



POSTAL SERVICE

39 CFR Part 121

Revised Service Standards for Market-Dominant Mail Products

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is adding one to two days to the service standards for certain First-Class Mail and Periodicals.

DATE: Effective October 1, 2021.

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SUPPLEMENTARY INFORMATION:

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I. Introduction.

On April 23, 2021, the Postal Service published proposed revisions to First-Class Mail and Periodicals service standards in the Federal Register and sought public comment (the Proposed Rule). Service Standards for Market-Dominant Mail Products, 86 FR 21675 (Apr. 23, 2021). These proposed service standards constitute a central element of the Postal Service's *Delivering for America* strategic plan to achieve service excellence and financial sustainability, which was announced on March 23, 2021. The comment period for the Proposed Rule closed on June 22, 2021. Current service

standards require the Postal Service to rely heavily on air transportation, using air cargo transportation carriers and commercial passenger air carriers. Air transportation is subject to a number of factors that make it less reliable than surface transportation, such as weather delays, network congestion, and air traffic control ground stops; air transportation also tends to cost significantly more than surface transportation. The basic logic of the changes is that the addition of one or two days to current service standards for First-Class Mail and Periodicals would enable the Postal Service to convey a greater volume of mail within the contiguous United States by surface transportation, thereby achieving a better balance of on-time reliability and cost-effectiveness. It would also enable the Postal Service to enhance the efficiency of its surface transportation network.

The scope of the changes is also limited. Most First-Class Mail (61 percent) would stay at its current standard, and overall 70 percent of First-Class Mail would be subject to a standard of 3 days or less, consistent with the current standards within the contiguous United States. For the minority of volume that is subject to a shift in service standard, the standard would only change by 1 or 2 days (with most of such volume experiencing a 1-day change). At the same time, the Postal Service would be positioned to provide service on a significantly more predictable basis.

On April 21, 2021, the Postal Service submitted a request to the Postal Regulatory Commission (PRC) for an advisory opinion on these service standard changes proposed for First-Class Mail and Periodicals, in accordance with 39 U.S.C. 3661(b). The PRC initiated Docket No. N2021-1, in which it conducted formal hearings with testimony on the record in order to consider the Postal Service's request. A number of interested persons and entities intervened and conducted discovery to probe the Postal Service's request and evidence; the PRC's Presiding Officer and its appointed Public Representative also actively examined the evidence through the discovery and

hearing process. Some intervenors introduced their own rebuttal testimony and other evidence into the record. Several intervenors submitted arguments to the PRC in the form of post-hearing briefs, and many other interested persons did the same through submission of statements of position. The supporting evidence in that proceeding advanced by the Postal Service demonstrated a number of significant benefits from implementing the service standard changes consistent with the policies enumerated in Title 39 of the United States Code: more reliable, predictable, and consistent service for mailers; significant cost savings due to the creation of a more efficient transportation network; longer-term financial sustainability; and further operational benefits in the future.

The proceeding culminated in an advisory opinion issued by the PRC on July 20, 2021, which concluded that the Postal Service's proposed changes, in principle, are rational and not inconsistent with statutory requirements. The PRC did make a number of recommendations for how the Postal Service should implement its changes. The Postal Service does not concur with many portions of the PRC's advisory opinion, including how the PRC analyzed aspects of the evidence presented by the Postal Service. That said, the Postal Service largely agrees with the PRC's recommendations, and will be following most of them as these new service standards are implemented.

Specifically, the Postal Service agrees with the principle of setting realistic performance targets based on actual operating conditions. The Postal Service has not claimed that it will achieve the 95 percent service performance target set forth in the *Delivering for America* plan instantaneously with the service standard change; rather, the implementation of this change is a necessary step towards ultimately achieving that target, in conjunction with other elements in the plan. Interim targets will be set as the plan is implemented. The Postal Service also agrees with the principles of closely monitoring the implementation process to ensure that the new transportation network is

achieving the Postal Service's goals, measuring customer satisfaction with the changes, and working closely with customers. Successful implementation not only of this service standard change, but of the plan generally, requires careful and systematic operational planning and execution, as well as customer engagement. On the other hand, the Postal Service continues to believe that the econometric analysis that it presented in Docket No. N2021-1—in response to a PRC recommendation in an earlier advisory opinion—constitutes a robust and objective approach to understanding how these service standard changes may impact mail volumes, and therefore the Postal Service does not agree with the PRC's new recommendation to disregard that analysis.

II. Comments.

The Postal Service received about 136,317 comments in response to the Proposed Rule. These responses came overwhelmingly from individuals using very similar, if not verbatim, language, but also from a small variety of other sources, including the Attorneys General of a group of states together with cities, a union, and public advocacy groups. Some of the comments submitted in the Proposed Rule, including those by the Attorneys General and others, are simply copies of the same briefs or statements of position that they had filed in the PRC proceeding, re-submitted to the Postal Service as their comments for this rulemaking. The Postal Service likewise incorporates by reference its Initial Brief and Reply Brief as filed publicly in the PRC proceeding. Initial Brief of the United States Postal Service, PRC Docket No. N2021-1 (June 21, 2021), <https://go.usa.gov/xF5n4>; Reply Brief of the United States Postal Service, PRC Docket No. N2021-1 (June 25, 2021), <https://go.usa.gov/xF5n2>. While almost all commenters express some form of opposition to the changes, they do not offer clear alternative proposals or revisions.

Many comments raise issues that fall outside the scope of this proceeding. For example, such non-germane issues included:

- Pensions and retiree health benefits;
- Postal banking;
- Appropriations;
- Service standards and/or service performance regarding packages;
- Removal of sorting machines and collection boxes;
- Tenure of the current Postmaster General;
- Potential changes to the retail network; and
- “Privatization” of aspects of (or indeed the entirety of) the Postal Service.

None of these issues, irrespective of their importance, properly fall within the scope of this rulemaking. Changes to the service standards for First-Class Mail and end-to-end Periodicals do fall within the scope of this rulemaking, and comments that focused on such changes were taken into closer account and are addressed below.

Many commenters predict that the changes to service standards for First-Class Mail and end-to-end Periodicals will degrade service, disrupting the provision of goods and services while leaving vulnerable customers and financially stressed business with no viable recourse. By way of support, many of these commenters relate anecdotes of service failures that have impacted them negatively. Other comments raise various concerns that bear at least some relation to the service standard changes at issue, such as the following:

- Impacts of the proposed changes on rural customers;
- The appropriateness of the proposed changes during the pendency of the COVID-19 pandemic;
- The impact of the proposed changes on election mail;
- The purportedly illegitimate prioritizing of cost reduction over delivery speed;
- Loss of mail volume; and
- An alleged strategy to deemphasize First-Class Mail in favor of packages.

As noted, most of the comments are in the form of short letters, using very similar or identical verbiage. Frequently, these form letters stated that they were opposed to the proposed service standard changes, which they alleged would “permanently” slow down the delivery of much of the mail; that the Postal Service’s focus should be on improving the delays that “plagued” service during the past year; that the Postal Service is “critical” to keeping all citizens connected; and that the commenters “depend on reliable and affordable postal services.” These last views, expressed repeatedly in over 100,000 submissions, confirm that the American public overwhelmingly depends upon reliable and affordable postal services.

To be clear, this does not mean that many comments do not also express an interest in more expeditious service. Yet the comments undeniably recognize that reliability is significant. Further, what they express clearly was the “essential” nature of postal services to the public, and that they want to see these essential services both maintained and improved for years to come. The comments highlight the many aspects of what quality postal services include: reliability and affordability, as well as fast delivery. These sometimes competing qualities must be balanced when designing service standards. 39 U.S.C. 3691(b)(1)(C).

The Postal Service has taken the comments into account, and has determined that they do not furnish a reasonable basis to deviate from the initial set of proposed changes to the service standards in question. In particular, the comments do not present any compelling explanation for why adding a day or two to a minority of First-Class Mail and end-to-end Periodicals volume would make postal services insufficiently speedy, let alone negate the benefits of enhanced reliability, cost effectiveness, and financial sustainability that will inure to all. The Postal Service therefore considers that these new standards properly balance the various statutory policies regarding the design of service standards, and should be implemented.

III. Response to Comments.

A. Representative Concerns.

To the extent that anecdotes of performance failures relate to First-Class Mail and end-to-end Periodicals, the Postal Service has concluded that the changes will help to ameliorate, rather than worsen, service performance and customer satisfaction. By enacting these service standards, the Postal Service will be able to increase service reliability and thus ensure that its service standards provide customers with more meaningful service expectations compared to the current standards.

