

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Michael Kubayanda, Chairman;
Ann C. Fisher, Vice Chairman;
Mark Acton;
Ashley E. Poling; and
Robert G. Taub

Public Inquiry on Modification of Service
Performance Measurement Plan

Docket No. PI2022-3

ORDER DIRECTING THE POSTAL SERVICE TO REQUEST AN ADVISORY OPINION
PRIOR TO IMPLEMENTING ITS PROPOSED CHANGE TO THE CRITICAL ENTRY
TIMES FOR PERIODICALS AND APPROVING THE OTHER PROPOSED REVISIONS
TO MARKET DOMINANT SERVICE PERFORMANCE
MEASUREMENT PLAN

(Issued July 18, 2022)

I. INTRODUCTION

On April 22, 2022, the Postal Service filed a notice, pursuant to 39 C.F.R. § 3055.5, proposing revisions to its Service Performance Measurement Plan (SPM Plan) for Market Dominant products.¹ The Postal Service's proposed modifications include: "1) a revision to how the long haul exception impacts 'Start-the-Clock' events; 2) the inclusion of Reply Mail in the measurement of Single-Piece First-Class

¹ United States Postal Service Notice of Filing Changes to Service Performance Measurement Plan Document, April 22, 2022 (Notice).

Letters/Cards/Flats; and 3) a revision to the critical entry time[s] (CET) applicable to Periodicals,” as well as a variety of stylistic and grammatical changes. Notice at 1.

For the reasons discussed below, the Commission does not approve the proposed modifications insofar as they relate to the Postal Service’s proposal to change the CET for Periodicals. The CET are “the latest time[s] that a reasonable amount of a class of mail can be received at designated induction points in the postal network for it to be processed and dispatched in time to meet service standards.”² The Commission finds that the proposed change to the CET for Periodicals qualifies as a “change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis” under 39 U.S.C. § 3661(b) (Section 3661). Therefore, the Commission orders the Postal Service, should it intend to proceed with the proposed CET change, to file a request for an advisory opinion pursuant to Section 3661 and in accordance with 39 C.F.R. part 3020. The Commission approves the remaining proposed modifications to the SPM Plan as presented in the Notice (and corrected by errata).³ Specifically, the Commission approves the Postal Service’s proposed revision to the long haul exception, the inclusion of Reply Mail in measurement, and other non-substantive grammatical revisions.

II. PROCEDURAL HISTORY

On April 26, 2022, the Commission filed an order opening a docket to consider the proposed revisions, providing an opportunity for interested persons to comment, and appointing a Public Representative.⁴

² See Library Reference USPS-LR-PI2022-3/2, Revised USPS Service Performance Measurement Plan, May 20, 2022, file “iSPM RevPlan – Black Lined 5-19-22.pdf,” at 6 (Revised SPM Plan).

³ See Notice of United States Postal Service of Filing Errata to United States Postal Service Notice of Filing Changes to Service Performance Measurement Plan Document, May 20, 2022 (Errata).

⁴ Notice and Order Initiating Proceeding to Consider Modifications to Market Dominant Service Performance Measurement Plan, April 26, 2022, at 3 (Order No. 6159).

Six sets of comments were initially submitted.⁵ In particular, the Association of Magazine Media (MPA), the Association for Postal Commerce (PostCom), and the National Newspaper Association (NNA) raised concerns with the Postal Service's proposal to change the CET for all Periodicals not entered on Pure Carrier Route pallets to 8:00 a.m. See MPA Comments at 3; PostCom Comments at 2-3; NNA Comments at 2. Asserting that this planned change will impact many mailers by effectively adding an extra day to the expected delivery for their mailings, these commenters raise concerns that the proposed change constitutes a "change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis" and for which the Postal Service must request an advisory opinion under 39 U.S.C. § 3661(b). MPA Comments at 2 n.4 (quoting 39 U.S.C. § 3661(b)); see PostCom Comments at 2; NNA Comments at 2.

In response, to facilitate its review of this issue and afford participants the opportunity to address any matters raised by the comments, the Commission issued an order on May 20, 2022 requesting reply comments.⁶ The Commission stated that it expected the Postal Service to specifically explain in detail why its planned CET change for Periodicals would not constitute "a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis." Order No. 6178 at 3. The Commission also directed the Postal Service to address previous court and Commission precedent regarding the application of Section 3661. *Id.* at 3-4. The

⁵ See, e.g., Comments of MPA – The Association of Magazine Media, May 18, 2022 (MPA Comments); Comments of the Association for Postal Commerce, May 18, 2022 (PostCom Comments); Comments of the National Association of Presort Mailers, May 18, 2022 (NAPM Comments); Comments of the National Postal Policy Council, May 17, 2022 (NPPC Comments); Public Representative Comments, May 18, 2022 (PR Comments). In addition, the National Newspaper Association filed comments after the established deadline, which were accepted by the Commission. See Motion for Late Acceptance, May 19, 2022; Comments of National Newspaper Association, Inc., May 19, 2022 (NNA Comments); see also Order Providing Instructions for Implementation of Modification of Service Performance Measurement Plan, Establishing Deadline for Reply Comments, and Granting Motion for Late Acceptance, May 20, 2022, at 5 (Order No. 6178).

⁶ See Order No. 6178. On that same day, in response to a clerical error identified by the Public Representative in his comments, the Postal Service filed its Errata on May 20, 2022. See Errata at 1-2.

Commission reserved its final decision on this issue until reply comments were received.⁷ Additionally, on May 25, 2022, CHIR No.1 was issued to obtain additional information from the Postal Service regarding its proposed change to the CET for Periodicals.⁸

On June 3, 2022, the Postal Service filed its reply comments.⁹ The Postal Service also responded to CHIR No. 1.¹⁰ Additional comments were also filed by the News Media Alliance (NMA).¹¹

III. POSITIONS OF THE COMMENTERS AND THE POSTAL SERVICE

The following participants filed initial or reply comments concerning aspects of the Postal Service's proposed modifications to its SPM Plan: MPA, National Association of Presort Mailers (NAPM), NMA, NNA, National Postal Policy Council (NPPC), PostCom, the Public Representative, and the Postal Service. Summaries of the comments received are organized by topic below.

