

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decision-making process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture;
Office of the Administrator,
Agricultural Marketing Service;
Office of the General Counsel;
Dairy Programs, Agricultural
Marketing Service (Washington office)
and the Offices of all Market
Administrators.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: January 16, 2004.

A.J. Yates,

Administrator, Agricultural Marketing
Service.

[FR Doc. 04-1402 Filed 1-20-04; 10:30 am]

BILLING CODE 3410-02-P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2004-1; Order No. 1389]

Definition of Postal Service

AGENCY: Postal Rate Commission.

ACTION: Proposed rule.

SUMMARY: The Commission hereby provides notice that it is initiating a proposed rulemaking for the purpose of adding a definition of the term "postal service" to its rules of practice. This change is intended, among other things, to clarify Commission jurisdiction and thereby minimize the need for ad hoc determinations.

DATES: Initial comments are due March 1, 2004; reply comments are due April 1, 2004.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system, which can be accessed at <http://www.PRC.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

68 FR 14437 (March 25, 2003)

The Commission's rules of practice and procedure, 39 CFR 3001.1 *et seq.*, do not define the term "postal service."

Historically, this omission has created little confusion or controversy. Of late, however, that would appear no longer to be the case. See PRC Order No. 1388, January 16, 2004. Consequently, in the interests of administrative efficiencies, the Commission proposes to amend its rules to define the term "postal service."

1. Background

In only a relatively few proceedings has the Commission been called upon to consider, for jurisdictional purposes, the meaning of the term "postal service." The first instance involved special services, over which, the Postal Service had contended, it had unilateral rate setting authority. In Docket No. R76-1, following the District Court's decision in *Associated Third Class Mailer Users v. U.S. Postal Service*,¹ the Commission addressed the issue of which special services fell within its rate jurisdiction. In considering those that might properly be characterized as "postal services," the Commission determined that:²

[s]pecial postal services "that is, those which fall within the ambit of § 3622—are services other than the actual carriage of mail but supportive or auxiliary thereto. They enhance the value of service rendered under one of the substantive mail classes by providing such features as added security, added convenience or speed, indemnity against loss, correct information as to the current address of a recipient, etc.

Nearly two decades elapsed before the Commission again confronted the issue as presented in a series of complaints filed in 1995 and thereafter.³ In Docket No. C95-1, the Commission considered a complaint concerning shipping and handling charges for orders placed with the Postal Service Philatelic Fulfillment Service Center. Finding first that complaints regarding fees for postal services fell within the scope of section 3662, the Commission dismissed the complaint based on the court's reasoning in *Associated Third Class Mailer Users v. U.S. Postal Service*, supra.⁴ Specifically, the Commission found that the handling and shipping of catalog orders placed with the Philatelic Fulfillment Service Center were not closely related to the delivery of mail and, thus, charges for those services did

not constitute fees for postal services under section 3662.⁵

Subsequently, Docket No. C96-1 involved a complaint that the Postal Service was operating and charging fees for a packaging service (Pack & Send) that had not been submitted to the Commission for a recommended decision.⁶ The complainant, a coalition comprised of organizations and individuals doing business in the Commercial Mail Receiving Agency industry, alleged, inter alia, that the Postal Service was charging rates that did not conform with the policies of the Postal Reorganization Act. In reviewing the record and the parties' arguments, the Commission recognized that "there are a variety of analytical lenses through which potential relationships to customary postal functions may be usefully viewed."⁷ To that end, the Commission analyzed whether Pack & Send service should be characterized as a postal or nonpostal service by, among other things, considering its relationship to the Postal Service's nonpostal statutory functions, its intrinsic and structural features, and the correlation between its use and subsequent mailing. Based on its analyses, the Commission found Pack & Send to be a postal service due to, among other things, its direct structural relationship to the provision of postal services (as a wholly new method of accepting mailable matter for delivery) as well as its intrinsic value as an added-value service available for certain categories of parcel service offered by the Postal Service.⁸

In Docket No. C99-1, United Parcel Service filed a complaint contending that the Postal Service was providing a new service, Post Electronic Courier Service (Post ECS), in violation of the Act.⁹ Post ECS service, a pilot program available only to licensees, offered an

⁵ *Id.* at 5.

⁶ See Complaint of Coalition Against Unfair USPS Competition, Docket No. C96-1, May 23, 1996.

⁷ PRC Order No. 1145, December 16, 1996, at 12 (footnote omitted).