As an initial matter, the Postal Service notes that over 60 percent of First-Class Mail volume will remain unaffected by the changes, and that 70 percent of First-Class Mail volume will continue to have a service standard of 3 days or less. The Postal Service further notes that it has been unable to achieve its service performance targets for many years, and that these service failures illustrate the weakness of the current transportation model. Indeed, the commenters who cite these failures make a strong case for the changes. Bills do not, in general, arrive late due to the insufficient speed of surface transportation, but rather because a mailer relied on a service standard that failed to materialize: had the mailer known that delivery would take longer, the mailer could have mailed sooner. Many of the commenters' frustrations, in other words, appear to have arisen from the lack of reliability currently ingrained in the transportation network. Service standards that are reliably achieved can be planned around; service failures of fluctuating duration often cannot.

Numerous commenters related anecdotes of service performance failures, complaining of slow delivery times and occasional lost items, which resulted in missed payments on bills, delayed receipt of prescription medications, and other inconveniences. These commenters frequently misconstrue service changes as an attempt to enshrine and regularize the service failures of the past year. As noted above,

to the extent that these anecdotes relate to First-Class Mail and end-to-end Periodicals, the Postal Service submits that the changes will help to ameliorate, rather than worsen, service performance and customer satisfaction. Many of the items about which customers express concern, such as bills, tend to ship from locations of relatively close geographical proximity, and as such, they will figure among the group of unaffected mailings. Further, the Postal Service aims, with the new service standards, to deploy a transportation network capable of delivering on time and with consistency, one on which customers can count. Vulnerable customers who rely on the Postal Service for predictable delivery would particularly stand to benefit from the enhanced service reliability that will result from these changes.

Some comments express skepticism of surface transportation. For example, one commenter asserts that “[t]he justification/rationale . . . that airplanes are less reliable than trucks driving across country is beyond absurd,” and speculated that “[d]elivering [F]irst[-C]lass [M]ail cross country by using only trucks realistically would need a standard ‘maximum’ of 12 days,” and that “[e]ven then the actual could exceed 15 days.” One individual commenter, who intervened in the PRC docket and then re-submitted a copy of his brief from that case, comments that air and surface transportation are comparably reliable, and that, moreover, non-transportation root causes of delay make a 95 percent service performance target impossible. However, experience indicates both that the air transportation network is less reliable than surface transportation, and that by beneficially exploiting the capabilities of the surface transportation network, the Postal Service can achieve a greater degree of reliability. With regard to root causes of delay, the changes afford additional time to rectify certain handling errors and transit failures. Furthermore, these changes form but one part of a broader strategy, set forth in the Postal Service’s comprehensive *Delivering for America* strategic plan, to achieve 95 percent success in the metric of service performance; the

Postal Service has not portrayed these changes as sufficient to achieve that end, but rather as a necessary component, among others, to ultimately achieving a 95 percent service level.

The same commenter references certain service standard changes implemented in the years 2000 and 2001, pursuant to which “the Postal Service defined a service standard to match a range of truck driving time.” The commenter then asserts that these former changes did not yield an increase in improved reliability, and suggests that the current changes will likewise fail to realize their stated goal. Nonetheless, the commenter offers little evidence to legitimize any such comparison between two different service standard changes occurring in two vastly different contexts. The current changes are different from and more extensive than the changes implemented two decades ago.

At least one commenter alleges that “[i]f one can plan for 95 percent on-time delivery within a five-day timeframe, one can make a plan for 95 percent on-time delivery within a three-day timeframe.” Actual experience, though, overwhelmingly indicates that the Postal Service cannot, in a cost-effective manner, achieve 95 percent on-time delivery within a 3-day timeframe. The Postal Service has not met its First-Class Mail service targets in years, and these service failures have been particularly pronounced for mail subject to a 3-day standard. This is because the current First-Class Mail standards require delivery in 3 days or less throughout the continental United States regardless of the distance between origin and destination, a short timeframe that necessitates excessive use of less reliable air transportation. The short timeframe also results in tight timelines for processing and transporting mail, further increasing the risk of service failures caused by contingencies that arise in the normal course of business.

One commenter contends that, if service standards are lengthened, some mail will be delivered early, thereby undercutting the Postal Service’s goal of consistency.

This type of “inconsistency,” however, is not a cause for criticism. The Postal Service seeks to deliver more mail within its stated service performance targets, and thus to avoid delays—especially of the sort of which so many commenters complain.

Some commenters suggest that the Postal Service has illegitimately prioritized cost reduction over speed of delivery. In particular, joint comments by advocacy groups state that “[t]he Postal Service proposal . . . puts costs above the ‘expeditious’ delivery of mail” in violation of 39 U.S.C. 101(a) and 101(e). The Postal Service stresses that projected cost savings, while important, do not constitute the sole factor motivating the changes. The service standard changes will both reduce cost and improve service reliability, with minimal impact on delivery speed, particularly in light of recent actual performance. Furthermore, the cost savings associated with this plan are not envisioned as ends in themselves; rather, they are intended to ensure that universal service, provided at least 6 days a week at affordable rates, remains financially sustainable into the future. The Postal Service has discretion to balance service reliability, speed, and delivery frequency in light of reasonable rates and best business practices and to account for costs, existing service levels, and various factors that affect the financial viability of the universal service network. The changes represent a considered and reasonable effort to strike an appropriate balance among these considerations.

Numerous commenters question the projected financial benefit associated with the new service standards. These comments frequently predict that the changes will precipitate a “downward spiral,” whereby declining service leads to declining demand and thus to declining revenue that outstrips the cost savings. In a similar vein, joint comments by public advocacy groups conjecture that “by potentially decreasing mail volumes or harming the Postal Service brand, the proposal may not result in cost savings for the Postal Service.” An industry mailer in financial services likewise speculates that “the Postal Service may experience significantly more volume loss as a

result of the proposed changes than it expects as companies shift to faster, more reliable, and easier to manage electronic channels in response” to the changes. An individual commenter echoes this by stating his belief that the Postal Service has underestimated the volume loss associated with the changes.

No commenter offers evidence to corroborate these suppositions. On the other hand, the Postal Service has, in its proceeding before the PRC, developed record evidence about potential demand effects in the form of an expert econometric analysis. While that analysis forecasts a decline in volume, the forecasted decline is not anticipated to spark a negative feedback loop or to swallow all concomitant benefits. Bolstering this analysis is evidence, in the form of regular customer survey data presented before the PRC, that customers generally place higher value on service reliability than speed. To the extent that some customers may prefer delivery speed faster than these standards, the evidence does not support a conclusion that these customers will prompt a cascade of demand decline, but rather that customer satisfaction will remain stable, if not improve, with more reliable service. Rather than harm the Postal Service’s brand, then, the changes should help to alleviate the reputational damage accruing to late and missed deliveries.

Some commenters question the appropriateness of the changes during the pendency of the COVID-19 pandemic, observing the role played by the Postal Service in delivering prescription medications, food and pantry staples, stimulus checks, and coupons. First, package deliveries—including those of prescription medications and food—are not affected by the changes at issue in this rulemaking, which are limited to First-Class Mail and Periodicals. Further, many of the service performance failures raised by other commenters have been exacerbated by the effects of the COVID-19 pandemic on air transportation and by the strain on the Postal Service’s surface transportation networks in attempting to shoulder the resulting burden of meeting

current service standards. See Postal Regulatory Comm'n, Annual Compliance Determination Report, Fiscal Year 2020 (Mar. 29, 2021), at 109–16. The evidence indicates that the new changes will help to ameliorate, rather than worsen, these performance failures. The pendency of COVID-19, its disruption of air transportation, and the resultant burden on surface transportation to meet current service standards therefore makes these corrective measures more, not less, urgent.

Many commenters express concern that the changes might negatively impact the delivery of election mail. For example, joint comments by public advocacy groups aver that “[d]elaying mail delivery risks significant numbers of completed ballots that might not be counted because they are delivered after states’ deadlines for receipt of mail-in ballots.” The Postal Service notes the limited scope of these service standard changes, as well as the distinction between lengthened service standards and delays. The changes will add one or two days to the current service standards for certain mail volume, particularly mail traveling long distances, but intrastate mail volume will be largely unaffected: local mail (i.e., First-Class Mail that is traveling 3 hours or less between origin and destination) will remain subject to a 2-day standard, and First-Class Mail traveling within a State will, with the exception of certain mail in Alaska, still be subject to a standard of 3 days or less. Indeed, as for election mail specifically, based on November 2020 general election data and the use of the ballot Service Type ID (STID) in the Intelligent Mail Barcode (IMB), only approximately 3.84 percent of inbound First-Class Mail ballot volume would experience a slight downward change in service standards—to which affected mailers can respond by adjusting their mailing times accordingly. Indeed, the enhanced reliability should provide ballot mailers with more, not less, assurance that their mailings will be delivered within the expected service standard.

