

productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rule making is not expected to result in a "major rule" as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The changes proposed in this notice do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. See 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act: The rule making will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1968. See 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are inapplicable, because this rule making does not involve the use of technical standards.

O. Paperwork Reduction Act: This rule making involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). As discussed previously, the changes in this final rule simply reiterate the provisions of section 10(h) of the Leahy-Smith America Invents Act. The collection of information involved in this rule making has been reviewed and previously approved by OMB under OMB control numbers 0651-0021 and 0651-0032. This notice does not add any additional information collection requirements for patent applicants or patentees. Therefore, the USPTO is not resubmitting information collection packages to OMB for its review and approval because the changes proposed in this notice do not affect the information collection requirements associated with the information collections under OMB control numbers 0651-0021 and 0651-0032. The USPTO will update fee calculations for the currently approved information collections associated with this rule

making upon submission to the OMB of the renewals of those information collections.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses, and Biologics.

For the reasons set forth in the preamble, 37 CFR part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

■ 2. Section 1.16 is amended by adding paragraph (t) to read as follows:

§ 1.16 National application filing, search, and examination fees.

* * * * *

(t) Non-electronic filing fee for any application under 35 U.S.C. 111(a) that is filed on or after November 15, 2011, other than by the Office electronic filing system, except for a reissue, design, or plant application:

By a small entity (§ 1.27(a))	\$200.00
By other than a small entity	\$400.00
* * * * *	

■ 3. Section 1.445 is amended by revising paragraph (a) introductory text and paragraph (a)(1) to read as follows:

§ 1.445 International application filing, processing and search fees.

(a) The following fees and charges for international applications are established by law or by the Director under the authority of 35 U.S.C. 376:

- (1) A transmittal fee (see 35 U.S.C. 361(d) and PCT Rule 14) consisting of:
 - (i) A basic portion \$240.00
 - (ii) A non-electronic filing fee portion for any international application designating the United States of America that is filed on or after November 15, 2011, other than by the Office electronic filing system, except for a plant application:

By a small entity (§ 1.27(a))	\$200.00
By other than a small entity	\$400.00
* * * * *	

Dated: November 7, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011-29462 Filed 11-14-11; 8:45 am]

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POSTAL REGULATORY COMMISSION

39 CFR Part 3055

[Docket No. RM2011-14; Order No. 947]

Performance Measurement

AGENCY: Postal Regulatory Commission.
ACTION: Final rule.

SUMMARY: The Commission is adopting a rule addressing reporting requirements for the measurement of the level of service the Postal Service provides in connection with Stamp Fulfillment Services following consideration of comments filed in response to a proposed rule. No commenter opposed the proposed rule. The final rule is therefore adopted as proposed. Adoption of this rule will foster greater transparency and accountability.

DATES: *Effective date:* December 15, 2011.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789-6820 or stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:

Regulatory History: 76 FR 55619 (September 8, 2011).

Table of Contents

- I. Introduction
- II. Procedural History
- III. Background of Postal Service Proposals
- IV. Service Performance Measurement Reporting
- V. Service Performance Measurement Reporting Rules
- VI. Review of Comments
- VII. Final Rule
- VIII. Ordering Paragraphs

I. Introduction

This rulemaking is part of the series of rulemakings initiated by the Postal Regulatory Commission (Commission) to fulfill its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law 109-435, 120 Stat. 3198 (2006). The final rules described herein, which establish reporting requirements for the measurements of level of service afforded by the Postal Service in

connection with Stamp Fulfillment Services (SFS), are adopted as proposed. The reporting of level of service is required by 39 U.S.C. 3652(a)(2)(B)(i) as part of the Postal Service's annual report to the Commission and supporting documentation. This is a part of the Commission's implementation of a modern system of rate regulation for market dominant products to ensure service is not impaired as a result of the greater flexibility provided to the Postal Service under the PAEA in light of the price cap requirements. See 39 U.S.C. 3622 and 3651.