⁸ *Id.* at 18-19; see also *id.* at 11-18. Following this finding, the Commission held further proceedings in Docket No. C96-1 in abeyance pending a filing by the Postal Service requesting a recommended decision concerning Pack & Send service, or the filing of a notice by the Service indicating that the packaging service was discontinued. *Id.* at 25. Further proceedings proved unnecessary as the Postal Service chose to discontinue Pack & Send service. PRC Order No. 1171, April 25, 1997.

⁹ See Complaint of United Parcel Service, Docket No. C99-1, October 5, 1998. UPS's complaint was based on three claims: (a) That the service may only be established pursuant to sections 3622 and 3623 of the Act; (b) that the provision of the service at no charge violates sections 3622(b)(3) and 3622(b)(4); and (c) that Post ECS represents a change in the nature of postal services affecting service on a nationwide or substantially nationwide basis.

¹ *Associated Third Class Mailer Users v. U.S. Postal Service*, 405 F.Supp. 1109 (D. D.C. 1975); *National Association of Greeting Card Publishers v. U.S. Postal Service*, 569 F.2d 570 (D.C. Cir. 1976); *vacated on other grounds*, 434 U.S. 884 (1977).

² PRC Op. R76-1, Vol. 1, June 30, 1976, at 266-67 (footnote omitted).

³ Jurisdictional issues were addressed in Docket No. MC78-3 concerning the Postal Service's request for a recommended decision to establish an Electronic Computer Originated Mail subclass.

⁴ PRC Order No. 1075, September 11, 1995, at 4-5.

all-electronic means of transmitting documents securely via the Internet.¹⁰ The Postal Service moved to dismiss the complaint arguing, first, that the Commission lacks authority to determine the status of the service as either postal or nonpostal, and second that, even assuming the Commission had authority to determine the status of Post ECS service, the complaint should be dismissed as beyond the Commission's authority because the service is neither postal nor domestic.¹¹ The Commission denied the motion, finding that its mail classification authority empowered it to review the status of services proposed or offered by the Postal Service.¹² Nor was the Commission persuaded, based on the record developed to that point, that the service did not include domestic operations or that it was nonpostal. In that regard, the Commission did not find it dispositive that service did not entail hardcopy mail.¹³ For purposes of ruling on the motion to dismiss, the Commission, however, did not decide whether Post ECS was, or was not, a postal service.¹⁴ That issue, which was deferred pending further proceedings in the docket, was not reached as the complaint was subsequently dismissed as moot.¹⁵

The most recent proceedings in which jurisdictional issues have been raised share a common theme. In the latest rate proceeding, Docket No. R2001-1, interrogatories were filed by the Office of Consumer Advocate (OCA) requesting information concerning various services offered by the Postal Service, including, for example, Post ECS, USPS eBillPay, and USPS Send Money. The Postal Service objected to these interrogatories, characterizing the services as nonpostal and irrelevant to the rate proceeding. OCA sought to compel production. The Postal Service was directed to respond to certain interrogatories, but this ruling was suspended in light of the settlement filed in that proceeding that ultimately became the basis for the Commission's recommended decision.¹⁶

¹⁰ Briefly, licensees could transmit documents to a Postal Service Electronic Commerce Server whereupon the Postal Service would notify the addressee by e-mail that the document was available at a specified URL address. To retrieve the document, the addressee would access the site, enter the appropriate password, and, if desired, download the document.

¹¹ Motion of the United States Postal Service to Dismiss, Docket No. C99-1, November 5, 1998.

¹² PRC Order No. 1239, May 3, 1999, at 12.

¹³ *Id.* at 15-21.

¹⁴ *Id.* at 20-21.

¹⁵ PRC Order No. 1352, November 6, 2002. Because it terminated Post ECS service, the Postal Service moved to dismiss the complaint as moot.

¹⁶ See P.O. Ruling R2001-1/42, January 29, 2002, at 5-11 and 13.

Finally, the petition filed by Consumer Action, addressed separately in companion Order No. 1389, requests the Commission to initiate proceedings concerning 14 services offered to the public by the Postal Service without prior Commission approval. The 14 services identified encompass not only electronic services, including online payment services, electronic postmark, and NetPost Certified, but also miscellaneous other services, ranging from retail merchandise to the Unisite Antenna Program. While issues related to the petition are fully addressed in Order No. 1389, it is sufficient to note, for purposes of this discussion, that the Postal Service characterized all of the services identified in the petition as nonpostal.¹⁷

Prior to Docket No. C99-1, the Commission had three occasions to consider an electronic service provided by the Postal Service. Each has some bearing on issues to be considered in this proceeding.