In order to mitigate any impact on election mail, the Postal Service has already held two briefings with election officials since the release of its *Delivering for America* Plan. At both briefings, the proposed service standards changes were discussed, and feedback was received. The Postal Service will continue to work closely with national election associations, federal organizations, state election executives, and local election officials regarding these changes.

A public advocacy group on behalf of prison populations contends that the changes “vitiates the value and utility of First-Class Mail to incarcerated customers,” a subset of customers who “depend on First-Class Mail perhaps more extensively than any other constituency in today’s world.” The Postal Service acknowledges the unique challenges faced by incarcerated mailers. Far from undermining the value and utility of First-Class Mail for these mailers, however, the changes are highly unlikely to affect them negatively and will counterbalance any marginal inconveniences with a higher degree of reliability.

The advocacy group suggests that the changes ignore “the needs of Postal Service customers, including those with physical impairments.” See 39 U.S.C. 3691(c)(3). To this end, it invokes the scenario of an incarcerated person, subject to a civil action, who suffers prejudice due to a 5-day service standard. The advocacy group also, and on similar grounds, contends that the changes infringe 39 U.S.C. 3691(b)(1)(B), which mandates that service standards for market-dominant products be designed to “preserve regular and effective access to postal services in all communities.”

The Postal Service acknowledges that, to the extent that incarcerated customers generally lack access to electronic means of communication, they may be more reliant on First-Class Mail for sending and receiving tax documents, court filings, and other correspondence. It does not follow, however, that the changes would impair those

activities. First, most Single-Piece First-Class Mail would retain its current service standard, and the operational changes enabled by the new service standards will significantly increase the probability that that mail will be delivered on time. Second, most incarcerated persons are in state or local facilities, many of these incarcerated persons are presumably residents of the states where they are incarcerated, and the courts with jurisdiction over their incarceration are presumably located in the same state. None of this intrastate correspondence will be subject to a 5-day service standard. With limited exception, all intrastate Single-Piece First-Class Mail will continue to have a service standard of 2 or 3 days. Only Alaska will have a 4-day service standard for some intrastate Single-Piece First-Class Mail. Third, even if some Single-Piece First-Class Mail to or from incarcerated persons were subject to materially longer service standards or actual delivery times, the prevalence of postmark rules minimizes the impact of longer delivery times on incarcerated persons' business and legal matters. See, e.g., 26 U.S.C. 7502; Federal Rules of Civil Procedure 5(b)(2)(C), 6(d); Federal Rules of Criminal Procedure 45(c), 49(a)(4)(C); California Code of Civil Procedure section 1013(a). Other common rules withhold legal completion of service of a mailed summons until the recipient has executed a written acknowledgment of receipt within some period extending far beyond even a 5-day First-Class Mail service standard—and not before. See, e.g., California Code of Civil Procedure section 415.30; North Carolina Rules of Civil Procedure 4(j)(1); South Carolina Rules of Civil Procedure 4(d)(8).

Because the service of court documents is not sensitive to the time between mailing and receipt, the advocacy group's scenario, referenced above, is unlikely to materialize.

The advocacy group also disputes that the Postal Service took customer satisfaction into account, on the theory that the Postal Service's customer satisfaction surveys do not include incarcerated people among potential participants. However, the advocacy group offers no contrary evidence of incarcerated people's preferences to

support its hypothesis of divergence from the preferences of the general mailing populace. Absent such evidence, there is no basis on which to conclude that incarcerated persons do not value reliability and consistency over speed, as the Postal Service's customer survey data indicate for postal customers generally. The advocacy group itself appears to agree that reliability is of paramount importance to incarcerated persons, given its fear that "the proposed 1–5 day delivery range leaves incarcerated mailers utterly unable to reliably estimate the time in which it will take for First-Class Mail to be delivered." In fact, the changes will demonstrably improve incarcerated mailers' ability to rely on standard delivery times.

Finally, the advocacy group contends that the changes violate 39 U.S.C. 3691(c)(7), which requires that service standards take into account "the effect of changes in technology, demographics, and population distribution on the efficient and reliable operation of the postal delivery system." For this claim, the advocacy group adduces two grounds: that with these changes, the Postal Service "arbitrarily ignores the nation's robust and extensive air network that has routinely been used to transport First-Class Mail"; and that the "1–5 day delivery range leaves incarcerated mailers utterly unable to reliably estimate the time in which it will take for First-Class Mail to be delivered." This characterization of the air network as "robust" is belied by evidence showing that, in terms of transporting mail, it is actually less reliable and resilient than surface transportation. As mentioned above, all intrastate mailings (with the exception of some Alaska ZIP Code pairs) will fall within the 1–3 day delivery range; and the changes, by enabling superior service performance, will better allow incarcerated persons to estimate the time it will take First-Class Mail to be delivered, since the delivery standards will be more reliably achieved.

A financial services company expresses concern that the changes will cause certain impacts on its mailing operations. The company relates that it recently

consolidated the facilities from which it processes mailings and avers that the changes will reverse its cost savings associated with that consolidation. The company further notes that, currently, it can send mailings to its geographically diverse accountholders on a single timeline, and that the changes will oblige it to account for differing travel times. "Mailpieces in the same advertising campaign," it explains, "will need to be entered at different times to achieve similar in-home dates." Invoices on the same billing cycles and with the same due dates may likewise need to be staggered. While the Postal Service acknowledges that the new standards may require adjustments on the part of business mailers, mailers will also benefit from enhanced reliability. Such mailers may find that the benefits of increased reliability, which will enable customers to have more confidence in the specific date of delivery, offset any costs associated with staggered mailing invoices and mailing campaigns. Furthermore, such mailers have a vested interest in the Postal Service's ability to achieve long-term financial sustainability while maintaining affordable rates, and the changes will enable progress toward that end.

A postal labor organization opposes the changes on several grounds. First, it alleges that the changes will hinder the distribution of local dues reimbursements, reduce the timeliness of its communications regarding collective bargaining and union activities, and compromise the value of its monthly periodical. Second, it observes that "the American public have expressed strong opposition to the changes proposed as measured by the high number of public comments submitted." Finally, it opines that putative harm to the Postal Service's brand will outweigh the projected cost savings, and suggests, in lieu of the changes, and as a measure of brand protection, that the Postal Service adopt "more realistic performance targets (to less than 95 percent) for cross-country mail."

With regard to the first point, the Postal Service notes that the union itself, in its comments, affirms its commitment to and support of improved reliability. The Postal Service further observes that the enhanced reliability enabled by the changes can counterbalance any marginal impact on the union's mailing activities that the standards may cause. With regard to the second point, it bears mentioning that approximately 98 percent of the comments received consisted of short form letters that were prompted by critics of the proposed change; it is not the case that such letters are indicative of opposition by "the American public" generally of this proposal. Moreover, evidence suggests that customers typically value reliability above speed, and that—as the numerous anecdotes of service performance failures further attest—delayed or missed deliveries inflict at least as much, and likely more, damage to the Postal Service's brand than would a slightly lengthened service standard affecting less than 40 percent of First-Class Mail. The Postal Service therefore disagrees with the suggestion that, by maintaining the current standards while setting forth lower service targets, the Postal Service could more effectively protect its current high approval rating among the American public.

At least one commenter claims that with the changes comes a higher risk that time-sensitive Periodicals will arrive late at their destination. The Postal Service observes that, when subject to delays, time-sensitive Periodicals may lose value to customers. As such delays cannot be planned around, customers who ship and receive Periodicals will stand to benefit from the greater degree of reliability enabled by the changes, which will also only extend the standard by one or two days. In addition, this change affects only end-to-end Periodicals, which represent a very small portion of overall Periodicals volume, and are more likely to be quarterly or monthly publications that are less time-sensitive than Periodicals generally.

Numerous comments were submitted by, or on behalf of, customers domiciled in Alaska. First, a group of Alaskan state legislators allege that the changes “would grossly violate the Universal Service Obligation.” The Postal Service notes, in response, that the PRC’s Report on Universal Postal Service and Postal Monopoly, Dec. 19, 2008, at 197–98, finds service quality to be an attribute of the universal service obligation, and further finds the statutory requirement to seek an advisory opinion before changing service quality nationwide to be a necessary component of service quality. For the changes at issue in this rulemaking, the Postal Service has already sought an advisory opinion; the changes, moreover, aim to rebalance speed and reliability, in order to address well-documented concerns about the latter and thereby to maintain and indeed improve service quality.

Further, some business owners express concern that the changes will affect their ability to ship products (such as smoked salmon) to locations within the 48 contiguous states. Others worry that the changes will compromise their ability to receive food and prescription medications via the Postal Service. Several commenters note that the Alaska Public Guardian manages the shelter, food, medical and financial needs of approximately 1,700 incapacitated Alaskans, and that the Postal Service is the only method available to the Public Guardian to send checks and documents to these individuals, their landlords, service providers, and families. These commenters note the time-sensitive nature of many such mailings; observe that they “are already routinely late, many times already arriving on the date information is due or after deadlines have passed”; and voice the concern that “[c]hanging the delivery standards will . . . exacerbate these issues.”

