recommendation as unresolved and plan to pursue it through audit resolution.

Recommendations	To assess the effectiveness of the revised rules and quantify the magnitude of fraudulent activity, we recommend the chief postal inspector: 2. Modify the existing tracking system to include the identification of fraud involving both private mailboxes and post office boxes.
Management's Comments	Management agreed with our recommendation. The Inspection Service has developed and implemented a tracking system responsive to our recommendation.
Evaluation of Management's Comments	Management's comments are responsive to our recommendation.

Validity of Claims

Two of four receiving agency objections that we reviewed were valid. Specifically, the Postal Service revised the rules to further restrict public disclosure of physical location information, however, the rules are unclear about releasing this information when a civil protection order has expired or customers have relocated to a different jurisdiction. Also, the objections that receiving agencies will incur additional costs to implement the rules were valid. However, the industry estimate of \$1 billion was unsupported and overstated. In addition, we were unable to substantiate claims the revised rules treated receiving agency boxholders unfairly, or that the Postal Service issued its revised rules in retaliation to a complaint filed by the Coalition Against Unfair USPS Competition.

**Public Disclosure of
Physical Location**

Under the initial proposed rule, the physical location information of receiving agency customers conducting business with the public could be disclosed to the general public, and the physical location information of any receiving agency customer could be disclosed to law enforcement officials conducting criminal investigations upon verbal request. In an October 1999 hearing before the House Subcommittee on Regulatory Reform and Paperwork Reduction, the National Coalition Against Domestic Violence expressed concerns about the ease with which such information for victims of violence could be released.

To address this concern, the Postal Service issued a final rule in January 2000, further restricting release of physical location information. The final rule stated the Postal Service could only disclose information upon written request by government or law enforcement officials or pursuant to a court order. The rule also stated a written request would be denied if an individual had a civil protection order on file.

Receiving agency customers and the National Coalition Against Domestic Violence were still concerned with the revised rules because physical location information could be disclosed if a civil protection order on file expired or an individual relocated outside the jurisdiction the civil protection order covered.

We recognize that individuals are responsible for maintaining a current civil protection order on file and that the Postal Service has no authority to uphold expired civil

protection orders. However, our review disclosed the revised rules are silent on whether physical location information will be released when an expired civil protection order is on file or individuals relocate to a different jurisdiction. As a result of these conditions, release of this information may be subject to the interpretation of Postal Service field legal counsel.

Further, disclosure statements on application forms³ did not reflect the revised disclosure rules published in January 2000. We discussed this issue with Postal Service management during the audit, which subsequently updated the application forms. Therefore, no recommendation is required.

Cost of Revised Rules

According to a July 30, 1999, Cato Institute study,⁴ the revised regulations would cost receiving agencies and their customers \$1 billion. The Postal Service found, and our review confirmed, that the assumptions Cato used to estimate costs were unsupported and that the cost estimates were overstated. For example, the study indicated that private boxholders and receiving agencies would incur \$977 million and \$89 million, respectively, to implement the revised rules. The \$977 million estimate for private boxholders included \$537 million for new supplies and \$440 million for change of address notification. The estimate assumed there were 2.5 million private boxholders and that there was a 100 percent occupancy rate.

Our audit disclosed that the Cato Institute lacked documentation to support these assumptions. In fact, a spokesperson for a major receiving agency indicated the number of private boxholders could not be accurately estimated because businesses renting mailboxes vary in size. Further, the communications director for Mail Boxes Etc. and spokesperson for the receiving agency industry estimated the number of private boxholders was closer to 800,000 than 2.5 million. Data was not available to establish the correct number of private boxholders. However, the significant difference between estimates

³ These forms include Postal Service Form 1093, "Application for Post Office Box or Caller Service," Postal Service Form 1583, "Application for Delivery of Mail Through Agent," and Postal Service Form 1583-A, "Application to Act as a Commercial Mail Receiving Agency."