As discussed above, several commenters, including MPA, PostCom, and NNA, raise concerns with the Postal Service's proposed change to the CET for all Periodicals not entered on Pure Carrier Route pallets to 8:00 a.m. See MPA Comments at 3; PostCom Comments at 2-3; NNA Comments at 2. They assert that this planned CET change for Periodicals will impact many mailers by, in effect, adding an extra day to the

⁷ *Id.* at 5. The Commission did note that its:

Order does not restrict the Postal Service's ability to implement the other two planned changes to the SPM Plan (concerning revisions to the long haul exception and inclusion of Reply Mail in measurement) because there have been no comments directly adverse to these proposals and both appear to be improvements over the existing SPM Plan.

Id.

⁸ Chairman's Information Request No. 1, May 25, 2022.

⁹ Reply Comments of the United States Postal Service, June 3, 2022 (Postal Service Reply Comments).

¹⁰ Responses to the United States Postal Service to Questions 1-6 of Chairman's Information Request No. 1, June 3, 2022 (Response to CHIR No. 1).

¹¹ Reply Comments of the News Media Alliance, June 3, 2022 (NMA Reply Comments).

expected service for their mailings. See MPA Comments at 3-4; PostCom Comments at 2. Therefore, they argue that the planned change constitutes a “change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis” and for which the Postal Service must request an advisory opinion under Section 3661. MPA Comments at 2 n.4 (quoting 39 U.S.C. § 3661(b)); see PostCom Comments at 2; NNA Comments at 2. NAPM also emphasize that having CET that are later in the day allow for more processing on the part of customers, “which benefits the USPS by having more mail that is more finely presorted, containerized, and meets IMb Full-Service requirements so the data can be included in service performance measurement.” NAPM Comments at 4. The Public Representative also raises questions about whether Periodical mailers could adjust to the new CET and whether the Postal Service received stakeholder feedback before proposing its change.¹²

In its reply comments, the NMA agrees that the change to the Periodicals CET would be a nationwide change in the nature of postal services and argues that advancing the CET would “have a significant harmful effect on the actual service received by publishers.” NMA Comments at 1-2. Specifically, NMA states that publishers who are affected by the change would be forced to either move their publishing schedules (meaning earlier deadlines and less timely late-breaking coverage) or suffer a day’s delay in mail process. *Id.* at 2. Finally, NMA also states that the change in the CET “may result in a misleading improvement in the Postal Service’s measured performance” considering that mail received by the Postal Service after the new CET would, in effect, have an extra day to be processed while still meeting its service standards. *Id.* at 3.

¹² PR Comments at 5. As described above, the Public Representative also identifies a clerical error in the Postal Service’s proposed SPM Plan, which is addressed in the Postal Service’s Errata. PR Comments at 6; Errata at 1-2.

In its reply comments, the Postal Service takes the position that its proposed CET change applicable to Periodicals would not be a nationwide change in the nature of postal services requiring an advisory opinion under Section 3661. Postal Service Reply Comments at 1. Specifically, the Postal Service asserts that the planned adjustment to the CET is neither a “meaningful change” for purposes of Section 3661 analysis nor is it in the “nature of postal services.” See *id.* at 2-3, 5-6. The Postal Service also argues that, because the change is actually “a minor alteration that minimally affects Periodicals Mail service,” it is more appropriately considered within Docket No. PI2022-3 rather than in an advisory opinion docket. *Id.* at 6-8. The Postal Service also distinguishes the proposed CET change from those considered before (and found to require advisory opinion proceedings) in previous court and Commission precedent. *Id.* at 8-16. Finally, the Postal Service responds to the substantive remarks from commenters regarding the advisability of accelerating the CET for Periodicals. *Id.* at 16-20.

With respect to the proposed revision to the long haul exception, NAPM, NNA, NPPC, PostCom, and the Public Representative generally support this proposal.¹³ Relatedly, NAPM encourages the Postal Service to continue to work on other initiatives to bring additional mail into measurement. NAPM Comments at 2.

With respect to the proposed inclusion of Reply Mail in the measurement of Single-Piece First-Class Letters/Cards/Flats, NAPM, NNA, NPPC, PostCom, and the Public Representative generally support this proposal.¹⁴ Additionally, NAPM and NPPC suggest that the Postal Service consider disaggregating Reply Mail as a separate category for measurement. See NAPM Comments at 2-3; NPPC Comments at 1. PostCom suggests that the Postal Service reexamine other factors that could limit inclusion of mailpieces in measurement and consider making delivery data for

¹³ See NAPM Comments at 2-3; NNA Comments at 2; NPPC Comments at 1-2; PostCom Comments at 1; PR Comments at 3-4.

¹⁴ See NAPM Comments at 3; NNA Comments at 2; NPPC Comments at 1; PostCom Comments at 1; PR Comments at 4.

mailpieces excluded from measurement available via the Informed Visibility platform.

See PostCom Comments at 1.

IV. COMMISSION ANALYSIS OF THE POSTAL SERVICE'S PROPOSED CHANGE TO THE CRITICAL ENTRY TIMES FOR PERIODICALS

With respect to the Postal Service's proposed change to the CET for Periodicals, the issue for Commission decision is whether the Postal Service is required to file a request for an advisory opinion pursuant to Section 3661 which provides:

When the Postal Service determines that there should be a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis, it shall submit a proposal, within a reasonable time prior to the effective date of such proposal, to the Postal Regulatory Commission requesting an advisory opinion on the change.