The Postal Service acknowledges the unique challenges faced by incapacitated Alaskans, and further acknowledges that customers in rural Alaska may rely on the Postal Service for prescription medications and foodstuffs. However, it bears repeating

that the changes under review in this rulemaking will affect only First-Class Mail and Periodicals—not the packages which bear items like food, prescription medications, and other merchandise. With regard to the Public Guardian and its clients, it also bears mentioning that mailings can—and often do—arrive earlier than the deadlines indicated by service standards. Furthermore, as discussed, the changes will help ameliorate, rather than exacerbate, the service performance failures which these commenters note. Thus, the increase in reliability enabled by these changes should counterbalance inconveniences which result from the addition of one day to the service standards for First Class Mail originating in and destined for Alaska.

Two farmers' organizations draw attention to the special challenges faced by their members. These commenters note that farmers rely on the Postal Service to ship and receive seeds, fertilizer, pesticides, tools, and other essential products, as well as to receive live animals like chicks and bees. They also note that, as their members tend to live in rural areas not covered by private carriers and frequently not equipped with broadband internet, they rely on the Postal Service for prescription medications and for purposes of general communication. In opposing the changes, these commenters appear to operate under the misimpression that the service standards for all First-Class Mail will be lengthened from 1–3 days to 5 days.

The Postal Service reiterates that the changes at issue here concern only First-Class Mail letters and flats and Periodicals, and not the packages used for conveying the supplies, seeds, and animals listed by these commenters as matters of special concern. Moreover, with respect to the non-package mail at issue, the Postal Service reiterates that over 60 percent of First-Class Mail will remain unaffected by the changes, and that, of the affected mailings, only a fraction (approximately 10 percent) will see service standards lengthened to 5 days. Most First-Class Mail (70 percent) will remain subject to a service standard of 3 days or less. The Postal Service also notes that the

increased reliability accruing to the changes should counterbalance any inconveniences associated with longer delivery times.

Numerous commenters cite or allude to Article I, Section 8, of the U.S. Constitution, which grants Congress the power to “establish Post Offices and post Roads.” Many, though perhaps not all, of these commenters either suggest or claim outright that the changes would somehow violate this clause. This claim is premised on the view that the changes amount to a wholesale “destruction” or “sabotage” of the postal system.

The Postal Service disagrees. Far from acting contrary to Congress’s design, the service standard changes flow from Congressional delegations of authority to establish and revise service standards and to plan, develop, promote, and provide adequate and efficient postal services. 39 U.S.C. 101(a), 403(a), (b)(1), 2010, 3691(a). Moreover, these changes reasonably balance the various policies that those statutory delegations require the Postal Service to achieve or take into account when designing service standards. The changes will leave unaffected approximately 60 percent of First-Class Mail mailings; will enable higher levels of satisfactory service performance and operational efficiency; and will help put the Postal Service on a sounder financial footing, so that it may continue to serve its customers with universal postal services for many years to come. As such, the changes are designed to preserve, and not to undermine, the Postal Service.

Some commenters assert that the Postal Service did not, in conceptualizing the new service standards, conduct “impact studies.” The Postal Service notes that it modelled the impacts of the new service standards on customers across the country, as well as on the Postal Service’s transportation network. And it has employed various methodologies to project the costs savings and volume declines that the new service standards are anticipated to produce.

B. Other Statutory Concerns.

Some of the comments—particularly those that merely incorporate by reference the identical briefs or statements of position that had been filed in the PRC proceeding—raise concerns that the proposed service standard changes are inconsistent with relevant statutory criteria. Upon considering these comments, the Postal Service remains convinced that the service standard changes are consistent with all applicable statutory provisions, especially when considering the provisions together. The Postal Service has taken into account the factors of 39 U.S.C. 3691(c), and has concluded that the service standard changes should serve and help it to achieve the objectives of 39 U.S.C. 3691(b). These provisions require that the Postal Service balance of number of considerations. The Postal Service has evaluated these factors and objectives holistically, and believes that these service standard changes reflect a reasonable balance that, on the whole, will benefit the American public in the near and long term. In addition, the PRC extensively considered this issue and concluded that the proposed service standard changes in principle are not inconsistent with any statutory requirements.

In a statement of position filed with the PRC on June 21, 2021 (and incorporated by reference in this proceeding), the Attorneys General for 21 States, together with several cities (collectively, the “States”), suggest that the Postal Service has short-circuited the process of planning and seeking an advisory opinion by avoiding “consultation” with the PRC under 39 U.S.C. 3691 (a) before submitting its request or issuing its Proposed Rule. However, the Postal Service has fully complied with the regulatory requirements applicable to this process. The “consultations” envisaged in 39 U.S.C. 3691 (a) concerned the initial establishment of the service standards regulations in 2007, rather than subsequent modifications of the service standards.

That subsection 3691(a) provides that “the Postal Service shall, in consultation with the Postal Regulatory Commission, by regulation establish (and may from time to time thereafter by regulation revise) a set of service standards for market-dominant products.” Importantly, the phrase about PRC consultation follows “shall”: as such, it applies only to that modal clause (“shall . . . establish”), and not to the separate modal clause set forth in the parentheses (“may . . . revise”). Had Congress intended otherwise, the framers would have structured the sentence so that the consultation clause would modify both “shall . . . establish” and “may . . . revise,” rather than only the former. In any event, the Postal Service’s formal request for an advisory opinion under 39 U.S.C. 3661(b) would satisfy any arguably applicable “consultation” obligation in this instance.

With respect to substance, one statute reflects the variety of policies that the Postal Service must address, including providing service that is “prompt, reliable, and efficient” with “prompt and economical delivery,” while also “emphasiz[ing]” other priorities including the “control of costs.” See 39 U.S.C. 101(a), (f), (g); see also 39 U.S.C. 403(a), (b)(1), 2010, 3661(a), 3691(b)(1)(C). Many commenters fixate narrowly on promptness and would relegate reliability, efficiency, economy, and control of costs to second-tier policy objectives. Yet the statute does not offer a basis for such a ranking. The Postal Service must balance achievement of all policy objectives in a manner that is operationally and financially sustainable. That cannot be done under current service standards.

The States, without concrete suggestions, contend that the Postal Service should consider “chang[ing] its service standard to address long-term trends” only after it “reliably meet[s] its [current] performance targets[.]” And the States suggest that the Postal Service is intentionally sacrificing market-dominant volume to bolster package capabilities. To the contrary, adopting the States’ position would straightjacket the

Postal Service because meeting current service standards in a reliable manner is not feasible, as evidenced by the fact that the Postal Service has not met its service performance targets for years. Waiting to achieve the infeasible would prevent the Postal Service from ever implementing necessary reforms.

The States contend that the new service standards will increase the delivery time for some mail from government entities, including election mail, government payments, and applications for government benefits programs. They recognize that the Postal Service has not met existing service standards “for some time” but aver that, rather than adjust them, the Postal Service should simply begin meeting them. Similarly, the Association for Postal Commerce (PostCom) contends that, even if the Postal Service must incur additional costs to meet service standards, it should simply do so because it “is not a profit-seeking business.”

While such criticisms repeatedly argue that the Postal Service has a responsibility under Title 39 to deliver First-Class Mail quickly, they ignore the fact that the Postal Service must balance speed of delivery with other statutory considerations. One such consideration is the Postal Service’s obligation to be self-sustaining. Given this self-sufficiency mandate, the Postal Service must ensure that it provides services in a cost-effective manner, particularly if it is to ensure affordable rates. As the States note in passing, 39 U.S.C. 101 (a) states that the Postal Service will be “supported by the people.” But, beyond operational challenges unrelated to cost, they ignore that, if the Postal Service is unable to recoup the costs of operations through revenues, its essential services cannot be provided. 39 U.S.C. 101 (d).¹

The very services that many critics of the service standards emphasize are essential are at risk due to the Postal Service’s present unsustainable position. It is no

¹ The Postal Service’s operations are generally funded by revenues, not by taxpayer appropriations. See 39 U.S.C. 2401.

solution to this problem to say that the Postal Service should simply deliver mail more reliably within the existing service standards: this not only ignores the infeasibility of the task under the current standards, but also the Postal Service's dire financial situation. Given the Postal Service's long-standing service performance, operational, and financial problems and its statutory obligations to provide adequate, efficient, and economical services, it is certainly no solution to say that the Postal Service should simply expend more resources on unreliable, inefficient transportation providers in an attempt to meet the current standards.

