

October 4, 2003, and will terminate at 8:45 p.m. (PDT) on October 4, 2003.

Dated: September 23, 2003.

Gerald M. Swanson,

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

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## POSTAL SERVICE

### 39 CFR Part 230

#### Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service is amending the Code of Federal Regulations to state the rules that govern compliance with subpoenas, summonses, and court orders served on employees of the Office of Inspector General where neither the Postal Service, the United States, nor any other federal agency is a party.

**EFFECTIVE DATE:** October 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Marta Erceg, Director, Legal Services, Office of Inspector General, at (703) 248-2447.

**SUPPLEMENTARY INFORMATION:** The Postal Service has previously published rules that govern compliance with subpoenas, summonses, and court orders served on Postal Service and Inspection Service employees. This is the first publication of subpoena compliance rules as they apply to Office of Inspector General employees.

#### List of Subjects in 39 CFR Part 230

Administrative practice and procedure.

■ For the reasons stated in the preamble, the Postal Service amends 39 CFR as follows:

#### PART 230—OFFICE OF INSPECTOR GENERAL

■ 1. The authority citation for part 230 is revised to read as follows:

**Authority:** 5 U.S.C. App.3; 39 U.S.C. 401(2) and 1001.

#### Subpart A—General Policy and Authority

■ 2. Sections 230.1 through § 230.5 are designated as new subpart A and a

heading for subpart A is added to read as set forth above.

■ 3. Following Subpart A, add the following new subpart B:

#### Subpart B—Rules Governing Compliance with Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

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230.10 What do these rules govern?

230.11 What special definitions apply to these rules?

230.12 Can Office of Inspector General employees testify or produce documents that would assist me in my civil proceeding?

230.13 Why are restrictions on Office of Inspector General employees in civil proceedings necessary?

230.14 Who owns the written or recorded notes, memoranda, reports, and transcriptions made pursuant to an official investigation, audit, or review conducted by an employee of the Office of Inspector General?

230.15 What must an Office of Inspector General employee do if served with a demand requiring the production of documents or an appearance in court?

230.16 Is there a prohibition on presenting Office of Inspector General reports or records during an employee's testimony?

230.17 If an attempt is made to compel production of reports and records during the employee's testimony, what is an Office of Inspector General employee directed to do?

230.18 If authorization to testify or produce documents is not obtained by the employee, what is the employee directed to do?

230.19 What criteria will the authorizing official use to determine whether to authorize testimony or production of documents?

230.20 What records will not be released?

230.21 May the General Counsel to the Inspector General and/or a U.S. Department of Justice attorney represent the employee in any appearance?

230.22 May another employee be substituted for the employee requested to appear?

230.23 May an Office of Inspector General employee testify as an expert or opinion witness?

230.24 How is a demand for employee documents or testimony made to the Office of Inspector General?

230.25 Who pays the costs incurred when the Office of Inspector General responds to a demand for documents or testimony?

230.26 Do these rules affect the service of process requirements of the Federal Rules of Civil Procedure (28 U.S.C. Appendix)?

230.27 Do these rules create any right or benefit enforceable by a party against the Postal Service?

#### Subpart B—Rules Governing Compliance With Subpoenas, Summonses, and Court Orders by Postal Employees Within the Office of Inspector General Where Neither the Postal Service, the United States, Nor Any Other Federal Agency Is a Party

##### § 230.10 What do these rules govern?

(a) Subpart B governs those situations where an employee of the Office of Inspector General has been summoned, subpoenaed, or given a court order in connection with any federal, state, local court, administrative, or legislative proceeding.

(b) The rules in Subpart B do not apply to:

(1) Proceedings where the United States, the Postal Service, or any other federal agency is named as a party;

(2) Congressional requests or subpoenas for testimony or documents;

(3) Employees serving as expert witnesses in connection with professional and consultative services under Title 5, Code of Federal Regulations, Part 7001, provided they state for the record that their testimony reflects their personal opinions and should not be viewed as the official position of the Postal Service;

(4) Employees making appearances in their private capacities in proceedings that do not relate to their Postal Service employment, such as traffic accidents or domestic relations matters; and do not involve professional or consultative services;

(5) Situations where the Inspector General or an official designated by the Inspector General determines that the best interests of the public or the Office of Inspector General would be served by an exemption from the regulations.

(c) These rules should be read together with the Freedom of Information Act (FOIA), which provides additional information about access to records.

##### § 230.11 What special definitions apply to these rules?

The following definitions apply to Subpart B:

(a) Authorizing official means the Inspector General or an official designated by the Inspector General to authorize release of documents or permission to testify.

(b) Case or matter means any civil proceeding before a court of law, administrative board, hearing officer, or other body conducting a judicial or administrative proceeding in which the United States, the Postal Service, or another federal agency is not a named party.