⁴ Cato Institute Briefing Paper entitled, The U.S. Postal Service War on Private Mailboxes and Privacy Rights.

provided by the Cato Institute and an official representative of the receiving agency industry raises serious questions about the reliability of the Cato assumptions. Also, because the turnover rate for private mailboxes is high, the occupancy rate of boxes cannot be tracked. Nevertheless, a 100 percent occupancy rate assumption is unreasonable.

Our analysis also disclosed that Cato's \$537 million estimate for new supplies might be overstated. This estimate does not allow for stock depletion during the one-year transition and assumes that 2.5 million private boxholders are current renters and will be renters at the end of the transition period. We also believe that many of the small businesses that are likely to use private mailboxes are printing their own stationery rather than purchasing large quantities from printing companies. While specific data was not available, the above factors would reduce the \$537 million estimate proposed by Cato.

The Postal Service also noted that Cato's estimate regarding address change notification was overstated. For example, Cato assumed that 2.5 million private boxholders would require an average of 40 changes of address notifications at 94 cents⁵ per notification, for a total of \$94 million. The Postal Service contends that it can provide a preprinted address change notification card at no cost. Even relying on Cato's assumptions, the cost would be only \$20 million by using this card and 20-cents postage per notification.

In conclusion, we observed that none of the Cato Institute calculations appeared to be supported by accurate data. The costs are highly sensitive to the estimate of the number of boxholders; a number that we have noted is not tracked by industry. Specifically, the Cato Institute costs were directly proportional to the assumed number of boxholders; any change in the assumed number of boxholders changes the resulting cost by the same factor. For example, if the number of boxholders was half that assumed by the Cato Institute, the change of address costs would be half those published by the Cato Institute, even before addressing the

⁵ The 94 cents includes costs such as stationery and postage, and excludes labor costs for preparing address change notifications.

issues of questionable turnover rate and labor and supply cost assumptions.

Treatment of
Boxholders

The Postal Service revised the rules for private boxholders to make them similar to current post office boxholders. A comparison of rules for post office and private boxholders found minimal differences in the treatment of post office customers and receiving agency customers. Specifically:

- Former private boxholders bear the cost of remailing items for the first six months after termination of services with the receiving agency, whereas post office boxholders do not. However, before the revised rules, private boxholders bore remailing costs indefinitely.
- Private boxholders can authorize a receiving agency to forward accountable mail without going to the receiving agency, but post office boxholders must present a valid identification to obtain such mail.
- Private boxholders must refile an updated application form and present two forms of identification, one of which must be a photograph, by April 26, 2000. This was a one-time requirement for current private boxholders to bring them in line with post office boxholders' rules. Post office boxholders were already required to update their forms and provide photo identification when they renew their post office boxes.

Alleged Retaliation

In May 1996, the Coalition Against Unfair USPS Competition filed a complaint with the Postal Rate Commission alleging the Postal Service was hindering competition by directly competing with receiving agencies. Subsequent to this action, the Postal Service issued the proposed revised rules in August 1997. Due to the timing of Postal Service's actions, the revised rules were perceived as retaliation for the complaint filed by the coalition.

A review of postal documents disclosed that the need for the revised rules was first discussed in 1993, three years before the coalition's complaint. The discussions were based on Inspection Service reviews conducted in the early

to mid 1990s and a 1995 California state law⁶ regulating the receiving agency industry. Two Inspection Service reports⁷ recommended revisions to the application and identification requirements for private boxholders.

Although we found no evidence of retaliation, based on interviews with representatives from major receiving agencies and witnesses who testified at the October 1999 congressional hearing, a strong perception existed that Postal Service was hindering competition. This perception was based, in part, on the lack of adequate justification for the revised rules. Preparing a cost/benefit analysis would have mitigated public reaction by providing a well reasoned rationale for Postal Service actions.