It is also incorrect to claim that the Postal Service has not considered the potential impact of the service standards on election mail. As noted above, the Postal Service has used Intelligent Mail® barcode tracking specifically to evaluate the amount of inbound ballot volume that would experience a downward change and concluded that it was only 3.84 percent of such volume. The Postal Service has already held briefings to discuss the changes with election officials to enable them to align their mailings with service standards and will continue to conduct outreach during and after any implementation. Finally, none of the changes is specific to election mail or implicates the kinds of measures the Postal Service has taken during past elections to expedite election mail.

Before the PRC, the Postal Service explained how it has reasonably balanced the various 39 U.S.C. 3691 objectives and factors and the statutory policies set forth in 39 U.S.C. 101, 403, 2010, and 3661 (a), and the PRC concluded that the proposed changes do not facially conflict with any statutes. The service standards would enhance the value of postal services by improving reliability and consistency, while minimizing the tradeoffs in terms of lengthened service standards. This balancing of reliability, speed, and frequency is also consistent with reasonable rates and best business practices, both of which require efficient cost management, and with various other

statutes that require a balance between efficiency and service. Congress committed to the Postal Service the discretion to perform this balancing of numerous and sometimes competing policies. Other parties may favor one statutory policy or another in their own narrower interests, or may wish for a different balance amongst the various policies, but only the Postal Service bears the statutory responsibility of accounting for all of the relevant policies in weighing initiatives. In furtherance of this duty, the Postal Service has set forth a reasonable balance regarding these new service standards.

The States compare the operational changes at issue to other changes challenged in certain federal lawsuits from 2020, but this comparison is entirely misplaced. First, the substance of the alleged operational changes in those cases had nothing to do with either these service standard changes or their operational motivations (such as the planned shift from air transportation to surface). Instead, those cases concerned alleged operational changes from July 2020, including alleged changes to policies regarding late and extra surface transportation trips and overtime, among other claims, particularly in the unusual context of the pandemic and the 2020 election. The courts therefore did not review the Postal Service's balancing of the various statutory policies in designing the then-existing service standards, let alone those proposed well after the events at issue in the 2020 lawsuits. Second, the statutory challenges in those cases arose largely from procedural allegations that the Postal Service had not sought proper regulatory review of the alleged operational changes prior to implementation. Irrespective of whether such regulatory review was required in connections with those matters, here it is beyond dispute that the Postal Service formally sought precisely the ex ante regulatory review that litigants in those cases had suggested was lacking there. To the extent those federal lawsuits have any bearing on this case, they merely support the process that the Postal Service has employed here.

The States mischaracterize the Postal Service's motivation as seeking to favor package performance at the expense of First-Class Mail. That is not what the *Delivering for America* Plan says or implies; to the contrary, the Plan explicitly and repeatedly emphasizes the Postal Service's intent to improve reliability for both mail and packages, not favoring the latter at the expense of the former. E.g., Plan at 6, 8, 24, 27, 30, 34, 40. Indeed, a fundamental goal of the Plan is to ensure the reliable delivery of all mail 6 days a week, at affordable rates, meaning the Plan fully recognizes the centrality of mail to the Postal Service's statutory mission. (At the same time, the States express concerns about the delivery of prescription medications; as noted earlier, however, such packages are not at issue in this rulemaking.)

The States' concerns about First-Class Mail used for their governments' mailings to their own residents are unfounded. It is only reasonable to infer that a substantial proportion of governmental-to-individual mailings is mailed from somewhere in the same general region; indeed, the States admit that "much of [such mailings] involves in-state mail." In other words, the likelihood that the service standards would lengthen the delivery time of these mailings—particularly that any would now be subject to 4- or 5-day service standards—is low. Only between 1 and 27 percent (depending on the state) of 2-day mail in only 28 contiguous states would move to a 3-day standard; further, no First-Class Mail would actually shift to a 5-day standard for pairs originating and destinating within the same state, and Alaska is the only state in which some 3-day could shift to a 4-day standard for pairs within the state.

The States criticize the proposal as if its motivation were to degrade service. It is incorrect, however, to suggest that, because the Postal Service has failed to meet service performance targets in the past, the proposal amounts to nothing more than "simply moving the goalposts." It is not only rational, but critical, that the Postal Service take steps to address its longstanding service performance, operational efficiency, and

financial problems, in order to provide the American public with reliable service through a financially sustainable postal system. This is the goal of the *Delivering for America* Plan, of which this proposal is a (but far from the only) critical element. The principal purposes of the changes are to enable operations to provide more reliability for customers and a more cost-effective network to help sustain the Postal Service's long-term financial stability by shifting some volume from air to surface transportation. Similarly, for offshore delivery, the changes would enable a shift from air cargo to commercial air.

The new service standards balance promptness with reliability, efficiency, and economy by preserving current service standards for the majority of First-Class Mail and end-to-end Periodicals, and by tailoring the service standard changes to increase the use of more reliably prompt and cost-effective surface transportation. The changes will also enable other measures to improve the promptness and efficiency of the surface transportation network. These measures include modern methods of transporting mail by containerization, as the changes would allow the Postal Service to directly containerize trays where volume warrants. See 39 U.S.C. 101(f).

Furthermore, most First-Class Mail would continue to be delivered within 3 days, and while certain long-distance customers would receive a service standard that is 1 or 2 days longer, they would be assured of consistent and predictable delivery within those service standards. For those customers who need faster delivery than would be provided under these service standards for their letters, Priority Mail Express and Priority Mail would continue to be available. See *id.* at (e). Similarly, Priority Mail Express and Priority Mail will continue to rely on modern methods of containerization and systems designed to achieve expeditious, overnight transportation and delivery of important letter mail to all parts of the Nation where it is economical to do so. *Id.* at (f).

The Postal Service has reasonably balanced the relevant statutory objectives and factors. The revised service standards would enhance value for customers, providing greater reliability and consistency. *Id.* at 3691(b)(1)(A), (b)(1)(C), (c)(2). Customers would have a better ability to predict when to expect First-Class Mail delivery, based on objective criteria. The Postal Service has reasonably determined that the service standards would improve both delivery reliability and efficiency, while minimizing the extent of impact on delivery speed. *Id.* at 3691(b)(1)(C), (c)(1), (c)(6). But, contrary to the view portrayed by the States, the Postal Service is not merely “moving the goal posts” of the service standards. The service standards are necessary to facilitate much more concrete operational initiatives to improve delivery reliability and transportation efficiency.

Several commenters argue that the changes violate 39 U.S.C. 101, but fail to recognize how the changes appropriately balance the various policies set forth in that provision. The States, for example, quote 39 U.S.C. 101(e), but never mention subsection (f) of that section. An individual commenter argues that the proposed service standards are contrary to 39 U.S.C. 101(e) and (f) (“Congress generally considered ‘faster’ delivery to be ‘better’ delivery”), without reconciling the statutory mandate to balance both “prompt” and “economical” delivery in selecting modes of transportation. The Postal Service notes that the “economical” prong cannot be relegated to some lesser aspirational goal, given the longstanding expectation that the Postal Service be financially self-sufficient. See generally 39 U.S.C. 101(a), 2401; H.R. Rep. 91–1104, at 17 (1970). The Postal Service cannot simply incur huge costs to ensure a narrower conception of speed, particularly one that experience shows is not consistently achievable in practice.

First, 39 U.S.C. 101(e) does not say that all letter mail must be delivered in the fastest manner at all costs, nor does it define “important.” Similarly, the second

sentence of subsection (f) does not require overnight delivery of all mail, and instead recognizes that only certain important letter mail may warrant overnight treatment. In that regard, the Postal Service is not changing the current service standard for First-Class Mail subject to an overnight standard. The Postal Service also has other options for speedier delivery available to customers who want their important letter mail to travel overnight, even for long distances: specifically, Priority Mail Express and Priority Mail.

By contrast, the first sentence of subsection (f) does address “all mail” and thus is much more relevant to the present initiative, which will affect First-Class Mail and end-to-end Periodicals based on distance of transportation. Subsection (f) also focuses specifically on “modes of transportation”—the underlying issue with respect to the changes here at issue. Prompt and economical, when considered together, cannot mean speediest in all instances, but necessarily entails reasonably fast speeds to the extent that they can be achieved at reasonable costs. The Postal Service’s current usage of air transportation has proven inadequate to meet that test, and so the Postal Service is taking measured steps to improve the selected modes of transportation. To do so, however, the service standards need to be adjusted.

Moreover, the proposed changes are limited in scope, and are designed to address the consequences of the current standards that result in an unreliable, inefficient service, while also mitigating the impact on speed of delivery. In this regard, most mail volume will remain at its current standard, and overall, most mail volume will continue to be subject to a standard of 3 days or less. All mail will also receive much more reliable service, meaning actual service performance will be better aligned with the service standards, rather than having consistent performance failures (a problem particularly pronounced for mail currently subject to a 3-day standard). Hence, and regardless of how one might choose to define the scope of “important letter mail,” the Postal Service has given appropriate consideration to the interest in ensuring

expeditious delivery of First-Class Mail letters generally, and has appropriately balanced that interest to the extent possible with the other policies of the statute, including reliability, efficiency, and affordability.