In Docket Nos. MC76-1-4, the Commission approved a stipulation and agreement concerning Mailgram service.¹⁸ Under the terms of the settlement, the parties stipulated that Mailgram service was a communications service subject to regulation by the Federal Communications Commission and not a postal service subject to regulation by this Commission. While the Commission concurred that Mailgram service need not be included in the Domestic Mail Classification Schedule (DMCS), it rejected the inference that the parties to the settlement could stipulate away the Commission's jurisdiction.¹⁹ Furthermore, the Commission specifically noted that its "decision is without prejudice to our future consideration of any other alternative communications methods or our jurisdiction thereof."²⁰

The principal issue presented in Docket No. MC78-3, concerning Electronic Computer Originated Mail (E-COM), was whether the Postal Service should enter the field of

¹⁷ The Report by the President's Commission on the Postal Service touches on the issue of electronic mail, noting that "the online revolution dramatically blurred the lines of what constitutes a "postal service," producing some dubious forays." The President's Commission recommends that the Postal Service abandon electronic services and focus on traditional mail. Report of the President's Commission on the United States Postal Service, July 31, 2003, at 27.

¹⁸ PRC Op. Docket Nos. MC76-1-4, June 15, 1977.

¹⁹ *Id.* at 4-5. This finding was based on two considerations: (a) that the general public could not obtain this service from the Postal Service, and (2) the service was regulated by the FCC.

²⁰ *Id.* at 6.

electronic mail.²¹ The Postal Service's proposal consisted essentially of two electronic transmissions, the first from the mailer to a Western Union facility located in Virginia, and the second from that facility to one of 25 serving post offices. Under its proposal, the Postal Service would provide both data processing services and data transmission services. As proposed, the Postal Service would control the mailer's messages from the time they arrived at Western Union's facility until they were delivered to the addressee.²² Regarding its proposal, the Postal Service maintained the position that E-COM messages, while in electronic form, were deemed "in the mails."²³

The Commission also had before it an alternative proposal that differed from E-COM in an important respect. While both would make use of the Postal Service's delivery network, the alternative would be available to any common carrier connecting its transmission facilities to the Postal Service's data processing and printing facilities. For a variety of reasons, the Commission ultimately recommended the alternative proposal.²⁴ Among the factors influencing this decision were the pro-competitive aspects of the alternative as well its jurisdictional implications.²⁵

During the pendency of Docket No. MC78-3, the Carter Administration issued a policy statement outlining its position concerning the Postal Service's role in providing electronic mail service.²⁶ The Commission addressed the applicability of the eight conditions in the policy statement to the proposals before it, and, among other things, concluded that the Postal Service should make its delivery services available to all electronic carriers at the same rates as those it charges itself. "We find * * * that this rate constraint is required not only by §§ 403(c), 3622 (b)(1) and 3623 (c)(1) of the Act, but by § 3622(b)(4). * * *"²⁷ Moreover, in discussing a related condition, which concerned developing technical interconnecting standards to ensure equal access to the mail delivery system, the Commission found that § 101(f), as relates to modes of transportation, is applicable to telecommunication

²¹ PRC Op. Docket No. MC78-3, December 17, 1979, at 1.

²² *Id.* at 29.

²³ *Id.* at 172 (footnote omitted).

²⁴ Although not dispositive, the Commission noted that prior to its decision, the contract between Western Union and the Postal Service was cancelled. See *id.* at 3-4.

²⁵ See generally *Id.* at 6-11.

²⁶ *Id.* at 159.

²⁷ *Id.* at 171.

carriers.²⁸ In December 1984, the Commission recommended, pursuant to a request from the Postal Service, that E-COM be eliminated from the DMCS.²⁹

Mailing Online represents the Postal Service's third attempt to provide electronic mail service. Pursuant to a request filed by the Postal Service in November 1999, the Commission recommended that Mailing Online be implemented as a three-year experiment. Mailing Online provided electronic transmission of documents to the Postal Service via the Internet for printing, finishing, and posting as hard copy mail. Upon receipt of the data files containing the document and related information, such as the address list and printing options, the Postal Service performed various tasks, such as address hygiene and merging of names and addresses with document files, to create print-image files to be sent to commercial printing contractors. The latter would print and finish the documents, prepare them for mailing, and enter the pieces at a local postal facility for delivery.³⁰ By letter dated August 29, 2003, the Postal Service gave notice that Mailing Online service would be terminated as of September 1, 2003.³¹

2. Rationale for the Rule

As this background underscores, the postal character of new services provided by the Postal Service is unsettled. Because the issue appears to be increasingly controversial, the Commission has determined that it would be administratively most efficacious to clarify it by rule rather than on an ad hoc basis.