Recommendation	To ensure physical location information is not improperly disclosed, we recommend the chief operating officer and executive vice president:
	3. Instruct postmasters to seek legal counsel before releasing physical address information when civil protection orders on file have expired or individuals have relocated to another jurisdiction.
Management's Comments	Management agreed with our recommendation. Management will reissue instructions to emphasize protective orders. They will also clarify the actions taken after the protective order has expired or the person moves, including the need to consult counsel in these instances.
Evaluation of Management's Comments	Management's comments are responsive to our recommendation.
Additional Management's Comments	Management questioned the validity of Cato Institute's statement that by educating postmasters, 90 percent of mail fraud would be deterred. They made this statement because we found their report to be unreliable when estimating the cost to implement the revised rules.

⁶ California State Law A B 171, effective January 1, 1995, was designed to protect California consumers by regulating receiving agencies and boxholders.

⁷ The Inspection reports included [Report on preliminary results of national pilot project to assess DMM compliance by CMRA's in the Houston, TX, delivery area](#), Case 180-1182689 PVC (1), and [Central New Jersey District P. O. Box and CMRA Review](#), Case 072-1206438-SI (2).

**Evaluation of
Management's
Comments**

By making this statement, our intent was not to validate the 90 percent estimate, but rather to show that training local postmasters could deter fraud. In fact, as stated in management's comments, the Inspection Service has launched an effort to educate both postmasters and receiving agencies to help identify and prevent fraud.

APPENDIX. MANAGEMENT'S COMMENTS



March 29, 2001

DEBRA S. RITT
ASSISTANT INSPECTOR GENERAL
FOR BUSINESS

SUBJECT: Response to Draft Audit Report - Review of the Revised Rules
Governing Commercial Mail Receiving Agencies
(Report Number DS-RA-01-Draft)

The Chief Operating Officer and Executive Vice President John E. Potter, and Chief Postal Inspector Kenneth Weaver, have asked us to respond to your request for comments regarding the findings and recommendations contained in the latest (February 26, 2001) draft audit on Commercial Mail Receiving Agencies (CMRAs). As appropriate, our response will refer to the comments we provided in our August 28, 2000, memorandum to Ronald Stith commenting on the original draft (June 28, 2000). A copy of the referenced response is attached.

COMMENTS

In the cover letter of the recent draft, it is stated, "...the Postal Service followed and in some cases exceeded (emphasis added), its internal procedures for revising rules..." This statement could be interpreted as a violation of procedures when in effect the actual meaning is the Postal Service went further in accommodating the affected parties than its internal procedures for revising rules require.

The previous draft CMRA audit, dated June 28, 2000, that was provided for comment, included as one of its findings, "The Postal Service did not convincingly demonstrate the need for regulatory change;" and, "The Postal Service did not demonstrate the magnitude of the problem it sought to alleviate through its regulations."

In our August 28, 2000, response, a complete history was provided going back to 1992 starting with the Inspection Service led National Credit Card Task Force and the soon to follow Mail Order Task Force. The Inspection Service did provide a significant amount of case specific information to support our claim of substantial mail fraud conducted through CMRA mailboxes. These efforts, coupled with the original support of twenty-two States Attorneys General, who signed and submitted written testimony to the House Subcommittee on Regulatory Reform and Paperwork Reduction, supported the need for change. (Subsequently, all 50 States Attorneys General signed a statement supporting the original revised rules and opposed any softening of the regulations.) This is sufficient expert information confirming the need for change. Please refer to pages 1 through 3 of the attached memorandum.

None of this background information is referenced anywhere in the revised draft audit. However, the findings in the latest draft indicate on page 5, "...the Postal Service did not demonstrate the need for regulatory change by presenting statistical or scientific data to support its claims for mail fraud conducted through private mailboxes...." How can the audit draw such a conclusion from the information referenced in the attachment?

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With regards to cost, the audit notes the Postal Service did not consider the financial impact. Please refer to pages 3 and 4 of the attachment regarding our response to the issue of cost. Neither the Postal Service nor the Office of the Inspector General was able to develop a methodology for a valid cost assessment. To minimize any cost impact, the Postal Service extended the effective date of the regulations. This action, coupled with the historical customer turnover rate for CMRAs, reduces cost consequences even further.