II. Procedural History

An SFS fee is charged for order processing and handling stamp and product orders received by mail, phone, fax, or Internet at the Postal Service's Stamp Fulfillment Services center in Kansas City, Missouri. Orders can include stamps, stamped cards, envelopes, stationery, and other philatelic items.

On July 13, 2010, the Commission added SFS to the market dominant product list pursuant to a Postal Service request.¹ On June 16, 2011, the Commission granted a Postal Service request for a temporary waiver from reporting service performance for SFS until the filing date for the 2011 Annual Compliance Report. The Commission further asked the Postal Service to either file a request for a semi-permanent exception from reporting or begin the consultation process for establishing service standards (and measurement systems) prior to August 1, 2011.²

By letter dated July 29, 2011, the Postal Service informed the Commission of its intent to institute an internal measurement system for SFS and asked for Commission comment.³ The Postal Service proposed service standards, measurement methodologies, and reporting requirements. The Postal Service indicated that it would formalize its proposed service standards through a **Federal Register** notice.

On August 25, 2011, the Commission responded to the Postal Service request for comment.⁴ The Commission

concurred with the measurement approach that the Postal Service proposed and indicated that the Commission would initiate a rulemaking to make the Commission's reporting rules consistent with the Postal Service's reporting proposals.

On September 1, 2011, the Commission initiated the instant proceeding to consider rules for periodic reporting SFS service performance measurements.⁵ The Public Representative and David B. Popkin (Popkin) commented on the proposed rules.⁶ The Postal Service filed reply comments.⁷

III. Background of Postal Service Proposals

A. Proposed Measurement System

The Postal Service proposed to measure the time from SFS order entry to the time a SFS order is placed on a mail truck manifest for entry into the mailstream. The transit time once an order is entered into the mailstream to delivery is not included as part of the SFS measurement.

A measurement starts when an order is entered into the National Customer Management System (NCMS). NCMS manages SFS inventory, general ledger, order history, and customer accounts.

A measurement ends when the order is logically closed out in the Automated Fulfillment Equipment System (AFES).⁸ The AFES system interacts with NCMS and is used to fulfill orders.

B. Proposed Service Standards

The Postal Service's proposed service standards vary depending upon how a

Calamoneri, Managing Counsel Corporate & Postal Business Law, United States Postal Service, August 25, 2011.

⁵ Notice of Proposed Rulemaking on Periodic Reporting of Service Performance Measurements for Stamp Fulfillment Services, September 1, 2011 (Order No. 837).

⁶ Public Representative's Comments in Response to Order No. 837 (PR Comments); Comments/Motion of David B. Popkin, September 22, 2011 (Popkin Comments); Additional Comments of David B. Popkin, October 4, 2011 (Popkin Additional Comments). In response to the Popkin Comments, the Postal Service filed a Response of United States Postal Service to Comments/Motion of David B. Popkin, September 28, 2011. The Postal Service attached the Kevin A. Calamoneri and Shoshana M. Grove letters cited in footnotes 3 and 4, respectively, a description of the Postal Service's proposed service performance measurement plan, and a copy of its proposed **Federal Register** notice for SFS.

⁷ Reply Comments of United States Postal Service, October 12, 2011 (Postal Service Reply Comments).

⁸ A logical closure is an indication that an order has been fulfilled, packaged, labeled, and placed on a manifest for pickup by a Postal Service truck before entering the mailstream.

customer's order was received.⁹ The Postal Service proposes the following three service standards:

- Internet Orders: Non-Philatelic/Non-Custom
Less than or equal to 2 business days
- Business Level Orders
Less than or equal to 5 business days
- Philatelic/Custom and all Other Order Sources
Less than or equal to 10 business days

C. Proposed Service Goals

For each of the three proposed service standards, the Postal Service proposes a service goal or target of achieving each service standard at least 90 percent of the time.

IV. Service Performance Measurement Reporting

The Postal Service proposed to report the percentage of time that SFS meets or exceeds the applicable proposed service standard. The Postal Service also proposed to report service variances. Service variances will report the total percentage of orders fulfilled within the applicable service standard, plus the percentage that are fulfilled 1, 2, or 3 days late. Reporting is to be disaggregated by how a customer's order was received. Percentage on time and service variance reporting are to be provided to the Commission both on a quarterly and on an annual basis.