Some commenters suggest that the changes would be inconsistent with 39 U.S.C. 101(b), which requires the Postal Service to “provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining.” The Postal Service notes that, by distinguishing on the basis of mailing distance and not on the nature of the origin or destination, the service standards would affect urban and rural mailers similarly. Moreover, the service standards are measured only after acceptance at a postal facility, and would not alter that status quo. Accordingly, whether post offices are present in a community—and hence 39 U.S.C. 101 (b)—is irrelevant to the present changes.

Various commenters suggest that the changes may infringe 39 U.S.C. 403(c), which bars the Postal Service, in providing services, from “mak[ing] any undue or unreasonable discrimination among users of the mails” or “grant[ing] any undue or unreasonable preferences to any such user.” Notably, upon consideration of detailed briefs on both sides of this precise question, the PRC concluded that the service standard changes are not unreasonable and do not facially violate 39 U.S.C. 403(c). The Postal Service certainly agrees with the PRC’s assessment in that important respect. Nevertheless, it is important to examine carefully the nature of the comments alleging discriminatory impact of the changes.

In accord with PRC precedent, three conditions must be met to establish a claim of unreasonable discrimination: (1) one or more mailers must be offered less favorable rates or terms and conditions than those offered to other mailers; (2) the two sets of mailers must be similarly situated; and (3) there must be no rational or legitimate basis for differing treatment. Order No. 718, Order on Complaint, PRC Docket No. C2009-1

(Apr. 20, 2011), at 28. Several commenters suggest that the service standards would implicate these conditions, but the Postal Service does not find this argument persuasive.

Most broadly, some commenters seem to suggest that any geographical disparities resulting from the service standards will suffice to satisfy the first two 39 U.S.C. 403 (c) criteria. However, the relevant question is not where customers live, but how far their mailings travel. The Postal Service is not degrading service standards in selected states or for selected mailers, but rather is lengthening the service standards for all mailings that traverse longer distances based on objective distance criteria that will apply nationwide. Furthermore, the Postal Service notes that when considering whether First-Class Mail service, as a whole, would inappropriately discriminate among customers following this service standard change, longer-distance mailers will continue to benefit from the uniform First-Class Mail rate, whereby they pay less per mile than shorter-distance mailers. Moreover, with respect to expected delivery times, many longer-distance mailers subject to lengthened service standards will continue to enjoy a delivery speed (i.e., distance traveled per day) that is significantly faster than that for shorter-distance mail, even if longer-distance mail's speed advantage will now be somewhat less. Initial Brief of the United States Postal Service, PRC Docket No. N2021-1 (June 21, 2021), at 47–49.

As for the third prong in the 39 U.S.C. 403 (c) analysis, the Postal Service notes that both courts and the PRC have granted it broad latitude in distinguishing between different mailers, given the Postal Service's statutory responsibility to provide universal service in an economical and efficient manner. *See, e.g., Egger v. USPS*, 436 F. Supp. 138, 142 (W.D. Va. 1977) (declaring it "obvious that the Postal Service may provide different levels of delivery service to different groups of mail users so long as the distinctions are reasonable"); *UPS Worldwide Forwarding, Inc. v. U.S. Postal Serv.*, 66

F.3d 621, 634–35 (3d Cir. 1995) (noting that Postal Service may treat mailers differently so long as that different treatment is reasonable); Order No. 4294, Order Granting the Postal Service’s Motion to Dismiss, PRC Docket No C2019-1 (Dec. 12, 2018), at 10 (“the Postal Service may differentiate among customers where the differences have a rational basis”); Order No. 5491, Order Granting the Postal Service’s Motion to Dismiss Complaint with Prejudice, PRC Docket No. C2020-2 (Apr. 28, 2020), at 9.

The Postal Service has adduced a rational, non-arbitrary basis for the differences in standards: namely, to improve service performance by enhancing reliability through greater use of surface transportation, which in turn depends on designing standards that predicate days of delivery on geographic distances. Moreover, courts have recognized that objective geographic disparities can serve as a rational justification for different levels of service in connection with 39 U.S.C. 403(c). *UPS Worldwide Forwarding*, 66 F.3d at 634–35.

Some commenters suggest that 39 U.S.C. 101(a) and 404(c) constrain the interpretation of the phrase “undue or unreasonable discrimination,” in support of the broader view that any geographical disparities in service standards would, by definition, trigger a 39 U.S.C. 403(c) violation. One commenter, for instance, discusses the uniform-rate requirement under 39 U.S.C. 404(c) and then speculatively asserts that the scope of “discrimination” under 39 U.S.C. 403(c) should likewise bar geographically-based differentials in service standards. This argument is inapposite: 39 U.S.C. 404(c) speaks to rates, not to service standards, and nothing in the statutory text ties the two provisions together in the manner suggested by the commenter. Another commenter purports to read, in 39 U.S.C. 101(a)’s stated goal of “binding the nation together,” an obligation to impose uniform service standards across the United States. The Postal Service further notes, though, that geographically-tiered service distinctions already exist in the prior service standards upheld by this and other commenters. If such

distinctions do not give the commenters pause in regard to the prior service standards, then it cannot be that the mere occurrence of a geographical disparity constitutes undue discrimination in connection with the new service standards, either.

Some commenters contend that the changes would result in discrimination with respect to certain demographic groups. The States thus express concern over the changes' impact on rural, low-income, elderly, and disabled customers. The Postal Service notes, however, that the States do not assert that the changes will fall unequally on such customers; in other words, they neither claim nor purport to demonstrate that these changes would target a disproportionately large percentage of mailings conveyed by vulnerable populations. Furthermore, even assuming for the sake of argument that rural, low-income, disabled, and/or other vulnerable customers may be disproportionately reliant on First-Class Mail, they likewise prove particularly vulnerable to the unreliable air network and to the resulting service failures that have persisted for years, both of which the changes aim to relieve.

Certain commenters likewise express concerns about the possible impact of the changes on their own interests as veterans, rural customers, disabled customers, elderly customers, small businesses, and other vulnerable customers. With regard to rural communities in particular, joint comments by public advocacy groups suggest that the changes violate 39 U.S.C. 101(b), which requires that the Postal Service "provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self sustaining" and to ensure "effective postal services . . . to residents of both urban and rural communications." However palpable their policy interests as a general matter, none of these commenters present evidence that they disproportionately align with the minority of mail volume affected by the service standard changes (for example, that a greater percentage of rural customers' mail will have a changed service standard than for non-rural customers). As

noted earlier, the service standard changes are based on distance traveled by a mailpiece, without further distinction as to the location or nature of the mailer or recipient. Moreover, the Postal Service notes that insofar as persons in vulnerable communities—including rural communities—currently experience delivery delays and other service failures, they stand to benefit from the changes, which aim to provide more reliable deliveries and therefore consistent customer expectations. Moreover, and as discussed above, the service standards are limited in scope.

One commenter, a public advocacy group for prisoners, claims that the current changes would violate 39 U.S.C. 404(c). First-Class Mail, on its theory, fulfills the mandate that the “Postal Service shall maintain one or more classes of mail for the transmission of letters sealed against inspection[, one of which] shall provide for the most expeditious handling and transportation afforded mail matter by the Postal Service.” It asserts that, under the proposed service standards, First-Class letters would “categorically be excluded from air transportation,” even though other classes of mail would continue to be transported by air; and that “this discrepancy plainly violates the requirement that First-Class letters be provided the most expeditious handling and transportation.” As an initial matter, it is incorrect to state that First-Class Mail would be “categorically” excluded from air transportation under this proposal; much long-distance First-Class Mail would continue to be transported by air. In any event, the Postal Service notes that 39 U.S.C. 404(c) requires only that one class of sealed letters receive “most expeditious” treatment, not that each class of sealed letters do so. Thus, the “most expeditious” type of sealed mail has long been understood to mean what is now Priority Mail Express, which is handled and transported more expeditiously than First-Class Mail.

In sum, the service standard changes do not conflict with any statutory obligations; to the contrary, considering those obligations as a whole, the changes

properly balance the policies of the statute. Consequently, modifications to the Proposed Rule in light of the comments received are unwarranted.

IV. Explanation of Final Rules.

The Postal Service's market-dominant service standards are contained in 39 CFR Part 121. The revised version of 39 CFR Part 121 appears at the end of this Notice. The following is a summary of the revisions. In addition to the changes described below, minor edits are made to (i) conform to product name changes for USPS Marketing Mail®, (ii) correct a clerical error in the subsection on Destination Entry Periodicals, (iii) delete expired provisions, and (iv) refer to common or defined terms in a more consistent manner throughout the rules. What was previously known as "Standard Mail" has been rebranded as "USPS Marketing Mail," see generally 81 Fed. Reg. 93,606 (2017), and therefore Part 121 (including section 121.3 and Appendix A) has been updated to refer to the current name of this product.