One of the sections that is most misleading is the summary of the rules on page 2-3 of the audit. This creates the perception that these are all new requirements. In fact, most requirements already existed in some form, and many of the changes actually eased the rules on CMRAs. Some of this is acknowledged later on. However, the initial impression may be that the rule changes were burdensome. Please refer to page 4 of the attachment.

The audit states on page 6, "...the Postal Service did not demonstrate...how much of the problem (fraud) the regulations would eliminate." In the revised audit, there is a statement that we believe has never appeared in previous drafts or discussions. "The Cato Institute believed that better education by local postmasters of receiving agencies would help deter 90 percent of mail fraud." The source of this statement is the same source that stated the regulations would cost the CMRA industry a billion dollars; a figure the OIG found to be totally inaccurate. The reliability of the 90 percent figure is unsubstantiated, yet it's cited in the report.

The Inspection Service has launched a joint effort with the CMRA industry to educate both the postmasters and CMRA members on the key points to help identify, and more importantly, to help prevent fraud. This is but one element of the multifaceted approach to fraud prevention.

On page 7, the audit reads, "The Postal Service considered several variations of the rules, but did not consider alternatives other than revising the rules." Please refer to page 5 of the attachment where we responded to this specific finding by outlining the steps that were taken in considering alternatives. Again, we welcome any additional suggested alternatives that the OIG feels should have been considered, but were not.

RECOMMENDATIONS

The following are the Postal Service's responses to the specific recommendations contained in the February 26, 2001 draft audit:

Recommendation 1:

Ensure that, in the future, written justification supporting proposed changes to rules governing commercial mail receiving agencies addresses the magnitude of the problem, include a cost impact analysis and identify the various options considered.

Response:

As outlined in our previous response of August 28, 2000 to this recommendation, the Postal Service met these requirements. In the future, as we did in the past, procedures will be decided upon on a case-by-case basis.

Recommendation 2:

Modify the existing tracking system to include the identification of fraud involving both private mailboxes and post office boxes.

Response:

In the August 28, 2000, response, the Postal Service agreed. The Inspection Service has developed and implemented such a tracking system.

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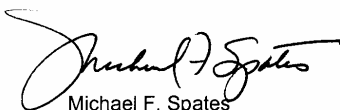
Recommendation 3:

Instruct postmasters to seek legal counsel before releasing physical address information when civil protection orders on file have expired or individuals have relocated to another jurisdiction.

Response:

In the August 28, 2000, response, the Postal Service agreed. Published in the February 24, 2000, Postal Bulletin and revised in our Administrative Services Manual are detailed instructions for handling Requests for Boxholder or Commercial Mail Receiving Agency Customers Information. Contained in these publications is specific information regarding protective orders and instructions to seek advice of field counsel. Considering the importance of this issue, the Postal Service will re-issue the instructions with particular re-emphasis on protective orders. We will also clarify the actions to be taken after the protective order has expired or the person moves, including the need to consult counsel in these instances.

If you have any questions, please contact either one of us (Mike Spates: (202) 268-6854 or Larry Maxwell: (202) 268-5015).



Michael F. Spates
Manager
Delivery Operations



Lawrence E. Maxwell
Inspector in Charge, Fraud
Child Exploitation and Asset
Forfeiture Group

Attachment: August 28, 2000 Memorandum to Ronald Stith

cc: Mr. Potter, w/o attachment
Mr. Weayer, w/o attachment
Mr. Donahoe, w/o attachment
Mr. Rapp, w/o attachment
Mr. Gunnels, w/o attachment



August 28, 2000

RONALD K. STITH
ACTING ASSISTANT INSPECTOR GENERAL
FOR BUSINESS OPERATIONS

SUBJECT: Response to Draft Audit Report – Commercial Mail Receiving
Agencies (Report Number DS-AR-00-DRAFT)

The Chief Operating Officer and Executive Vice President, Clarence Lewis, and the Chief Postal Inspector, Kenneth Weaver, have asked us to respond to your request for comments regarding the findings and recommendations contained in the draft audit on Commercial Mail Receiving Agencies (CMRAs). The following comments are grouped by the subjects and findings as contained in the audit.