Section 3661. Users of the mail must be provided the opportunity for a hearing on the record before the Commission's review is complete. 39 U.S.C. § 3661(c). The advisory opinion, based on evidence developed during hearings in accordance with 5 U.S.C. §§ 556, 557, considers whether the Postal Service's planned change conforms, in terms of its objectives and effects, to the policies of Section 3661 and the remainder of Title 39. The procedural rules in 39 C.F.R. part 3020 apply to the advisory opinion process.¹⁵

The statutory provisions governing the advisory opinion process are mandatory: if a change in the nature of postal services generally affects service on a nationwide or substantially nationwide basis, then the Postal Service must request and the Commission must render a written advisory opinion (following an opportunity for a formal, on the record hearing). 39 U.S.C. § 3661(b) and (c). However, the Commission's opinion is advisory in nature and therefore is not binding on the Postal

¹⁵ The Postal Service must file its request "not less than 90 days before the proposed effective date of the change in the nature of postal services involved." 39 C.F.R. § 3020.112. Additionally, the Postal Service must comply with the pre-filing requirements of appearing in 39 C.F.R. § 3020.111.

Service. The Commission's advisory opinions provide recommendations for the Postal Service's consideration.¹⁶

A. The *Buchanan* Factors and Their Application

To determine whether the Postal Service's proposed change to the CET for Periodicals triggers Section 3661, the Commission must analyze whether it constitutes "a change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis." Section 3661. It is well settled that the advisory opinion process is limited to proposed changes in which three factors must coexist.¹⁷ In the seminal decision considering this language, the U.S. Court of Appeals for the Fifth Circuit determined that Section 3661 is implicated when: (1) the Postal Service has made a "change" that has "some meaningful," rather than "minor," impact on service; (2) the change is "in the nature of postal services;" and (3) the change affects service "on a nationwide or substantially nationwide basis"—*i.e.* over a "broad geographical area." *Buchanan*, 508 F.2d at 262-63 (internal quotation marks omitted). "These three factors combine to demonstrate that Congress intended the safeguards of 3661 to apply only when changes of significance were contemplated." *Id.* at 263.

The following review demonstrates that the Postal Service's proposal to change the CET for Periodicals meets all of these factors and therefore the proposed change to the CET constitutes a nationwide change in the nature of postal services requiring the Postal Service to request an advisory opinion pursuant to Section 3661 and in accordance with 39 C.F.R. part 3020.

¹⁶ See, e.g., Postal Service Accelerates Delivery for Retail Ground, Parcel Select Ground Products, June 23, 2022, available at <https://about.usps.com/newsroom/national-releases/2022/0623-usps-accelerates-delivery-for-retail-ground.htm> (noting that "[t]he Commission made certain recommendations in its [advisory] opinion, and the Postal Service will, consistent with those recommendations, closely monitor the impacts of the change to ensure it achieves the anticipated operational and customer service benefits.").

¹⁷ See Postal Service Reply Comments at 1 (citing *Buchanan v. U.S. Postal Serv.*, 508 F.2d 259, 262 (5th Cir. 1975)).

1. The Proposed Change to the CET Has a Meaningful Impact on Service

As explained above, the first factor that must be analyzed in determining whether a proposed change triggers the Section 3661 advisory opinion requirement is whether that change is “meaningful” rather than “minor.” *Buchanan*, 508 F.2d at 262. This requires a quantitative, rather than qualitative, determination. *See id.* With respect to this factor, the Postal Service states that “advancing the CET for certain Periodicals by a few hours is a quantifiably minor alteration” and thus the change does not trigger Section 3661. Postal Service Reply Comments at 3. However, the Postal Service’s own evidence contradicts the notion that its proposed change to the CET for Periodicals will have only a quantitatively minor impact.¹⁸ In its Response to CHIR No. 1, the Postal Service provided data that shows that 58.4 percent of Periodicals mail volume will be affected by the advancement of the CET.¹⁹ The Periodicals class consists of two

¹⁸ In *Buchanan*, the U.S. Court of Appeals for the Fifth Circuit found that the Postal Service’s description of its own planned change was not determinative; instead, the court reviewed the facts in the record to determine whether these three factors were met. *See Buchanan*, 508 F.2d at 265-67 (affirming issuance of preliminary injunction pending Section 3661 proceedings before the Postal Rate Commission as to implementation of retail access program, which plaintiffs alleged was a decision-making process to relocate and alter postal facilities, noting that “the Postal Service says[] there is no change in the nature of postal services since [the retail analysis program] changes nothing and only provides information” whereas that “[t]estimony indicating the existence of two programs supports plaintiffs’ position.”).

¹⁹ See Response to CHIR No. 1, question 1. The share, 58.4 percent, of the affected Periodicals mail volume (mailpieces) was calculated by the Commission the following way. First, the total number of the affected Periodicals mail volume was derived as the sum of the In-County Periodicals mailpieces and Outside County Periodicals mailpieces affected by the proposed CET change (674,707+90,079,664=90,754,371). Second, the total measured mail volume was derived as the sum of the In-County Periodicals measured volume and Outside County Periodicals measured volume (1,242,816+154,168,027=155,410,843). Third, the total number of the affected Periodicals mail volume was then divided by the total measured volume to obtain the percentage of the affected Periodicals volume (90,754,371/155,410,843=58.4%). For data sources *see id.*, questions 1.c., 1.d. The Postal Service addresses the MPA’s assertion that this change may impact approximately 30 percent of Periodicals mailpieces, presumably attempting to show that this number represents only a minor change. Postal Service Reply Comments at 3-4. However, as explained above, the Commission calculations based on the Postal Service’s own numbers indicate that a much higher share of Periodicals volume (mailpieces) would be affected by the proposed CET change.

products: (1) In-County Periodicals; and (2) Outside County Periodicals.²⁰ Both Periodicals products would be affected if the Postal Service changed the CET: the Postal Service acknowledges that its proposed change to the CET would impact approximately 54 percent of In-County Periodicals and approximately 58 percent of Outside County Periodicals. Response to CHIR No. 1, questions 1.c., 1.d. This volume unquestionably meets the threshold for a quantitatively “meaningful” change. As such, this change satisfies the first of the *Buchanan* factors.