V. Service Performance Measurement Reporting Rules

The Commission proposed to modify 39 CFR 3055.65 to include a special reporting requirement for SFS. Section 3055.65 specifies the requirements for the periodic reporting (quarterly) of service performance achievements for special services, which includes SFS.¹⁰

The special reporting requirement specifies that the Postal Service will report (1) SFS on-time service performance (as a percentage rounded to one decimal place); and (2) SFS service variance (as a percentage rounded to one decimal place) for orders fulfilled within +1 day, +2 days, and +3 days of their applicable service standard.

Both items shall be disaggregated by customer order entry method. The Postal Service currently proposed three customer order entry methods: (1) Internet Orders: Non-Philatelic/Non-Custom; (2) Business Level Orders; and

⁹ As previously stated, the Postal Service's proposed service standards are not the subject of this rulemaking and can best be addressed by interested persons through a response to the Postal Service's **Federal Register** notice on this subject matter.

¹⁰ Note that section 3055.31(e) currently requires quarterly data to be aggregated to an annual level and reported to the Commission.

¹ Docket No. MC2009-19, Order No. 487, Order Accepting Product Descriptions and Approving Addition of Stamp Fulfillment Services to the Mail Classification Schedule Product Lists, July 13, 2010.

² Docket Nos. RM2011-1, RM2011-4 and RM2011-7, Order No. 745, Order Concerning Temporary Waivers and Semi-Permanent Exceptions from Periodic Reporting of Service Performance Measurement, June 16, 2011.

³ Letter from Kevin A. Calamoneri, Managing Counsel Corporate & Postal Business Law, United States Postal Service to Shoshana M. Grove, Secretary, Postal Regulatory Commission, July 29, 2011.

⁴ Letter from Shoshana M. Grove, Secretary, Postal Regulatory Commission to Kevin A.

(3) Philatelic/Custom and all Other Order Sources. By generically referring to the three proposed methods as “customer order entry method,” the Postal Service is provided flexibility to propose other methods to the Commission for future implementation without requiring a rule change.

VI. Review of Comments

Three parties, the Public Representative, Popkin, and the Postal Service, provided comments in this docket. No party opposed adoption of the reporting rules as proposed. However, both the Public Representative and Popkin provided significant comments on the Postal Service’s proposed measurement system and service standards.

A. Public Representative Comments

The Public Representative questions whether the data reported will be meaningful based upon the Postal Service’s selection of service standards. He submits that “one purpose of service performance reporting is to make public service performance results that ultimately prompt further improvements in service by the Postal Service.” PR Comments at 3. He contends that the Postal Service has selected service standards that are relatively easy to meet. Thus, he asserts there will be no impetus to improve the fulfillment of SFS orders.

To develop meaningful service standards, the Public Representative suggests that the Postal Service be required to report, for the first 3 years after implementation, the percentage of orders fulfilled for each business day of the 2-, 5-, and 10-day service standards. He argues that this would establish a service performance baseline for determining whether the reported results are meaningful. *Id.* at 3–4.

The Public Representative further suggests that the Postal Service be required to define and describe the service standards for Internet Orders: (1) Non-Philatelic/Non-Custom; (2) Business Level Orders; and (3) Philatelic/Custom and all Other Order Sources so it is clear what is being measured. *Id.* at 4.

B. Popkin Comments

Popkin, like the Public Representative, questions whether the data reported will be meaningful. Popkin Comments at 2. Based on his observations, Popkin contends that the 10 business day standard will be met virtually all the time, thus not providing any challenge to the Postal Service to improve service. *Id.*; Popkin Additional Comments at 2–3. Popkin suggests that

the Postal Service be required to provide data over the past few years to evaluate the 10-day standard. Popkin Comments at 2; Popkin Additional Comments at 2–3, 4–5.