FINDINGS

- "The Postal Service did not convincingly demonstrate the need for regulatory change."
- "The Postal Service did not demonstrate the magnitude of the problem it sought to alleviate through its regulations."

COMMENTS

The Postal Service provided the names of parties involved in fraud prevention efforts and detailed information going back to 1992 starting with the Inspection Service led National Credit Card Task Force. About the same time, the Mail Order Task Force was created to combat fraud affecting mail order companies. Moreover, the Postal Service worked closely with the Association of States Attorneys General who were also very concerned about fraud via a CMRA.

The National Credit Card Task Force extensively explored what could be done to provide the financial industry with lists of CMRA addresses as a fraud prevention measure. The industry complained that many credit card fraud schemes were occurring through the use of CMRA addresses. A short time later, the Mail Order Task Force focused on the mail order crime issues. They also voiced

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their collective concern regarding higher fraud losses with customers who used CMRA addresses.

The Postal Service provided detailed comments from the two principal postal inspectors involved with CMRA related fraud since 1992. These comments provided clear support for the regulation changes, but were not referenced in the final draft audit.

Inspection Service audits and follow-up reviews of Postal Service CMRA policies and procedures indicated a need for easy-to-understand rules to improve security and to meet the requirements of the sender and the addressee of mail sent via a CMRA. Our primary concern, which is the protection of the American public, is also shared by the entire law enforcement community, consumer organizations, mail order firms, credit card companies, and financial institutions and States Attorneys General.

Approximately two dozen States Attorneys General signed and submitted written testimony to the House Subcommittee on Regulatory Reform and Paperwork Reduction in support of the need for change. Subsequent comments supporting the original CMRA regulations and strongly opposing any softening of the rules by allowing the use of the “#” sign as an alternative to the “PMB” designation, were signed by all 50 States Attorneys General along with the District of Columbia and the Virgin Islands.

Representatives of the States Attorneys General, mailing industry, and financial institutions in support of these changes were not interviewed. Consequently, the focus of the report did not present a balanced review of the issues. Mention should be made of the extensive history of these efforts since 1992 and the strong support of 50 states in preventing fraud via CMRAs. Although this information was provided during the review, it was not included in the report. If included, the information would provide both sides of the story.

At the onset, the Inspection Service acknowledged that the existing computer databases for law enforcement were not specifically designed to identify the use of Commercial Mail Receiving Agencies (CMRAs) in criminal investigations. However, the decision to pursue regulatory enhancements was based on information provided by other law enforcement agencies and the Inspection Service's case information. The lack of empirical data does not weaken the highly credible law enforcement information that the Inspection Service was able to provide. As the audit team was previously informed, the Inspection

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Service identified hundreds of cases, most concerning the fastest growing type of crime: identity theft.

The desire to improve the regulations stemmed from the growing number of Inspection Service investigations that revealed an increase in fraudulent activity involving the use of CMRA addresses. The schemes often involve fraudulent credit card applications and mail order transactions using an address different from that of the victim. Although there are numerous cases on record relating to this activity, one notable event involved a Medicare fraudulent billing scheme using CMRA addresses. The event was the focus of an NBC national news segment: "Fleeing of America."

FINDINGS

- "Although the Postal Service complied with its internal process and procedures for rulemaking, which do not provide for an assessment of the cost impact, the Postal Service should have analyzed the potential costs of the rules."

COMMENTS

It appears the review team ran into the same problem the Postal Service confronted in calculating potential costs. According to the audit, "A spokesperson for a major receiving agency indicated the number of private boxholders could not be adequately estimated because businesses renting mailboxes vary in size. Further, the spokesperson estimated the number of private boxholders is closer to 800,000 than 2.5 million. Data was not available to establish the correct number of private boxholders Also, because the turnover rate for private mailboxes is high, occupancy rates of boxes cannot be tracked."

The Postal Service submitted written testimony to the House Subcommittee on Regulatory Reform and Paperwork Reduction commenting on the Cato Institute cost study. The comments in the OIG's report regarding the Cato Institute study were extracted directly from the Postal Service's testimony. There was no independent cost estimate provided in the audit report.