The Postal Service does not argue that the number of affected mailpieces is minor. Instead, the Postal Service appears to assert that the number of hours by which it proposes to advance the CET (3 to 6 hours)²¹ determines whether the proposal is a minor rather than meaningful change. See Postal Service Reply Comments at 3. However, as observed in the Response to CHIR No. 1, question 1, the scale and the scope of such a change is substantial because it affects a significant portion of Periodicals mail volume, not because it does or does not change the CET by a certain

²⁰ Postal Regulatory Commission, (draft) Mail Classification Schedule posted October 3, 2021, § 1300.2 (with revisions through June 30, 2022), available at <https://www.prc.gov/mail-classification-schedule>.

²¹ For the Periodicals mailpieces that are not processed using Flats Sequencing System (FSS) (that do not require a bundle sort and are sorted using a 5-Digit Scheme Container), the existing CET is 2:00 p.m. See Library Reference USPS-LR-PI2022-3-1, Revised USPS Service Performance Measurement Plan, April 22, 2022, file iSPM_RevPlan_RED-LINE – 4-21-22.pdf., at 72. For these Non-FSS Periodicals mailpieces, the Postal Service’s proposal to change the CET from 2:00 p.m. to 8:00 a.m. would advance the CET by 6 hours, and this change would affect approximately 61 percent of the volume of these Non-FSS Periodicals mailpieces. See Response to CHIR No. 1, question 1.b.i.

number of hours.²²

The Postal Service cites to *Postal Police Officers Ass'n v. United States Postal Serv.*, 502 F. Supp. 3d 411, 423-24 (D.D.C. 2020) for the proposition that “allegations that supported only a marginal impact to postal users were insufficient to implicate 39 U.S.C. § 3661(b).” Postal Service Reply Comments at 3. In that case, the plaintiff argued that the Postal Service was required under Section 3661 to seek approval from the Commission before limiting Postal Police Officers’ law enforcement jurisdiction to the protection of postal real estate. See *Postal Police Officers Ass'n*, 502 F. Supp. 3d at 422-23. The court’s findings with respect to the first *Buchanan* factor relied on the fact that the plaintiff had not explained how many Postal Police Officers were employed nationwide nor how many regularly engaged in off-site law enforcement activities before the alleged change, providing the court with no basis to determine the quantitative impact of the change. See *id.* at 423-24. Thus, *Postal Police Officers Ass'n* is not applicable to the facts of Docket No. PI2022-3, in which the Postal Service has acknowledged the quantity of mail that would be affected by the proposed change.

Additionally, the Postal Service makes a number of arguments regarding the advisability of the change; namely, that it will improve efficiency and performance and that users will be able to suitably make adjustments to compensate for the advancement of the CET. See Postal Service Reply Comments at 3-6. These arguments do not go to the issue of whether the Postal Service’s proposed change to

²² The Postal Service points to Docket No. PI2018-2, in which the Commission approved modifications to the SPM Plan that would more accurately account for “Non-Airlift Days” (days before a non-Monday holiday where air transportation is limited) as “also relevant” to the current analysis. Postal Service Reply Comments at 14 n. 7; see also Docket No. PI2018-2, Order Conditionally Approving Modifications to Market Dominant Service Performance Measurement Systems, November 5, 2018, at 2 (Order No. 4872). The Postal Service states that in Docket No. PI2018-2, the Commission “recognized that this change increases the number of days, by one, that it takes for mail to reach its destination,” and therefore the Postal Service (presumably) suggests that if such a change did not require an advisory opinion, neither should any change to the Periodicals CET that would also effectively add a day of delivery time to mailpieces. See Postal Service Reply Comments at 14 n. 7 (citing Order No. 4872 at 3). The distinguishing difference between these two cases is that the change discussed in Docket No. PI2018-2 only affected mailpieces “on no more than four” of 365 calendar days—a far smaller impact than in Docket No. PI2022-3, which is not limited to 4 days per calendar year. See Order No. 4872 at 3.

the CET, which would impact approximately 58.4 percent of Periodical mailpieces, is quantitatively meaningful and thus does not impact the *Buchanan* analysis. Whether and how mailers could potentially adjust to the Postal Service's proposal to change the CET for Periodicals instead are issues that are appropriate for exploration in the advisory opinion process, which allows the public the opportunity to participate in a pre-filing conference, a technical conference, discovery, the offering of rebuttal and/or surrebuttal testimony, a hearing on the record, and briefing.²³ Likewise, the Postal Service's "Responses to Commenters" for the most part address the advisability of the proposed changes themselves, rather than whether such changes require the Postal Service to request an advisory opinion from the Commission, and as such are not the subject of the instant order. See Postal Service Reply Comments at 16-20.

2. The Proposed Change to the CET Alters the Nature of Postal Services

As to the second *Buchanan* factor, whether a proposed action constitutes a change in the "nature of postal services" within the meaning of Section 3661 "involves a qualitative examination of the manner in which postal services available to the user will be altered." *Buchanan*, 508 F.2d at 263. The term "postal service" means "the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto." 39 U.S.C. § 102(5). In determining whether an initiative involves a change in the nature of postal services, "[i]t is the experience of the individual postal consumer, the recipient of the complex of services provided by the Postal Service and the intended beneficiary of the policies incorporated by § 3661, that must be assayed."²⁴ The Commission also stated that "the

²³ See 39 C.F.R. § 3020.111, .115-.123. Similarly, direct changes to the text of the service standards published in 39 C.F.R. parts 121 and 122 also present the opportunity for mailers to adjust their operations to maintain their prior days-to-delivery expectations. Such an opportunity does not affect whether a nature of services docket should be initiated in the first place.

²⁴ Docket No. N75-1, Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services, April 22, 1976, at 21 (Docket No. N75-1 Advisory Opinion).

effect of a contemplated program, rather than the [Postal] Service's specific intent in adopting it, controls” as to whether there has been a “change.” Docket No. N75-1 Advisory Opinion at 20.

