

(3) EFFECTIVENESS OF ELECTION.—An election under paragraph (1) shall remain in effect, unless an individual (or other duly authorized person) notifies the promoter in writing that such individual—

(A) has changed the election; and

(B) elects to receive skill contest or sweepstakes mailings from that promoter.

(e) PRIVATE RIGHT OF ACTION.—

(1) IN GENERAL.—An individual who receives one or more mailings in violation of subsection (d) may, if otherwise permitted by the laws or rules of court of a State, bring in an appropriate court of that State—

(A) an action to enjoin such violation;

(B) an action to recover for actual monetary loss from such a violation, or to receive \$500 in damages for each such violation, whichever is greater; or

(C) both such actions.

It shall be an affirmative defense in any action brought under this subsection that the defendant has established and implemented, with due care, reasonable practices and procedures to effectively prevent mailings in violation of subsection (d). If the court finds that the defendant willfully or knowingly violated subsection (d), the court may, in its discretion, increase the amount of the award to an amount equal to not more than 3 times the amount available under subparagraph (B).

(2) ACTION ALLOWABLE BASED ON OTHER SUFFICIENT NOTICE.—A mailing sent in violation of section 3001(l) shall be actionable under this subsection, but only if such an action would not also be available under paragraph (1) (as a violation of subsection (d)) based on the same mailing.

(f) PROMOTER NONLIABILITY.—A promoter shall not be subject to civil liability for the exclusion of an individual's name or address from any list maintained by that promoter for mailing skill contests or sweepstakes, if—

(1) a removal request is received by the promoter's notification system; and

(2) the promoter has a good faith belief that the request is from—

(A) the individual whose name and address is to be excluded; or

(B) another duly authorized person.

(g) PROHIBITION ON COMMERCIAL USE OF LISTS.—

(1) IN GENERAL.—

(A) PROHIBITION.—No person may provide any information (including the sale or rental of any name or address) derived from a list described in subparagraph (B) to another person for commercial use.

(B) LISTS.—A list referred to under subparagraph (A) is any list of names and addresses (or other related information) compiled from individuals who exercise an election under subsection (d).

(2) CIVIL PENALTY.—Any person who violates paragraph (1) shall be assessed a civil penalty by the Postal Service not to exceed \$2,000,000 per violation.

(h) CIVIL PENALTIES.—

(1) IN GENERAL.—Any promoter—

(A) who recklessly mails nonmailable matter in violation of subsection (b) shall be liable to the United States in an amount of \$10,000 per violation for each mailing to an individual of nonmailable matter; or

(B) who fails to comply with the requirements of subsection (c)(2) shall be liable to the United States.

(2) ENFORCEMENT.—The Postal Service shall, in accordance with the same procedures as set forth in section 3012(b), provide for the assessment of civil penalties under this section.

(Added Pub. L. 106-168, title I, §108(a), Dec. 12, 1999, 113 Stat. 1814.)

EFFECTIVE DATE

Pub. L. 106-168, title I, §108(c), Dec. 12, 1999, 113 Stat. 1816, provided that: "This section [enacting this section] shall take effect 1 year after the date of the enactment of this Act [Dec. 12, 1999]."

§ 3018. Hazardous material

(a) IN GENERAL.—The Postal Service shall prescribe regulations for the safe transportation of hazardous material in the mail.

(b) PROHIBITIONS.—No person may—

(1) mail or cause to be mailed hazardous material that has been declared by statute or Postal Service regulation to be nonmailable;

(2) mail or cause to be mailed hazardous material in violation of any statute or Postal Service regulation restricting the time, place, or manner in which hazardous material may be mailed; or

(3) manufacture, distribute, or sell any container, packaging kit, or similar device that—

(A) is represented, marked, certified, or sold by such person for use in the mailing of hazardous material; and

(B) fails to conform with any statute or Postal Service regulation setting forth standards for a container, packaging kit, or similar device used for the mailing of hazardous material.

(c) CIVIL PENALTY; CLEAN-UP COSTS AND DAMAGES.—

(1) IN GENERAL.—A person who knowingly violates this section or a regulation prescribed under this section shall be liable for—

(A) a civil penalty of at least \$250, but not more than \$100,000, for each violation;

(B) the costs of any clean-up associated with each violation; and

(C) damages.

(2) KNOWING ACTION.—A person acts knowingly for purposes of paragraph (1) when—

(A) the person has actual knowledge of the facts giving rise to the violation; or

(B) a reasonable person acting in the circumstances and exercising reasonable care would have had that knowledge.

(3) SEPARATE VIOLATIONS.—

(A) VIOLATIONS OVER TIME.—A separate violation under this subsection occurs for each day hazardous material, mailed or caused to be mailed in noncompliance with this section, is in the mail.

(B) SEPARATE ITEMS.—A separate violation under this subsection occurs for each item

containing hazardous material that is mailed or caused to be mailed in noncompliance with this section.

(d) HEARINGS.—The Postal Service may determine that a person has violated this section or a regulation prescribed under this section only after notice and an opportunity for a hearing. Proceedings under this section shall be conducted in accordance with section 3001(m).