Other than finding the Cato cost study to be inaccurate, the report cannot point to any significant costs (particularly given the timeframe of the PMB rule). Nevertheless, despite the absence of any estimates as to costs, the report

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inexplicably cites "financial burden" as support for its conclusion, at page 7, that our rulemaking procedures were inadequate.

The statements that the Postal Service misused its authority and contributed to the perception that the associated costs were unnecessary are particularly troublesome. It is unclear whether this is a conclusion or the recitation of the statements of a constituency with an axe to grind. Consistent with our statements elsewhere, there was no effort to determine whether this represented one viewpoint.

Although not able to calculate a reasonable cost estimate, the Postal Service extended the effective date of the regulations to minimize any cost impact. The extension gave CMRA boxholders an opportunity to deplete stationery stock and to notify correspondents during routine business cycles, such as, bill payments, order fulfillment, etc.

The audit report did not consider the scope of the rule changes and whether the Postal Service's actions were appropriate in view of the changes. The regulatory changes were made to existing rules which already required CMRAs to "register" with their post offices and provide lists of boxholders. These are actually clarifications of old rules in several instances, e.g. now providing a form (1583-A) for the CMRA owners to register with the Postal Service. There are some new requirements for CMRA boxholders for photo identification, but these are what have become a standard with many retail businesses today. Every attempt possible was made to mirror the current rules and regulations for Post Office Boxes, which include photo identification and verification of addresses.

The report made no effort to identify significant changes from former rules, clarifications of those rules, and even liberalizations of former rules such as the re-mailing requirement, which is a major change in favor of the CMRAs that lowers their costs. The changes, for the most part, did not create significant new requirements for CMRAs and their customers. This would particularly be true if the PMB requirement is not considered. Although the Postal Service would argue that its failure to calculate precise costs and benefits was not a basis for proper criticism in any event, our actions are especially reasonable when one considers the actual extent of the changes adopted. However, the OIG's report does not evaluate the extent of the changes.

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FINDINGS

- “The Postal Service did not consider alternatives to revising the rules.”

COMMENTS

The Inspection Service, in concert with the aforementioned workgroups and as outlined in previously submitted documentation, did consider alternatives. In addition, having received feedback from the affected CMRA industry and their customers, the Postal Service responded. As a result of numerous cooperative meetings with industry representatives and interested groups, specific accommodations, changes and clarifications were made. These meetings were chaired by the then Chief Postal Inspector, Ken Hunter. This was outlined in submitted Postal Service testimony to the House Subcommittee on Regulatory Reform and Paperwork Reduction. Copies of the testimony were provided, yet there is no mention in the audit of these activities, changes and considered alternatives.

The Postal Service followed the notice-and-comment rulemaking procedures in the Federal Register, which included the solicitation and analysis of public comments. Numerous meetings with interested parties were held after the rulemaking, which led to additional improvements and modifications.

We welcome any additional suggested alternatives that the OIG feels should have been considered at the time. However, none were suggested either during audit discussions or in the draft final report.

FINDINGS:

- “Inspection Service officials stated they are in the process of developing a system to track fraud committed through receiving agencies. However, the tracking system will not include fraud committed through post office boxholders.” (emphasis added)

COMMENTS:

The interest shown in the CMRA issue has resulted in the Inspection Service's redesign of the way it reports case information. Earlier this year, the Inspection Service Case Reporting System was modified to identify the use of both CMRA

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and Post Office Box addresses in any investigation conducted or complaint received. The Inspection Service will also request other members of the law enforcement community to begin identifying this same information where possible for us to perform a more comprehensive assessment. This information was shared with the OIG prior to the draft report.

ADDITIONAL COMMENTS

Regarding the section entitled, "Public Disclosure of Physical Location," there are a number of factual inaccuracies that should be corrected before the report is published.