The Commission and federal district courts have previously examined a wide array of proposed actions as “changes in the nature of postal services,” including (among others) the reduction of so-called extra and late delivery trips, the removal of mail sorting machines, the consolidation of post offices, changes in the application of origin-destination pairs, mail processing modifications, and changes to products’ CET (discussed in greater detail below).²⁵

²⁵ *New York v. Trump*, 490 F. Supp. 3d 225, 242-43, 245 (D.D.C. 2020) (exercising jurisdiction over a claim relating to the alleged failure of the Postal Service to undertake the process mandated under 39 U.S.C. § 3661(b) in making alleged nationwide changes to service and entering preliminary injunction), *order clarified*, No. 20-CV-2340(EGS), 2020 WL 6572675 (D.D.C. Oct. 22, 2020), *appeal dismissed*, No. 20-5352, 2021 WL 672390 (D.C. Cir. Feb. 10, 2021), *and opinion clarified*, No. 20-CV-2340(EGS), 2021 WL 7908123 (D.D.C. Apr. 3, 2021), *and opinion clarified sub nom. New York v. Biden*, No. CV 20-2340(EGS), 2021 WL 7908124 (D.D.C. Aug. 23, 2021) (clarifying preliminary injunction to reflect that the Postal Service is not prohibited “from declining approval for extra network trips pursuant to the following principles: (1) where an extra trip would not be service responsive, and (2) where not using an extra trip would delay a volume of mail that is no greater than 15% of the truck’s total capacity.”); *Commonwealth of Penn. v. DeJoy*, 490 F. Supp. 3d 833, 844, 884-87, 891-92 (E.D. Pa. 2020) (exercising jurisdiction over a claim relating to the alleged failure of the Postal Service to undertake the process mandated under 39 U.S.C. § 3661(b) in making alleged nationwide changes to service and entering preliminary injunction), *order clarified*, No. CV 20-4096, 2020 WL 6580462 (E.D. Pa. Oct. 9, 2020); *Postal Police Officers Ass’n*, 502 F. Supp. 3d at 423-24 (denying a request for a preliminary injunction based on the argument that the Postal Service was required to seek an advisory opinion before issuing a memo restricting the scope of duties for its police officers); Docket No. N2006-1, Advisory Opinion Concerning a Proposed Change in the Nature of Postal Services, December 19, 2006, at ¶ 2001, ¶ 3003 (analyzing the Postal Service’s plan to change the application of then-existing service standards to 3-digit ZIP Code service area origin-destination pairs pursuant to 39 U.S.C. § 3661(b)); Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing Stations and Branches, March 10, 2010, at 9-11 (analyzing the Postal Service’s plan to consolidate stations and branches pursuant to 39 U.S.C. § 3661(b)); Docket No. N2012-1, Advisory Opinion on Mail Processing Network Rationalization Service Changes, September 28, 2012, at 4, 50-53 (Docket No. N2012-1 Advisory Opinion) (analyzing the Postal Service’s planned changes to the published service standards and CET for multiple classes of mail pursuant to 39 U.S.C. § 3661(b)); Docket No. N2014-1, Advisory Opinion on Service Changes Associated with Standard Mail Load Leveling, March 26, 2014, at 3 (Docket No. N2014-1 Advisory Opinion) (analyzing the Postal Service’s proposed changes to the manner of processing and dispatching Standard Mail (now referred to as “USPS Marketing Mail”) dropped off at Destination Sectional Center Facilities on Fridays and Saturdays pursuant to 39 U.S.C. § 3661(b)). As directed by Order No. 6178, the Postal Service discusses these cases. See Postal Service Reply Comments at 9-15. Ultimately, however, this discussion does not persuade the Commission that any of these cases, which are factually and procedurally distinct from Docket No. PI2022-3, would serve to foreclose the Commission’s interpretation advanced in the instant order.

a. Customers' Experience May Be Significantly Altered

The Postal Service's proposal to change the CET for Periodicals impacts the customer experience of "postal services" in that it significantly alters the Postal Service's "acceptance" of applicable mailpieces.²⁶

Specifically, because the Postal Service is advancing the CET for Periodicals to 8:00 a.m., mailpieces that physically arrive at the Postal Service facilities after that "critical" time will not be considered "entered" for purposes of delivery expectations until the subsequent day and therefore delivery will actually occur a day later.²⁷ As an example, under the proposed change, a Periodicals mailpiece that arrives at the Postal Service facility on Monday at 9:00 a.m. will not be considered to have been entered until Tuesday. Assuming that said Periodicals mailpiece has a 3-day service standard, that mailpiece will now be considered "on-time" if delivered by Friday, rather than Thursday (under the existing CET). The table below illustrates the impact of the proposed change to the CET on the Periodicals volumes disaggregated by mail processing category:

²⁶ See 39 U.S.C. § 102(5) (defining "postal service" as "the delivery of letters, printed matter, or mailable packages, including *acceptance*, collection, sorting, transportation, or other functions ancillary thereto") (emphasis added).

²⁷ Generally, when the Postal Service accepts a mailpiece prior to the posted CET for a given day, that day is designated as the "Start-the-Clock" date. Revised SPM Plan at 6. However, when the mailpiece is entered after the CET, the "Start-the-Clock" date is registered as the following day. *Id.* The "Expected Delivery Day" for a mailpiece is determined by adding the applicable service standard to its "Start-the-Clock." *Id.* at 7. Thus, if a mailpiece is entered before the CET, its service standard is calculated from the day of entry; but if the mailpiece is entered after the CET, its service standard is calculated from the following day, thus also moving the Expected Delivery Day back.

Mail Processing Category	Current CET	Proposed CET	% Volume Impacted by the Proposed Change
FSS: No Bundle Sort Required, 5-Digit/Scheme Container	11:00 a.m.	8:00 a.m.	44%
Non-FSS: No Bundle Sort Required, 5-Digit/Scheme Container	2:00 p.m.	8:00 a.m.	61%
Non-FSS: Bundle Sort Required, 3-Digit and Up Container	11:00 a.m.	8:00 a.m.	18%

Source: Response to CHIR No. 1, questions 1.a., 1.b.

Note: "FSS" refers to "Flats Sequencing System." All three mail processing categories apply only to the Outside County Periodicals product.