(e) PENALTY CONSIDERATIONS.—In determining the amount of a civil penalty for a violation of this section, the Postal Service shall consider—

- (1) the nature, circumstances, extent, and gravity of the violation;
- (2) with respect to the person who committed the violation, the degree of culpability, any history of prior violations, the ability to pay, and any effect on the ability to continue in business;
- (3) the impact on Postal Service operations; and
- (4) any other matters that justice requires.

(f) CIVIL ACTIONS TO COLLECT.—

(1) IN GENERAL.—In accordance with section 409(d), a civil action may be commenced in an appropriate district court of the United States to collect a civil penalty, clean-up costs, and damages assessed under subsection (c).

(2) COMPROMISE.—The Postal Service may compromise the amount of a civil penalty, clean-up costs, and damages assessed under subsection (c) before commencing a civil action with respect to such civil penalty, clean-up costs, and damages under paragraph (1).

(g) CIVIL JUDICIAL PENALTIES.—

(1) IN GENERAL.—At the request of the Postal Service, the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this section or a regulation prescribed under this section.

(2) RELIEF.—The court in a civil action under paragraph (1) may award appropriate relief, including a temporary or permanent injunction, civil penalties as determined in accordance with this section, or punitive damages.

(3) CONSTRUCTION.—A civil action under this subsection shall be in lieu of civil penalties for the same violation under subsection (c)(1)(A).

(h) DEPOSIT OF AMOUNTS COLLECTED.—

(1) POSTAL SERVICE FUND.—Except as provided under paragraph (2), amounts collected under subsection (c)(1)(B) and (C) shall be deposited into the Postal Service Fund under section 2003.

(2) TREASURY.—Amounts collected under subsection (c)(1)(A) and any punitive damages collected under subsection (c)(1)(C) shall be deposited into the Treasury of the United States.

(Added Pub. L. 109-435, title X, §1008(b), Dec. 20, 2006, 120 Stat. 3259.)

CHAPTER 32—PENALTY AND FRANKED MAIL

Sec.	
3201.	Definitions.
3202.	Penalty mail.
3203.	Endorsements on penalty covers.
3204.	Restrictions on use of penalty mail.
3205.	Accounting for penalty covers.

Sec.	
3206.	Reimbursement for penalty mail service.
3207.	Limit of weight of penalty mail; postage on overweight matter.
3208.	Shipment by most economical means.
3209.	Executive departments to supply information.
3210.	Franked mail transmitted by the Vice President, Members of Congress, and congressional officials.
3211.	Public documents.
3212.	Congressional Record under frank of Members of Congress.
3213.	Seeds and reports from Department of Agriculture.
3214.	Mailing privilege of former President; surviving spouse of former President.
3215.	Lending or permitting use of frank unlawful.
3216.	Reimbursement for franked mailings.
3217.	Correspondence of members of diplomatic corps and consuls of countries of Postal Union of Americas and Spain.
3218.	Franked mail for survivors of Members of Congress.
3219.	Mailgrams.
3220.	Use of official mail in the location and recovery of missing children.

AMENDMENTS

- 1985—Pub. L. 99-87, §1(a)(2), Aug. 9, 1985, 99 Stat. 290, added item 3220.
- 1981—Pub. L. 97-69, §6(c)(2), Oct. 26, 1981, 95 Stat. 1043, substituted “survivors” for “surviving spouses” in item 3218.
- 1973—Pub. L. 93-191, §§1(b), 4(b), 12(b), Dec. 18, 1973, 87 Stat. 741, 742, 746, substituted “Franked mail transmitted by the Vice President, Members of Congress, and congressional officials” for “Official correspondence of Vice President and Members of Congress” in item 3210, substituted “President, surviving spouse of former President” for “Presidents” in item 3214, and added item 3219.

§ 3201. Definitions

As used in this chapter—

- (1) “penalty mail” means official mail, other than franked mail, which is authorized by law to be transmitted in the mail without prepayment of postage;
- (2) “penalty cover” means envelopes, wrappers, labels, or cards used to transmit penalty mail;
- (3) “frank” means the autographic or facsimile signature of persons authorized by sections 3210-3216 and 3218 of this title to transmit matter through the mail without prepayment of postage or other indicia contemplated by sections 733 and 907 of title 44;
- (4) “franked mail” means mail which is transmitted in the mail under a frank;
- (5) “Members of Congress” includes Senators, Representatives, Delegates, and Resident Commissioners; and
- (6) “missing child” has the meaning provided by section 403(1) of the Juvenile Justice and Delinquency Prevention Act of 1974.

(Pub. L. 91-375, Aug. 12, 1970, 84 Stat. 751; Pub. L. 99-87, §1(b), Aug. 9, 1985, 99 Stat. 291.)

REFERENCES IN TEXT

Section 403(1) of the Juvenile Justice and Delinquency Prevention Act of 1974, referred to in par. (6), is classified to section 5772(1) of Title 42, The Public Health and Welfare.

AMENDMENTS

- 1985—Par. (6). Pub. L. 99-87 added par. (6).