Popkin complains of the lack of opportunity to comment on the Postal Service’s SFS service standards because the standards appear as a final rule in the **Federal Register**. He is also critical of the Commission for focusing on the reporting requirements instead of the Postal Service’s service standards. Popkin Additional Comments at 1–2.

During the comment period, Popkin submitted a Freedom of Information Act request directed to the Postal Service seeking information on SFS order fulfillments. *Id.* at 3. Popkin contends the information provided supports his allegation that orders are being processed in substantially less time than indicated by the service standards.

Popkin notes that orders received during system downtime or catastrophic system failure, and pre-orders will be excluded from service standard reporting. He argues that these situations should not be excluded from reporting. *Id.* at 4–5.

Popkin also argues that the reporting categories should be clarified and better defined. *Id.* at 5.

C. Postal Service Reply Comments

The Postal Service’s Reply Comments address the issues raised by the Public Representative and Popkin and conclude that no change is necessary to its proposed measurement system and service standards.

The Postal Service states that it considered the questions raised by the Public Representative and Popkin while establishing a measurement system and service standards. Postal Service Reply Comments at 4. The Postal Service discusses the data it had available in making its decisions and the limitations of the data provided to Popkin. *Id.* at 4–5. It comments on its selection of reporting categories associated with its measurement system design. *Id.* at 5. It explains that customer expectations and volumes associated with the publication of a catalog and the holiday season play a role in establishing service standards. *Id.* at 5–6. Noting that Popkin’s comments are based on his personal perception (one of 3 million orders received yearly), the Postal Service contends that it has to consider a variety of order scenarios when establishing service standards. *Id.* at 7–8.

The Postal Service believes that pre-orders are properly excluded from measurement because the creation date for the order could be weeks before the product is allowed to ship. The Postal

Service notes that an order containing a pre-ordered item is split into two orders, with the items that can be fulfilled processed immediately. *Id.* at 7.

The Postal Service also contends that planned system downtimes and system failures are properly excluded from measurement. *Id.* The Postal Service describes system downtimes as audit periods or planned system upgrade periods. It states that during system downtimes customers are told to “please expect longer timeframe for delivery.” *Id.*

The Postal Service does not believe it is necessary to report daily fulfillments as suggested by the Public Representative and Popkin for the purpose of evaluating the appropriateness of the selected service standards. *Id.* at 8–9. The Postal Service argues that this is asking the Commission to substitute its judgment for that of the Postal Service in an area that is within the realm of the Postal Service. The Postal Service acknowledges that the Commission has a range of regulatory tools at its disposal if there is reason to believe that the service standards are not meaningful.

Finally, the Postal Service contends that it cannot provide further definitions regarding service standard categories because data is not fully available at this time. *Id.* at 9.

VII. Final Rule

The Commission adopts the SFS service performance reporting requirements as proposed. The rules will be incorporated into the Commission’s rules of practice and procedure by modifying the periodic reporting of service performance achievements for special services found in 39 CFR 3055.65.

Both the Public Representative and Popkin believe the Postal Service’s proposed service standards will be exceptionally easy to meet and provide little incentive for improvement in service. Both suggest temporarily reporting time to fulfillment on a daily basis to judge the appropriateness of the proposed standards.

The Commission concurs that a purpose of service performance measurement is to drive improvement in service. However, costs that drive some improvement must be balanced with the value of results. To justify improvements in service, other factors also must be considered, such as customer needs and expectations, and the capabilities of the system to provide that service. The Postal Service indicates that it has considered these factors in formulating its initial

proposals. The Commission will not require reporting of time to fulfillment on a daily basis at this point. The Commission first would like to review the ability of the Postal Service to meet its service standards as proposed before suggesting any changes. A Commission review of this service could be initiated if future demonstration that customer needs or expectations are not being met. As noted by the Postal Service, if in the future the Commission does not believe SFS service performance reporting is providing meaningful data, the Commission has the authority to direct changes in measurement systems and standards.

