

witnesses and the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Judicial Officer considers relevant or material to such proceeding.

(3) **RULE OF CONSTRUCTION.**—Nothing in paragraph (2) shall be considered to apply in any circumstance to which paragraph (1) applies.

(b) **SERVICE.**—

(1) **SERVICE WITHIN THE UNITED STATES.**—A subpoena issued under this section may be served by a person designated under section 3061 of title 18 at any place within the territorial jurisdiction of any court of the United States.

(2) **FOREIGN SERVICE.**—Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(3) **SERVICE ON BUSINESS PERSONS.**—Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by—

(A) delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(B) delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(C) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(4) **SERVICE ON NATURAL PERSONS.**—Service of any subpoena may be made upon any natural person by—

(A) delivering a duly executed copy to the person to be served; or

(B) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(5) **VERIFIED RETURN.**—A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(c) **ENFORCEMENT.**—

(1) **IN GENERAL.**—Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the Postmaster General may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business, and serve upon such person a petition for an order of such court for the enforcement of this section.

(2) **JURISDICTION.**—Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order entered shall be subject to appeal under section 1291 of title 28, United States Code. Any disobedience of any final order entered under this section by any court may be punished as contempt.

(d) **DISCLOSURE.**—Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under section 552 of title 5, United States Code. (Added Pub. L. 106-168, title I, §107(a), Dec. 12, 1999, 113 Stat. 1812.)

#### REFERENCES IN TEXT

The Federal Rules of Civil Procedure, referred to in subsec. (b)(2), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

#### EFFECTIVE DATE

Section effective 120 days after Dec. 12, 1999, see section 111 of Pub. L. 106-168, set out as an Effective Date of 1999 Amendment note under section 3001 of this title.

#### REGULATIONS

Pub. L. 106-168, title I, §107(b), Dec. 12, 1999, 113 Stat. 1813, provided that: "Not later than 120 days after the date of the enactment of this section [Dec. 12, 1999], the Postal Service shall promulgate regulations setting out the procedures the Postal Service will use to implement the amendment made by subsection (a) [enacting this section]."

### § 3017. Nonmailable skill contests or sweepstakes matter; notification to prohibit mailings

(a) **DEFINITIONS.**—In this section—

(1) the term "promoter" means any person who—

(A) originates and mails any skill contest or sweepstakes, except for any matter described in section 3001(k)(4); or

(B) originates and causes to be mailed any skill contest or sweepstakes, except for any matter described in section 3001(k)(4);

(2) the term "removal request" means a request stating that an individual elects to have the name and address of such individual excluded from any list used by a promoter for mailing skill contests or sweepstakes;

(3) the terms "skill contest", "sweepstakes", and "clearly and conspicuously displayed" have the same meanings as given them in section 3001(k); and

(4) the term "duly authorized person", as used in connection with an individual, means a conservator or guardian of, or person granted power of attorney by, such individual.

## (b) NONMAILABLE MATTER.—

(1) IN GENERAL.—Matter otherwise legally acceptable in the mails described in paragraph (2)—

- (A) is nonmailable matter;  
 (B) shall not be carried or delivered by mail; and  
 (C) shall be disposed of as the Postal Service directs.

(2) NONMAILABLE MATTER DESCRIBED.—Matter described in this paragraph is any matter that—

- (A) is a skill contest or sweepstakes, except for any matter described in section 3001(k)(4); and  
 (B)(i) is addressed to an individual who made an election to be excluded from lists under subsection (d); or  
 (ii) does not comply with subsection (c)(1).

## (c) REQUIREMENTS OF PROMOTERS.—

(1) NOTICE TO INDIVIDUALS.—Any promoter who mails a skill contest or sweepstakes shall provide with each mailing a statement that—

- (A) is clearly and conspicuously displayed;  
 (B) includes the address or toll-free telephone number of the notification system established under paragraph (2); and  
 (C) states that the notification system may be used to prohibit the mailing of all skill contests or sweepstakes by that promoter to such individual.

(2) NOTIFICATION SYSTEM.—Any promoter that mails or causes to be mailed a skill contest or sweepstakes shall establish and maintain a notification system that provides for any individual (or other duly authorized person) to notify the system of the individual's election to have the name and address of the individual excluded from all lists of names and addresses used by that promoter to mail any skill contest or sweepstakes.

## (d) ELECTION TO BE EXCLUDED FROM LISTS.—

(1) IN GENERAL.—An individual (or other duly authorized person) may elect to exclude the name and address of that individual from all lists of names and addresses used by a promoter of skill contests or sweepstakes by submitting a removal request to the notification system established under subsection (c).

(2) RESPONSE AFTER SUBMITTING REMOVAL REQUEST TO THE NOTIFICATION SYSTEM.—Not later than 60 calendar days after a promoter receives a removal request pursuant to an election under paragraph (1), the promoter shall exclude the individual's name and address from all lists of names and addresses used by that promoter to select recipients for any skill contest or sweepstakes.

(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 sub-

section (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**

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