With respect to the two products in the Periodicals class of mail, the Postal Service acknowledges that its proposed change to the CET would impact approximately 54 percent of In-County Periodicals and approximately 58 percent of Outside County Periodicals mailpieces. See Response to CHIR No. 1, questions 1.c., 1.d. Effectively, the Postal Service is adding a day to the service standards for over half of Periodicals mailpieces. These mailers will therefore be impacted by the proposed change to the Periodicals CET because they will now face a choice between either altering their publishing practices to meet an earlier CET (in order to maintain their existing delivery expectations) or accepting the business consequences of a slower delivery time for their mailed Periodicals products. The former option could require the modification of publishing and staffing schedules and might result in "earlier deadlines and less timely late-breaking coverage." See NMA Reply Comments at 2. Similarly, meeting the 8:00 a.m. CET could force customers to provide their products to Postal Service facilities before or during the morning rush hour. See NNA Comments at 2. The latter option would mean that customers maintaining the same business practices will be subject to expected delivery a day later. From the standpoint of affected customers, then, the

postal services offered for Periodicals will be altered.²⁸

b. Commission Precedent Contradicts the Notion that CET Changes Meeting All Three *Buchanan* Factors Are Outside the Scope of the Section 3661 Process

The Postal Service states that “CET changes by themselves have never been the basis of a Section 3661 proceeding.”²⁹ However, no Commission precedent indicates that CET changes meeting all three *Buchanan* factors would be outside the scope of a Section 3661 proceeding. Prior nationwide CET changes have been addressed within advisory opinions, lending credence to the notion that they are nationwide service changes subject to Section 3661.³⁰ For instance, when the Postal Service changed CET in FY 2015, these changes had previously been discussed as part of Docket No. N2012-1.³¹ In Docket N2012-1, the Postal Service proposed a Mail Processing Network Rationalization initiative, which involved the consolidation of processing and transportation networks. Docket No. N2012-1 Advisory Opinion at 1. This initiative required the modification of service standards for many classes of mail, including the acceleration of the CET for Presorted First-Class Mail and Periodicals. *Id.*

²⁸ The Postal Service argues that the impact of the change to the CET is entirely within the control of the Periodicals customers, and they can easily advance their operations. See Postal Service Reply Comments at 4. However, this argument concerns the prudence of the change itself, rather than whether this type of proposal should be subject to the advisory opinion process generally. See Section IV.A.1., *supra*.

²⁹ Postal Service Reply Comments at 13. The Commission recognizes that the Postal Service retains discretion over “whether to file a request [for an advisory opinion] related to a single initiative or whether to request that multiple related initiatives be considered together.” Docket No. C2022-1, Order Granting Motion to Dismiss Complaint, December 17, 2021, at 26 (Order No. 6067).

³⁰ Although Order No. 6178 invited the Postal Service to indicate whether the proposed CET changes were already addressed in the recent Docket No. N2021-1, which pertained (in part) to end-to-end Periodicals, the Postal Service did not respond with any such references. See Order No. 6178 at 4-5. The Postal Service estimated that its changes proposed in Docket No. N2021-1 would affect approximately 7 percent of Periodicals. Docket No. N2021-1, Direct Testimony of Robert Cintron on Behalf of the United States Postal Service (USPS-T-1), April 21, 2021, at 12 n.9.

³¹ Similarly, CET changes that were proposed to occur in FY 2012 were discussed in this same docket. See Docket No. N2012-1 Advisory Opinion at 53. The Postal Service references these changes in Postal Service Reply Comments at 13 n.5.

at 1, 50, 53. In the relevant part of the Docket No. N2012-1 Advisory Opinion, the Commission explained that for certain Periodicals formerly receiving overnight service, which CET were changing from 4:00 p.m. to 11:00 a.m., the proposed modification “in effect, [would] *change[] the definition of overnight delivery* by lengthening the time up to five hours.” *Id.* at 53 (emphasis added). In Docket No. PI2022-3, the applicable service standards are also effectively changed by 1 day for over half of Periodicals mailpieces.

On the other hand, certain CET changes for Periodicals implemented in FY 2011 were not subject to the advisory opinion process.³² In that instance, however, the question of whether CET changes triggered Section 3661 was not raised by any party. Though the Commission is free to address issues such as this as it sees fit, it generally relies on the parties to advance the facts and arguments that support their aims.³³ Because no party raised the issue of whether the FY 2011 CET changes constituted a nationwide change in service, the Commission did not raise this issue on its own volition.

Additionally, in Docket No. PI2008-1, the Commission also did not discuss whether CET changes triggered Section 3661. Docket No. PI2008-1 reviewed the Postal Service’s request to use internal and external service performance measurement systems, identified specific Commission concerns, provided recommendations on the approaches that the Postal Service was proposing for service performance measurement systems and data reporting, and discussed public comments.³⁴ Again, no party raised the issue of the applicability of Section 3661 in that docket. Moreover, the Commission made the statements in Order No. 140 that were referenced by the Postal Service in the context of encouraging the Postal Service to provide mailers with

³² See Docket No. ACR2011, *Annual Compliance Determination*, March 28, 2012, at 74 n.55 (noting that the “Postal Service established new CET with four possible CETs depending on sortation preparation and FSS-destination ZIP codes.”).

³³ See, e.g., *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020) (discussing the principle of party presentation in the similar context of federal courts).

³⁴ See Docket No. PI2008-1, Order Concerning Proposals for Internal Service Standards Measurement Systems, November 25, 2008, at 3, 8 (Order No. 140).

documentation regarding potential future changes to individual (facility-specific) CET rather than *nationwide* changes. See Postal Service Reply Comments at 13 n.5 (citing Order No. 140 at 17). Thus, those statements are inapposite to the issues presented in Docket No. PI2022-3.