Popkin contends that orders received during system downtime or catastrophic system failure, and pre-orders should not be excluded from service standard reporting. The Commission currently is willing to accept excluding planned downtimes so long as customers are notified of these occurrences as indicated by the Postal Service. However, the Commission believes that system failures (unscheduled events) should be included in the reporting of service performance. Infrequent events can be explained within the data reports. Frequent events might indicate a systemic problem that requires immediate attention. The Commission recommends that the Postal Service revisit the decision to exclude system failures.

The Postal Service states that pre-orders may be received well in advance of fulfillment. This creates a problem for determining when to start-the-clock on measurement. The Commission agrees that pre-orders create a start-the-clock issue and that it need not be addressed at this time.

The Public Representative and Popkin contend that the reporting categories should be clarified and better defined. The Commission reminds the Postal Service that it must provide a description of what is being measured with each annual report to the Commission. See 39 CFR 3055.2(e)(1). The Postal Service is directed to ensure that accurate descriptions of the reporting categories are provided at that time.

VIII. Ordering Paragraphs

It is ordered:

1. The Commission amends its rules of practice and procedure by modifying the periodic reporting of service performance achievements for special services found in 39 CFR 3055.65. The changes to 39 CFR 3055.65 appear following the signature of this order.

2. The Secretary shall arrange for publication of this order in the **Federal Register**.

List of Subjects in 39 CFR Part 3055

Administrative practice and procedure; Postal service; Reporting and recordkeeping requirements.

By the Commission.

Shoshana M. Grove,
Secretary.

For the reasons discussed in the preamble, the Postal Regulatory Commission amends chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

■ 1. The authority citation for part 3055 continues to read as follows:

Authority: 39 U.S.C. 503, 3622(a), 3652(d) and (e), 3657(c).

■ 2. In § 3055.65, add paragraph (d) to read as follows:

§ 3055.65 Special Services.

* * * * *

(d) *Additional reporting for Stamp Fulfillment Service.* For Stamp Fulfillment Service, report:

(1) The on-time service performance (as a percentage rounded to one decimal place), disaggregated by customer order entry method; and

(2) The service variance (as a percentage rounded to one decimal place) for orders fulfilled within +1 day, +2 days, and +3 days of their applicable service standard, disaggregated by customer order entry method.

[FR Doc. 2011-29391 Filed 11-14-11; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2011-0029-201103; FRL-9490-5]

Approval and Promulgation of Implementation Plans and Designations of Areas for Air Quality Planning Purposes; Charlotte-Gastonia-Rock Hill, NC and SC; Determination of Attainment of the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to determine that the Charlotte-Gastonia-

Rock Hill, North Carolina-South Carolina nonattainment area has attained the 1997 8-hour ozone national ambient air quality standards (NAAQS). The Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina 1997 8-hour ozone nonattainment area (hereafter referred to as the “bi-state Charlotte Area”) is composed of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell (Davidson and Coddle Creek Townships) Counties in North Carolina; and a portion of York County in South Carolina. This determination is based upon complete, quality assured, quality controlled, and certified ambient air monitoring data for the years 2008–2010 showing that the bi-state Charlotte Area has monitored attainment of the 1997 8-hour ozone NAAQS. Under the provisions of EPA’s ozone implementation rule the requirements for the States of North Carolina and South Carolina to submit an attainment demonstration and associated reasonably available control measures (RACM) analyses, reasonable further progress (RFP) plans, contingency measures, and other planning state implementation plans (SIPs) related to attainment of the 1997 8-hour ozone NAAQS for the bi-state Charlotte Area, shall be suspended for as long as the Area continues to attain the 1997 8-hour ozone NAAQS. Additionally, EPA is responding to comments received on EPA’s April 12, 2011, proposed rulemaking.

DATES: *Effective Date:* This final rule is effective on December 15, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R04-OAR-2011-0029. All documents in the docket are listed in the <http://www.regulations.gov> Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy for public inspection during normal business hours at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960.

FOR FURTHER INFORMATION CONTACT: Jane Spann or Zuri Farngalo, Regulatory Development Section, Air Planning