The concept of "postal service" is not static. It is evolutionary, with technology driving the change. For example, to transport the mails, the Postal Service originally relied on stagecoaches. In the 1800's, railroads were used to provide faster service. In the 20th century, trucks and airplanes became the dominant means to transport the mails. The Postal Service has characterized its entry into the electronic mail field as "a natural progression of technology," by using "electronics to move the mail" instead

of a surface or air carrier.³² The Postal Service's position was instrumental in the Commission's determination that section 101(f) of the Act is applicable to telecommunications carriers.³³

It is not merely that these technological advances provided for improved service, rather they gave rise to wholly new forms of "postal service." Examples include airmail service, Express Mail services, as well as electronic mail. In addition, technology has given rise to many new types of special postal services such as Confirm, and delivery and signature confirmation.

The point is that the character of services provided by the Postal Service has changed with advances in technology. It is a trend that may accelerate as the Postal Service considers how it may wish to employ advances in technology to satisfy its statutory mandate to provide prompt, reliable, and efficient services.³⁴ The recent proceedings before the Commission give evidence of the Postal Service's efforts to employ the latest technology. For example, services provided by the Postal Service that rely, in some fashion, on the Internet include NetPost CardStore, NetPost Certified Mail, Mailing Online,³⁵ Returns@Ease, online payment services,³⁶ and electronic postmark.

The Postal Service has also offered an array of other services not reliant on the Internet whose operations may or may not have postal implications. These services include, inter alia, Mail Package Shipment Program, a pilot program offering pickup service to

select merchants,³⁷ LibertyCash, a stored value card for use in purchasing postage and related products,³⁸ and Unisite Antenna Program, which concerns leasing Postal Service real estate for wireless communication towers.

Many of the latest services, particularly those relying on electronic communications, share a common bond with the Postal Service's initial forays into electronic mail. A principal impetus for the Postal Service to offer electronic mail service was an early concern that its message market share would be substantially reduced, based on projections that seven out of eight domestic messages would be lost to other carriers.³⁹ Today, the concern over electronic diversion continues to drive the Postal Service's efforts to generate increased revenues and to serve the public's communications needs. Even if its earlier efforts proved unsuccessful, it is not to say that the Postal Service's latest attempts to grow its revenues and volumes by offering new services or harnessing technology to enhance services offered to the mailing public will not succeed.

With the proliferation of these services, the Commission finds it appropriate to propose to codify in its rules the term "postal service" to provide guidance to the Postal Service and the public concerning services that fall within the ambit of sections 3622 and 3623 of the Act. The proposed rule imposes no restrictions on the types of postal service that the Postal Service may wish to offer. Such services, however, must be reasonably related to the functions customarily performed by the national post.

In pleadings before the Commission, the Postal Service has asserted that it is authorized to provide commercial nonpostal services.⁴⁰ The Commission takes no position on this claim, other than to reiterate that the lawfulness of the Postal Service's actions in implementing a nonpostal service is not an issue before the Commission.⁴¹ While the Commission has formed no opinion about whether any of the services identified in Consumer Action's petition are postal or nonpostal, it would appear, based on little more than a review of the

²⁸ *Id.* at 175-176. The Commission noted that the Postal Service also appeared to regard electronic media as equivalent to a mail transportation mode. *Id.* at 176.

²⁹ PRC Op., Docket No. MC84-2, December 21, 1984.

³⁰ For a more complete description of Mailing Online, see PRC Op. MC2000-2, June 21, 2000, at 1-3.

³¹ Letter to the Honorable Steven W. Williams, Docket No. MC2000-2, August 29, 2003.

³² Initial Brief of the United States Postal Service, Docket No. MC78-3, November 9, 1979, at 9. In that proceeding, the Postal Service argued that "E-COM service fits squarely within the scheme of transmitting messages envisioned by the Postal Reorganization Act. * * * The E-COM proposal keeps pace with advances in technology * * * by utilizing electronics to move mail, instead of utilizing [a surface or air carrier]." *Ibid.*

³³ See PRC Op. MC78-3, December 17, 1979, at 175-76.