With respect to the Postal Service's argument that it "has advanced CETs in the past, which have been considered in regulatory proceedings other than Section 3661; there has been no suggestion from the Commission that it needed to follow Section 3661 for such changes," as stated above, the Commission is not bound in Docket No. PI2022-3 by prior instances where the applicability of Section 3661 to CET changes was not fully briefed or examined. Postal Service Reply Comments at 8. As such, the treatment of nationwide CET changes in prior dockets does not foreclose the interpretation that any Postal Service proposal to change the CET that meet all three

Buchanan factors, is subject to the advisory opinion requirement of Section 3661.³⁵

³⁵ Even if precedent suggested that CET changes do not trigger Section 3661—and as explained above, it does not—this would not foreclose the ability of the Commission to take a contrary position in this case. “Agencies are free to change their existing policies as long as they provide a reasoned explanation for the change.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016) (citing *Nat’l Cable & Telecomm. Ass’n v. Brand X Internet Servs.*, 545 U.S. 967, 981-82 (2005); *Chevron U.S.A. Inc. v. Nat. Resources Def. Council, Inc.*, 467 U.S. 837, 863-64 (1984)). The agency must explain “that the new policy is permissible under the statute, that there are good reasons for it, and that the agency believes it to be better.” See *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (emphasis omitted); see also *Nat’l Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038 (D.C. Cir. 2012). When an agency changes its existing position, it “need not always provide a more detailed justification than what would suffice for a new policy created on a blank slate.” *Encino Motorcars*, 579 U.S. at 221 (quoting *Fox Television Stations*, 556 U.S. at 515). “But the agency must at least ‘display awareness that it is changing position’” and ‘show that there are good reasons for the new policy.’” *Encino Motorcars*, 579 U.S. at 221 (quoting *Fox Television Stations*, 556 U.S. at 515). “In explaining its changed position, an agency must also be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’” *Encino Motorcars*, 579 U.S. at 221-22 (quoting *Fox Television Stations*, 556 U.S. at 515); see *Smiley v. Citibank (South Dakota), N.A.*, 517 U.S. 735, 742 (1996). “‘In such cases it is not that further justification is demanded by the mere fact of policy change; but that a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.’” *Encino Motorcars*, 579 U.S. at 222 (quoting *Fox Television Stations*, 556 U.S. at 515-16).

In Docket No. PI2022-3, the Commission observes that interpreting proposals to change the CET that meet all three *Buchanan* factors to require the Postal Service to file a request for an advisory opinion is permissible under Section 3661. Meeting all three *Buchanan* factors is consistent with the plain language and legislative history of the statutory provision. See *Buchanan v. U.S. Postal Serv.*, 508 F.2d at 262-64. Such an interpretation is reasonable because plans requiring review under Section 3661 would be limited to meaningful nationwide changes that could significantly alter customers’ experiences concerning acceptance and the expected days-to-delivery of their mailpieces. The Commission believes such an interpretation would be better than allowing *de facto* changes to the service standards to take effect without undergoing the advisory opinion process. Only requiring the Postal Service to file a request for an advisory opinion relating to changes to the service standards published in 39 C.F.R part 121 (such as the changes to approximately 7 percent of Periodicals reviewed in the Docket No. N2021-1 Advisory Opinion), while not subjecting the changes at issue in Docket No. PI2022-3 to the advisory opinion process (which the Postal Service acknowledges would affect over half of Periodicals), would be an incongruent policy.

The Postal Service still retains the discretion to implement its proposed changes, subject to adhering to the advisory opinion process. While the Commission is cognizant that the Postal Service may have considered the precedent in determining not to file a request for an advisory opinion in this case, no serious reliance interests are impacted. The Postal Service states that it filed advance notice of its plan to change the CET for Periodicals pursuant to 39 C.F.R. § 3055.5. See Notice at 1. This provision expressly reserves that “[t]he Commission may initiate a proceeding at any time to consider such changes if it appears that the changes might have a material impact on the accuracy, reliability, or utility of the reported measurement, or if the changes might have a material impact on the characteristics of the underlying product.” 39 C.F.R. § 3055.5. The Postal Service states that it intends to change the CET for Periodicals after a reasonable time for the Commission to complete its review and issue a final order in this docket. See Response to CHIR No. 1, question 6.

c. Previous Commission Precedent Cited by the Postal Service is Inapposite

Although the Postal Service references several complaint proceedings in support of its argument that the proposed CET changes do not implicate Section 3661, each of the challenged actions in those dockets are distinguishable from the proposed changes at issue here.³⁶

For instance, the Postal Service refers to Docket No. C2012-1 for the proposition that when proposed changes “pertain to just one product and are intended to provide additional services to...customers[, t]heir introduction does not implicate section 3661, which deals with broader questions involving the nature of postal services generally.” Postal Service Reply Comments at 5-6 (quoting Order No. 1366 at 12). In that case, several parties challenged the Postal Service’s introduction of additional services offered to Post Office Box customers at certain locations, alleging that they were nationwide changes in service.³⁷ The Commission disagreed, stating:

The Post Office Box service enhancements at issue pertain to just one product and are intended to provide additional services to post office box customers. Their introduction does not implicate section 3661, which deals with broader questions involving the nature of postal services generally. By contrast, changes to individual products are generally more appropriately considered under other provisions of chapter 36, e.g., 39 U.S.C. §§ 3622, 3632, 3633, and 3642. These provisions, along with the Commission’s rules implementing them, are available, as a general matter, for considering changes to services of existing products.

³⁶ See, e.g., Postal Service Reply Comments at 6-7. The Postal Service also cites to one district court case, *Postal Police Officers Ass’n*, 502 F. Supp. 3d at 423-24, addressed in Section IV.A.1., *supra*, in which the changes in question—that a memo limiting the authority of Postal Police Officers to post office premises—were far more attenuated (if related at all) to the services provided to customers than the proposed changes in Docket No. PI2022-3.

³⁷ Docket C2012-1, Order on Motion to Dismiss Holding Complaint in Abeyance Pending Further Proceeding, June 13, 2012, at 1-2 (Order No 1366). The three enhanced services at issue were: (1) the option to use the post office street address and a “#” designation in lieu of a “P.O. Box” designation; (2) the option to receive email notification of mail delivery; and (3) the option to receive packages from private carriers. See *id.* at 2.

Order No. 1366 at 12-13.