At the bottom of page 2 of the draft, the last sentence states that "the Postal Service may only release a boxholder's *business* address pursuant to a written request from government or law enforcement agencies, or a court order." The word "business" should be deleted since there is no distinction in the regulation between a boxholder's business or home address. Under the regulation, the Postal Service will release address information from Form 1583 only in specific limited circumstances, regardless of whether the address is the customer's business or residential address, or both.

On page 8, the first sentence of the section captioned "Public Disclosure of Physical Location," should be changed to read as follows:

"Under the initial proposed rule, the physical location of CMRA customers doing business with the public could be disclosed to the general public; and the physical location of any CMRA customer could be disclosed to law enforcement officials conducting criminal investigations upon oral request."

The reference to "initial receiving agency *rules*" needs to be corrected, because this provision appeared only in a proposed rule and was never adopted, by notice of final rule, as a regulation of the Postal Service. Second, it is incorrect to say that the physical location information (in general) could be disclosed to the general public. Under the proposal, only the address of a CMRA customer using the box to do or solicit business with the public was to be disclosed to the general public, while the address of any CMRA customer could be disclosed to law enforcement.

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In the first sentence of the second paragraph of this section (still on page 8 of the draft), replace “revised the rules” with “issued a final rule” – for the same reason as stated above. Change the second sentence of the paragraph to read as follows:

“The final rule stated that the Postal Service could only disclose information upon written request by government or law enforcement officials or pursuant to a court order.”

Also, the reference in that sentence to “receiving agencies” is in error, because the Postal Service’s regulations govern disclosure by the Postal Service, not disclosure by receiving agencies.

RECOMMENDATIONS

Compelling justifications for the CMRA regulatory initiative, which were presented by numerous interested parties over the last two years, were shared with the OIG’s audit team. We disagree with the conclusions drawn in the report that the Postal Service did not convincingly demonstrate the need for regulatory change; that it did not consider alternatives to revising the rules; and, did not assess the magnitude of the problem. The provided information, as referenced in this response, was not reflected in the report.

Further, we dispute the notion that the impact on businesses in terms of costs and operations was not fully assessed. Many compromises were made especially regarding implementation dates and re-mailing requirements in order to mitigate any cost consequences.

An accurate and balanced assessment of this entire regulatory process needs to include the comments and positions of all significant parties such as the States Attorneys General; the Department of Justice; the law enforcement and private industry members of the Credit Card and Mail Order Fraud Task Forces; the Federal Trade Commission; and the Better Business Bureau, not just the opposition.

With regards to the specific recommendations contained in the draft report:

1. “Ensure the written justifications supporting proposed rules address the magnitude of the problems, include a cost impact analysis, and identify alternative solutions that were considered.”

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As outlined previously in this response, the Postal Service met these requirements.

2. "Develop and implement a tracking system to include the identification of fraud involving both receiving agency and post office boxholders."

We agree. The Inspection Service has developed and is implementing such a tracking system.

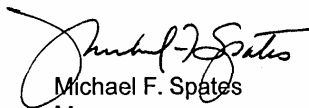
3. "Instruct postmasters to seek legal counsel before releasing physical address information when civil protection orders on file have expired or individuals have relocated to another jurisdiction."

We agree. The intent of the existing provision was that advice of counsel should be sought whenever the continuing force and effect of an order is in doubt. Instructions to the field will clarify this and ensure it is fully understood.

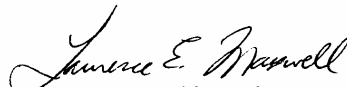
4. "Replace existing application forms so that the privacy statements reflect current restrictions on release of physical location information."

We agree. Existing application forms have been reworded so that the privacy statements reflect current restrictions on release of physical location information. The rewording was pending the final rule, which was published August 16, 2000.

If you have any questions, please contact either one of us (Mike Spates: 202-268-6854 or Larry Maxwell: 202-268-5015.)



Michael F. Spates
Manager
Delivery Operations



Lawrence E. Maxwell
Inspector in Charge, Fraud,
Child Exploitation and Asset Forfeiture Group

cc: Mr. Lewis
Mr. Weaver
Mr. Potter
Mr. Rapp
Mr. Gunnels