³⁴ 39 U.S.C. § 101(a).

³⁵ As noted above, the Postal Service terminated Mailing Online as of September 1, 2003. Letter to the Honorable Steven W. Williams, Docket No. MC2000-2, August 29, 2003.

³⁶ These include USPS eBillPay, USPS Send Money, and USPS Pay@Delivery. With respect to USPS eBillPay, the Postal Service indicates it has informed CheckFree Corporation that it will not renew its contract upon its expiration in April 2004. In addition, the Postal Service states that, as of that date, it will no longer offer either USPS Send Money or USPS Pay@Delivery, since both are features of its agreement with CheckFree. See Update to Report on Nonpostal Initiatives, November 14, 2003 (Update). Nonetheless, the Postal Service's website indicates that these services remain available without any reference to their apparent discontinuance as of April 2004.

³⁷ The Postal Service indicates it has terminated this program. Update.

³⁸ The Postal Service indicates it has terminated this program. *Ibid.*

³⁹ PRC Op. MC78-3, December 17, 1979, at 22-24.

⁴⁰ See Comments of United States Postal Service on Consumer Action Petition, January 30, 2003, at 14-17.

⁴¹ See PRC Order No. 1239.

pleadings in that proceeding, that the claim that each service is nonpostal may be somewhat strained. The converse would appear to be equally true; not each service would appear to be postal.

New services offered by the Postal Service are not without public interest considerations.⁴² The proposed rule provides a framework in which they may be considered. The need for Commission review, with an opportunity for public participation, is heightened because of the possibility (or even the likelihood) that new postal services may operate in competition with private sector services. The proceedings discussed above give ample evidence of this. Concerns about the effects on competition were at the heart of the two complaint proceedings, Docket Nos. C96-1 and C99-1. Similarly, in response to Consumer Action's petition, various commenters question the Postal Service's role in providing services in markets that are also served by the private sector.⁴³ The need to consider the competitive and financial implications of new Postal Service products provides compelling support for Commission review under section 3623 of the Act and is thoroughly consistent with the statutory scheme.⁴⁴

The Commission has the primary responsibility for interpreting whether services offered or proposed by the Postal Service are subject to chapter 36 of the Act.⁴⁵ In exercising its rate and classification authority, the Commission is required to carefully balance the competing interests of those affected by the Postal Service's actions, *e.g.*, assessing the effects of the Postal Service's proposals or services on the public, including both users and

competitors. Courts have explained that the Commission's involvement:

insures that an agency independent of the Postal Service will provide for public notice and hearing—input of those affected by the proposed action—in full and on the record, *see* 39 U.S.C. § 3624(a), consideration of pertinent factors and congressionally imposed goals before certain types of decisions are made.⁴⁶

The Court underscored the importance of the Commission's role by further noting that it was designed, among other things, "to assure that the public is heard from and the public interest represented before rate, classification, and significant service changes are made."⁴⁷

3. Proposed Rule

The Commission proposes to amend its rules by inserting the following definition into new subsection (r) of rule 5, 39 CFR 3001.5, as follows: "postal service means the delivery of letters, printed matter, or packages weighing up to 70 pounds, including acceptance, collection, processing, transmission, or other services supportive or ancillary thereto." A proposed amendment to the Code of Federal Regulations reflecting the addition of a definition of the term "postal service" to the Commission's rules of practice appears following the Secretary's signature.

The intent of the proposed rule is to afford the Postal Service sufficient flexibility to engage in functions ordinarily performed by a national post as may be affected, from time-to-time, by changes in technology. The principal standard that has been applied in analyzing different services is "the relationship of the service to the carriage of mail. Those which can fairly be said to be ancillary to the collection, transmission, or delivery of mail are postal services within the meaning of § 3622."⁴⁸ Thus, the proposed definition is intended not to represent a change, but to clarify the definition to all interested persons.