A. Service Standards Generally.

Service standards contain two components: (1) a delivery day range within which mail in a given product is expected to be delivered; and (2) business rules that determine, within a product's applicable day range, the specific number of delivery days after acceptance of a mail piece by which a customer can expect that piece to be delivered, based on the 3-Digit ZIP Code prefixes associated with the piece's point of entry into the mail stream and its delivery address.

Business rules are based on critical entry times (CETs). The CET is the latest time on a particular day that a mail piece can be entered into the postal network and still have its service standard calculated based on that day (this day is termed "day-zero"). In other words, if a piece is entered before the CET, its service standard is calculated from the day of entry, whereas if it is entered after the CET, its service standard is calculated from the following day. (If the following day is a Sunday or holiday, then the

service standard is calculated from the next Postal Service delivery day.) For example, if the applicable CET is 5:00 p.m., and a letter is entered at 4:00 p.m. on a Tuesday, its service standard will be calculated from Tuesday, whereas if the letter is entered at 6:00 p.m. on a Tuesday, its service standard will be calculated from Wednesday. CETs are not contained in 39 CFR Part 121, because they vary based on where mail is entered, the mail's level of preparation, and other factors.

B. First-Class Mail.

The Postal Service is changing some of the service standards applicable to certain First-Class Mail with respect to both of the two components of the standards. First, the Postal Service is promulgating modifications to the delivery day ranges within which mail in a given product is expected to be delivered. Second, the Postal Service is promulgating modifications to the business rules, changing the maximum number of hours of drive time that corresponds to the specific number of delivery days after acceptance of a mail piece by which a customer can expect that piece to be delivered (within a product's applicable delivery day range).

In particular, the changes to service standards include the delivery-day range for certain First-Class Mail. Currently, a one-day (overnight) service standard is applied to intra-SCF Presort First-Class Mail pieces properly accepted at the SCF before the day-zero CET. A two-day service standard is applied to intra-SCF single-piece First-Class Mail properly accepted before the day-zero CET, as well as to inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin P&DC/F and destination SCF is 6 hours or less. A three-day service standard is applied to inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the drive time between the origin P&DC/F and destination SCF is more than 6 hours and the origin and the destination are within the contiguous 48 states.

Under the new service standards, the delivery day range for First-Class Mail within the contiguous United States will expand from the current 1-3 days, to 1-5 days. The overnight service standard does not change. Among the changes detailed below, a two-day service standard will apply to intra-SCF First-Class Mail where the SCF is also the origin P&DC/F, and to intra-SCF and inter-SCF domestic First-Class Mail where the combined drive time between the origin P&DC/F, destination ADC, and destination SCF is 3 hours or less; a three-day service standard for inter-SCF First-Class Mail would apply where the combined drive time between the origin P&DC/F, destination ADC, and destination SCF is 20 hours or less (but over 3 hours) within the contiguous United States, and the same three-day standard would also apply for intra-SCF single-piece First-Class Mail if the combined drive time exceeds 3 hours and the SCF is not the origin P&DC/F; a four-day service standard for inter-SCF First-Class Mail would apply where the combined drive time between the origin P&DC/F, destination ADC, and destination SCF is 41 hours or less (but over 20 hours) within the contiguous United States; and combined drive times between the origin P&DC/F, destination ADC, and destination SCF in excess of 41 hours would result in a service standard of five days.

Furthermore, the Postal Service's regulations pertaining to the current service standards for First-Class Mail do not expressly account for the combined drive time between origin P&DC/Fs, ADCs, and SCFs, though often distribution routes encompass several such facilities. In order to clarify these service standards, the final rule specifies, in the new service standards for First-Class Mail, that the combined drive time encompasses all such P&DC/Fs, ADCs, and SCFs.

In addition, among the changes detailed below, the Postal Service is promulgating certain changes to the service standards for mail originating from or destined to areas outside of the contiguous United States. The Postal Service will apply a 4-day standard for First-Class Mail originating in the contiguous 48 states destined to

the city of Anchorage, Alaska, the 968 3-digit ZIP Code area in Hawaii, or the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico; for First-Class Mail originating in the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico and destined to the contiguous 48 states; for First-Class Mail originating in Hawaii and destined to Guam, or vice versa; for First-Class Mail originating in Hawaii and destined to American Samoa, or vice versa; and for other First-Class Mail that has both its origin and its destination within Alaska. The Postal Service will apply a 5-day standard for other First-Class Mail originating from and/or destined to the non-contiguous states and territories.

C. Periodicals.

Certain Periodicals are merged with First-Class Mail, and their service standards are consequently tied to the respective First-Class Mail service standards. In other words, the changes to First-Class Mail service standards will result in similar changes to the corresponding service standards of the merged Periodicals.

The Postal Service is therefore promulgating a related change concerning certain Periodicals. Under current service standards, for end-to-end Periodicals, a three-to-four-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation, with the service standard specifically equaling the sum of one day plus the applicable First-Class Mail service standard (i.e., either two or three days, depending on whether the drive time is more than 6 hours). Under the new service standard, a three-to-six-day service standard will be applied to Periodicals pieces properly accepted before the day-zero CET and merged with First-Class Mail pieces for surface transportation, with the service standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard.

List of Subjects in 39 CFR Part 121

Administrative practice and procedure, Postal Service.

Accordingly, for the reasons stated, the Postal Service adopts the following revisions to 39 CFR part 121:

PART 121 – SERVICE STANDARDS FOR MARKET-DOMINANT MAIL PRODUCTS

1. The authority citation for Part 121 continues to read as follows:

Authority: 39 U.S.C. 101, 401, 403, 404, 1001, 3691.

2. Section 121.1 is revised to read as follows:

§ 121.1 First-Class Mail.

(a) A 1-day (overnight) service standard is applied to intra-Sectional Center Facility (SCF) domestic Presort First-Class Mail pieces properly accepted at the SCF before the day-zero Critical Entry Time (CET), except for mail between Puerto Rico and the U.S. Virgin Islands, and mail destined to American Samoa and the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(b) A 2-day service standard is applied to:

(1) intra-SCF single-piece domestic First-Class Mail properly accepted before the day-zero CET if:

(i) the SCF is also the origin Processing & Distribution Center or Facility (P&DC/F), or

(ii) the combined drive time between the origin P&DC/F, destination Area Distribution Center (ADC), and destination SCF is 3 hours or less;

(2) inter-SCF domestic First-Class Mail pieces properly accepted before the day-zero CET if the combined drive time between the origin P&DC/F, destination ADC, and destination SCF is 3 hours or less;

(3) Presort First-Class Mail properly accepted before the day-zero CET with an origin and destination that are separately in Puerto Rico and the U.S. Virgin Islands; and

(4) intra-SCF Presort First-Class Mail properly accepted before the day-zero CET with an origin or destination that is in American Samoa or one of the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

(c) A 3-day service standard is applied to domestic First-Class Mail pieces properly accepted before the day-zero CET, if the 1-day and 2-day service standards do not apply, the combined drive time between the origin P&DC/F, destination ADC, and destination SCF is 20 hours or less, and both the origin and the destination are within the contiguous 48 states.

(d) A 4-day service standard is applied to domestic First-Class Mail pieces properly accepted before the day-zero CET, if the 1-day, 2-day, and 3-day service standards do not apply, and:

(1) The combined drive time between the origin P&DC/F, destination ADC, and destination SCF is 41 hours or less, and both the origin and the destination are within the contiguous 48 states;

(2) The origin is in the contiguous 48 states, and the destination is in any of the following: the city of Anchorage, Alaska (5-digit ZIP Codes 99501 through 99539); the 968 3-digit ZIP Code area in Hawaii; or the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico;

(3) The origin is in the 006, 007, or 009 3-digit ZIP Code areas in Puerto Rico, and the destination is in the contiguous 48 states;

(4) The origin is in Hawaii, and the destination is in Guam, or vice versa;

(5) The origin is in Hawaii, and the destination is in American Samoa, or vice versa; or

(6) Both the origin and destination are within Alaska.

(e) A 5-day service standard is applied to all remaining domestic First-Class Mail pieces properly accepted before the day-zero CET.

(f) The service standard for Outbound Single-Piece First-Class Mail International™; pieces properly accepted before the day-zero CET is equivalent to the service standard for domestic First-Class Mail pieces originating from the same 3-digit ZIP Code area and destined to the 3-digit ZIP Code area in which the designated International Service Center is located.