Taking technological changes into account is consistent with the Act. Section 101(a) directs the Postal Service to "provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities."⁴⁹ To that end, it is

charged with "promot[ing] modern and efficient operations."⁵⁰ As the Commission has previously observed, "the fact that a given service accomplishes one or more functional components of 'the carriage of mail' by means that do not involve a physical object does not necessarily support a conclusion that the service is 'non-postal.'"⁵¹ As corroboration, the Commission cited filings by the Postal Service in Docket Nos. MC78-3, E-COM, and MC98-1, Mailing Online.⁵² Notably, with respect to the former, the Postal Service maintained that "E-COM messages, while in electronic form, are * * * 'in the mails.'"⁵³ Regarding Mailing Online service, a Postal Service witness characterized the bits of electronic data that would ultimately be reduced to hard copy messages "as mail pieces."⁵⁴ Moreover, there are other contemporaneous indications that the Postal Service considered electronic service offerings as an extension of traditional mail services.⁵⁵

Finally, while it takes no position on any service identified in Consumer Action's petition, the Commission notes that certain services are offered through the Postal Service's Web site and are described there as mail or its functional equivalent. For example, regarding NetPost services, users are encouraged to "[d]iscover the many types of mail and many creative ways you can send mail online and have it delivered to their mailbox."⁵⁶ "Prepare and send hardcopy mail from the convenience of your computer."⁵⁷ As an inducement, there are "[p]ostage discounts with every mailing of any size."⁵⁸ Similarly, users are encouraged to use the USPS Electronic Postmark (EPM), which

the needs of different categories of mail and mail users.")

⁴² 39 U.S.C. § 2010.

⁴³ PRC Order No. 1239, May 3, 1999, at 19.

⁴⁴ *Ibid.*

⁴⁵ PRC Op. MC78-3, December 17, 1979, at 172 (footnote omitted).

⁴⁶ Docket No. MC98-1, Tr. 7/1718.

⁴⁷ See 61 FR 42,219 (1996) (Electronic services "will provide security and integrity to electronic correspondence and transactions, giving them attributes usually associated with First-Class Mail.") See also General Accounting Office Report on New Postal Products, GAO/GGD-99-15 (November 24, 1998) at 36-37 (The Postal Service "views its entry into the electronic commerce market as an extension of its core business—the delivery of traditional mail. According to service officials, electronic mail has the same attributes as traditional mail * * *.") *Id.* at 36.

⁴⁸ U.S. Postal Service Create and Send Mail Online page <<http://www.usps.com/send/waystosendmailandpackages/createandsendmailonline.htm>>.

⁴⁹ U.S. Postal Service NetPost Mailing Online page <<http://www.usps.com/maillingonline/welcome.htm>>.

⁵⁰ *Ibid.*

⁴² The Commission's Rules offer various alternatives for expedited consideration of proposed classification changes.

⁴³ See, *e.g.*, Comments of Pitney Bowes, Inc., Petition for Review of Unclassified Services, April 18, 2003; Comments of the Computer & Communications Industry Association on the Motion of the Office of the Consumer Advocate to Request that the Commission Institute a Proceeding to Consider the Postal/Nonpostal Character of Specified Services and the Establishment of Rules to Require a Full Accounting of the Costs and Revenues of Nonpostal Services, Petition for Review of Unclassified Services, January 28, 2003.

⁴⁴ Nothing in the proposed rule is intended to suggest that the Commission has or intends to assert jurisdiction over any "nonpostal" service. One might legitimately question the need for such service where offered in competition with the private sector. While that might also be said of competitive postal services, statutory considerations might well dictate a different result.

⁴⁵ See *United Parcel Service v. United States Postal Service*, 604 F.2d 1370, 1381 (3rd Cir. 1979), cert. denied, 446 U.S. 957 (1980).

⁴⁶ *United Parcel Service v. United States Postal Service*, 455 F.Supp. 857, 869 (E.D. PA 1978), *aff'd*, 604 F.2d 1370 (3d Cir. 1979), cert. denied, 446 U.S. 957 (1980).

⁴⁷ *Ibid.*

⁴⁸ PRC Order No. 1128, July 30, 1996, at 10.

⁴⁹ See also 39 U.S.C. § 403(a) ("The Postal Service shall plan, develop, promote, and provide adequate and efficient postal services * * *"); and 39 U.S.C. § 403(b)(2) ("provide types of mail service to meet

employs an auditable time stamp, because:⁵⁹

- “Correspondence handled by USPS subject to confidentiality statutes and regulations.”

- “Neutral third party with universal public service mandate.”

- “Federally imposed regulations on USPS employees— enhancing customer confidence.”

- “History of providing postmarks with legal significance.”

- “Long-lived statutory purpose ‘to bind the nation together through the * * * correspondence of the people.’ 39 U.S.C. 101.”

In the same vein, the Universal Postal Union recently indicated that it “is working with * * * progressive postal services to promote an electronic postmark that would facilitate electronic transactions and guarantee their security * * *.”⁶⁰ The electronic postmark is described as the “digital equivalent of the * * * indicia that appears on every stamped envelope today and has legally binding implications in matters of mail tampering.”⁶¹

4. Procedural Matters

Comments. By this order, the Commission hereby gives notice that comments from interested persons concerning the proposed amendment to the Commission’s rules are due on or before March 1, 2004. Reply comments may also be filed and are due April 1, 2004.

Representation of the general public. In conformance with § 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, Director of the Commission’s Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

It is ordered:

1. Interested persons may submit initial comments by no later than March 1, 2004. Reply comments may also be filed and are due no later than April 1, 2004.

⁵⁹ U.S. Postal Service Benefits of EPM page <<http://www.usps.com/electronicpostmark/benefits.htm>>.

⁶⁰ UPU Press Release, Electronic Postmark Aims to Build Confidence, Trust and Security for Global E-Trade and E-Business, Bern, Switzerland, 10 December 2003 <http://www.upu.int/presse/eu/electronic_postmark_aims_to_build_confidence_en.pdf>.

⁶¹ Ibid.

2. Shelley S. Dreifuss, director of the Office of the Consumer Advocate, is designated to represent the interests of the general public.

3. The Secretary shall arrange for publication of this proposed rulemaking in the **Federal Register**.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

Issued: January 16, 2004.

By the Commission.

Steven W. Williams,
Secretary.

For the reasons discussed above, the Commission proposes to amend 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24; 3661, 3663.

Subpart A—Rules of General Applicability

2. Amend § 3001.5 by adding new paragraph (r) to read as follows:

§ 3001.5 Definitions.

* * * * *

(r) *Postal service* means the delivery of letters, printed matter, or packages weighing up to 70 pounds, including acceptance, collection, processing, transmission, or other services supportive or ancillary thereto.

[FR Doc. 04–1389 Filed 1–22–04; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 579

[Docket No. NHTSA 2001–8677; Notice 8]

RIN 2127–AI92

Reporting of Information and Documents About Potential Defects

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Response to petitions for reconsideration.

SUMMARY: This document denies the petitions filed by several associations of motor vehicle manufacturers for reconsideration of the final rule published on July 10, 2002, that implemented the early warning

reporting (EWR) provisions of the Transportation Recall Enhancement, Accountability, and Documentation (TREAD) Act and responds to petitions for rulemaking. Under the final rule, in general, all manufacturers of motor vehicles whose yearly production of vehicles for sale in the United States is 500 or more in a particular vehicle category are required to report comprehensive information to NHTSA, including the numbers of property damage claims, consumer complaints, warranty claims, and field reports. Manufacturers of fewer than 500 vehicles per year are required to report only limited types of information (e.g., information about incidents involving deaths referred to in claims and notices received by the company). We have decided to retain the existing thresholds for the present time, although we will consider this issue in approximately two years, after we have had experience under the early warning reporting regulation.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, contact Jonathan White, Office of Defects Investigation, NHTSA (phone: 202–366–5226). For legal issues, contact Andrew DiMarsico, Office of Chief Counsel, NHTSA (phone: 202–366–5263).

SUPPLEMENTARY INFORMATION:

I. Background

On July 10, 2002, NHTSA published a final rule implementing the early warning reporting provisions of the TREAD Act, established by 49 U.S.C. 30166(m) (67 FR 45822). The agency published its responses to some issues raised by petitions for reconsideration on April 15, 2003 (68 FR 18136) and others on June 11, 2003 (68 FR 35132 and 35145) and announced that it would respond to other issues at a later date. The reader is referred to those documents, and the prior notice of proposed rulemaking (NPRM) (66 FR 66190) for further information.

The final rule established different reporting requirements for manufacturers, depending upon the type of product produced and, for vehicle manufacturers, the number of vehicles produced annually. Manufacturers of tires and child restraint systems (CRS) and vehicle manufacturers that produce 500 or more vehicles per year of one of four categories of vehicles (light vehicles, medium-heavy vehicles and buses, motorcycles, and trailers) must provide comprehensive quarterly reports to NHTSA. In general, such comprehensive reports must include information on deaths and injuries