(g) The service standard for Inbound Letter Post pieces properly accepted before the day-zero CET is equivalent to the service standard for domestic First-Class Mail pieces destined to the same 3-digit ZIP Code area and originating from the 3-digit ZIP Code area in which the designated International Service Center is located.

3. Section 121.2 is amended by revising paragraphs (a)(1) and (2) and (b)(2)(ii) to read as follows:

§ 121.2 Periodicals.

(a) *End-to-End.* (1) A 3- to 6-day service standard is applied to Periodicals pieces properly accepted before the day-zero Critical Entry Time (CET) and merged with First-Class Mail pieces for surface transportation (as per the Domestic Mail Manual (DMM)), with the standard specifically equaling the sum of 1 day plus the applicable First-Class Mail service standard.

(2) A 3-day service standard is applied to Periodicals pieces properly accepted before the day-zero CET if: the origin and destination are separately in Puerto Rico and the U.S. Virgin Islands; or if the origin is in Alaska, the service standard set forth in paragraph (a)(1) does not apply, and the destination is in the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

* * * * *

(b) * * *

(2) * * *

(ii) A 3-day service standard is applied to Periodicals pieces that qualify for a DSCF rate and are properly accepted before the day-zero CET at the designated DSCF, if they are entered at the DSCF in Puerto Rico and destined to the U.S. Virgin Islands, entered at the DSCF in Hawaii and destined to American Samoa, or destined to the following 3-digit ZIP Code areas in Alaska (or designated portions thereof): 995 (5-digit ZIP Codes 99540 through 99599), 996, 997, 998, and 999.

* * * * *

4. Section 121.3 is revised to read as follows:

§ 121.3 USPS Marketing Mail.

(a) *End-to-End.* (1) The service standard for Sectional Center Facility (SCF) turnaround USPS Marketing Mail® pieces accepted at origin before the day-zero Critical Entry Time is 3 days when the origin Processing & Distribution Center/Facility (origin P&DC/F) and the SCF are the same building, except for mail between the territories of Puerto Rico and the U.S. Virgin Islands.

(2) The service standard for Area Distribution Center (ADC) turnaround USPS Marketing Mail pieces accepted at origin before the day-zero Critical Entry Time is 4 days when the origin P&DC/F and the ADC are the same building, unless the ADC is in the contiguous 48 states and the delivery address is not, or the mail is between Puerto Rico and the U.S. Virgin Islands, or the mail is between Hawaii and American Samoa.

(3) The service standard for intra-Network Distribution Center (NDC) USPS Marketing Mail pieces accepted at origin before the day-zero Critical Entry Time is 5 days for each remaining 3-digit ZIP Code origin-destination pair within the same Network Distribution Center service area if the origin and destination are within the

contiguous 48 states; the same standard applies to mail that is intra-Alaska or between the state of Hawaii and the territory of Guam or American Samoa.

(4) For each remaining 3-digit ZIP Code origin-destination pair within the contiguous 48 states, the service standard for USPS Marketing Mail pieces accepted at origin before the day-zero Critical Entry Time is the sum of 5 or 6 days plus the number of additional days (from 1 to 4) required for surface transportation between each 3-digit ZIP Code origin-destination pair.

(5) For each remaining 3-digit ZIP Code origin-destination pair, the service standard for USPS Marketing Mail pieces accepted at origin before the day-zero Critical Entry Time is the sum of 5 or 6 days plus the number of additional days (from 7 to 21) required for intermodal (highway, boat, air-taxi) transportation outside the contiguous 48 states for each 3-digit ZIP Code origin-destination pair.

(b) *Destination entry.* (1) USPS Marketing Mail pieces that qualify for a Destination Delivery Unit (DDU) rate and that are accepted before the day-zero Critical Entry Time at the proper DDU have a 2-day service standard.

(2) USPS Marketing Mail pieces that qualify for a Destination Sectional Center Facility (DSCF) rate and that are accepted before the day-zero Critical Entry Time at the proper DSCF have a 3-day service standard when accepted on Sunday through Thursday and a 4-day service standard when accepted on Friday or Saturday, except for mail dropped at the SCF in the territory of Puerto Rico and destined to the territory of the U.S. Virgin Islands, or mail destined to American Samoa.

(3) USPS Marketing Mail pieces that qualify for a DSCF rate and that are accepted before the day zero Critical Entry Time at the SCF in the territory of Puerto Rico and destined to the territory of the U.S. Virgin Islands, or are destined to American Samoa, have a 4-day service standard when accepted on Sunday through Thursday and a 5-day service standard when accepted on Friday or Saturday.

(4) USPS Marketing Mail pieces that qualify for a Destination Network Distribution Center (DNDC) rate, and that are accepted before the day-zero Critical Entry Time at the proper DNDC have a 5-day service standard, if both the origin and the destination are in the contiguous 48 states.

(5) USPS Marketing Mail pieces that qualify for a DNDC rate, and that are accepted before the day-zero Critical Entry Time at the proper DNDC in the contiguous 48 states for delivery to addresses in the states of Alaska or Hawaii or the territories of Guam, American Samoa, Puerto Rico, or the U.S. Virgin Islands, have a service standard of 12-14 days, depending on the 3-digit origin-destination ZIP Code pair. For each such pair, the applicable day within the range is based on the number of days required for transportation outside the contiguous 48 states.

5. Appendix A to part 121 is revised to read as follows:

Appendix A to Part 121—Tables Depicting Service Standard Day Ranges

The following tables reflect the service standard day ranges resulting from the application of the business rules applicable to the market-dominant mail products referenced in §§ 121.1 through 121.4 (for purposes of Part 121, references to the contiguous states also include the District of Columbia):

Table 1. End-to-end service standard day ranges for mail originating and destinating within the contiguous 48 states and the District of Columbia.

TABLE 1—CONTIGUOUS UNITED STATES

Mail class	End-to-end range (days)
First-Class Mail	1-5
Periodicals	3-9
USPS Marketing Mail	3-10
Package Services	2-8

Table 2. End-to-end service standard day ranges for mail originating and/or destinating in non-contiguous states and territories.

TABLE 2—NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	End-to-end								
	Intra state/territory			To/from contiguous 48 states			To/from states of Alaska and Hawaii, and the territories of Guam, Puerto Rico (PR), American Samoa (AS), Northern Mariana Islands (MP), and U.S. Virgin Islands (USVI)		
	Alaska	Hawaii, Guam, MP, & AS	PR & USVI	Alaska	Hawaii, Guam, MP, & AS	PR & USVI	Alaska	Hawaii, Guam, MP, & AS	PR & USVI
First-Class Mail	1-4	1-4	1-2	4-5	4-5	4-5	5	5	5
Periodicals	3-5	3-5	3	13-19	12-22	11-16	21-25	21-26	23-26
USPS Marketing Mail	3-5	3-5	3-4	14-20	13-23	12-17	23-26	23-27	24-27
Package Services	*2-4	2-4	2-3	12-18	11-21	10-15	21-26	20-26	20-24

*Excluding bypass mail.

Table 3. Destination-entry service standard day ranges for mail to the contiguous 48 states and the District of Columbia.

TABLE 3—DESTINATION ENTRY SERVICE STANDARD DAY RANGES FOR MAIL TO THE CONTIGUOUS 48 STATES AND THE DISTRICT OF COLUMBIA

Mail class	CONTIGUOUS UNITED STATES			
	Destination entry (at appropriate facility)			
	DDU (Days)	SCF (Days)	ADC (Days)	NDC (Days)
Periodicals	1	1	1-2	2-3
USPS Marketing Mail	2	3-4		5
Package Services	1	2		3

Table 4. Destination entry service standard day ranges for mail to non-contiguous states and territories.

TABLE 4—DESTINATION ENTRY SERVICE STANDARD DAY RANGES FOR MAIL TO NON-CONTIGUOUS STATES AND TERRITORIES

Mail class	Destination entry (at appropriate facility)									
	DDU (Days)	SCF (Days)			ADC (Days)			NDC (Days)		
		Alaska	Hawaii, Guam, MP, & AS	PR & USVI	Alaska	Hawaii, Guam, MP, & AS	PR & USVI	Alaska	Hawaii, Guam, MP, & AS	PR & USVI
Periodicals	1	1-3	1	1-3	1-4 (AK) 11 (JNU) 11 (KTN)	1 (HI) 2 (GU)	1-4	10-11	10	8-10
USPS Marketing Mail	2	3-4	3-5	3-5				14	13	12
Package Services	1	2	2-3	2-3				12	11	11

AK = Alaska 3-digit ZIP Codes 995-997; JNU = Juneau AK 3-digit ZIP Code 998; KTN = Ketchikan AK 3-digit ZIP Code 999; HI = Hawaii 3-digit ZIP Codes 967 and 968; GU = Guam 3-digit ZIP Code 969.

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