The Commission does not read this language as creating an ironclad rule that a change to a single product can *never* implicate Section 3661. Even if it were to take such a position, which it does not,³⁸ the aforementioned language from Docket No. C2012-1 does not apply to Docket No. PI2022-3 for several reasons. First, in Docket No. PI2022-3, the Postal Service is attempting to alter both products within an entire *class* of mail rather than a single mail product (as was the case in Docket No. C2012-1). Second, the changes at issue in Docket No. C2012-1 were determined to be classification changes governed by 39 U.S.C. § 3642 and subject to the requirements applicable to Competitive products under 39 U.S.C. § 3633 (see Order No. 1366 at 12-13) rather than any alterations to “the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.” 39 U.S.C. § 102(5). Third, the Postal Service’s own, more recent behavior in filing Docket No. N2021-2—related to a single mail product, First Class Package Services—suggests that it does not find the number of mail products impacted by a change to be a determinative factor in whether it implicates Section 3661.³⁹ For these reasons, the Postal Service’s citation to Docket No. C2012-1 is unavailing.

Similarly, the Postal Service’s reference to Docket No. C2014-1 is also inapt. See Postal Service Reply Comments at 6. In that case, a mail user challenged a change to the Postal Operations Manual that restricted customers’ ability to provide feedback on post office service hours.⁴⁰ The Commission held that this change did not

³⁸ Order No. 1366 expressly recognized that “[t]he Commission [would not need to define here] what constitutes a change in the nature of postal services.” *Id.* at 13.

³⁹ It bears noting that Docket No. N2021-2 involved changes that were estimated to lengthen the service standards by 1 to 2 additional days for approximately 31.2 percent of volume and shorten the service standards by 1 day for approximately 4.8 percent of volume. Docket No. N2021-2, Advisory Opinion on the Service Standard Changes Associated with First-Class Package Service, September 29, 2021, at 1-2.

⁴⁰ Docket No. C2014-1, Order Dismissing Complaint, July 28, 2014, at 2 (Order No. 2136).

implicate Section 3661 because it could “most fairly be described as relating to an opportunity to comment, but is not itself in the nature of postal services.” Order No. 2136 at 6. As explained above, the CET change at issue in Docket No. PI2022-3 directly impacts the services provided to users, rather than simply their ability to comment on those services.

The Postal Service also cited the recent decision in Docket No. C2022-1 to support its contention that an advisory opinion docket is an inappropriate vehicle for considering the proposed CET change. See Postal Service Reply Comments at 6-7. In that case, the attorneys general of various states argued that the Postal Service should have requested an advisory opinion before instituting its 10-Year Strategic Plan. Order No. 6067 at 1-2. Although the Commission acknowledged that some of the specific initiatives described in the 10-Year Strategic Plan “have implicated or potentially will implicate all of the *Buchanan* criteria,” it held that the Postal Service was not required to seek an advisory opinion on the 10-Year Strategic Plan in its entirety because the 10-Year Strategic Plan, “in and of itself”, was not a “change” within the meaning of Section 3661. *Id.* at 17, 24. It reasoned that strategic plans such as the one at issue are “forward-looking planning documents that are subject to regular evaluation, updating, and revision” and “do not appear to be intended to effectuate changes simply by their development or issuance.” *Id.* at 18. It also explained that many of the changes mentioned in the 10-Year Strategic Plan were not “in the nature of postal services:”

The Commission also determines that it would be inappropriate to review the 10-Year Strategic Plan in its entirety pursuant to 39 U.S.C. § 3661(b) because various initiatives mentioned in the 10-Year Strategic Plan fall outside the scope of 39 U.S.C. § 3661(b), the definition of postal service in 39 U.S.C. § 102(5), and the *Buchanan* criteria. For example, many of the Postal Service’s workforce-related initiatives, including reducing non-career staff turnover, improving the hiring process, and building and retaining a diverse pipeline of candidates, do not appear on their face to implicate the first and second of the *Buchanan* criteria in that they neither are changes that would have a meaningful impact on service nor do they appear to be “in the nature of postal services” in that they would alter “the delivery of letters, printed matter, or

mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto” available to the user. Other examples of initiatives mentioned in the 10-Year Strategic Plan and outside the scope of 39 U.S.C. § 3661(b) include initiatives to advocate to Congress for legislative changes related to employee health care costs and to the Administration to change its method for apportioning government contributions to specific employee annuities. Further, the Commission previously found that rate and product changes regulated under other provisions of chapter 36 of title 39 are “generally more appropriately considered” under those provisions and that to require a 39 U.S.C. § 3661 proceeding before the Postal Service changed rates, services, or the product lists “would appear to impose an unnecessary requirement” that “is inconsistent with other provisions of [title 39].” The Postal Service includes both rate and product changes among its initiatives in the 10-Year Strategic Plan, some of which have already been the subject of Commission proceedings conducted pursuant to other provisions of chapter 36 of title 39. Requiring the Postal Service to file a request for an advisory opinion on the entirety of 10-Year Strategic Plan would improperly pull these and other initiatives outside of 39 U.S.C. § 3661(b)’s scope into a proceeding conducted pursuant to 39 U.S.C. § 3661.

Id. at 28-29 (footnotes and citation omitted). Here, however, the CET changes are neither amorphous future plans nor are they unrelated to the actual service provided to customers. Rather, as explained above, the proposed change to the CET will directly impact Periodicals customers by adding a day to many of their expected delivery times. This effect is far more concrete than the challenged 10-Year Strategic Plan in Docket No. C2022-1.

3. The Proposed Change to the CET is Nationwide in Scope

The third *Buchanan* factor is whether the proposed change affects service over a geographically broad area. See *Buchanan*, 508 F.2d at 263. The Postal Service concedes that “[e]very 3-digit ZIP Code would be likely impacted by the proposed revision to the CET applicable to Periodicals.” Response to CHIR No. 1, question 2. Moreover, in its Reply Comments, the Postal Service does not argue that the proposed change is geographically limited. See, e.g., Postal Service Reply Comments at 2.

Here, the third *Buchanan* factor—like the other two—is satisfied. Under this analysis, the proposed CET change requires an advisory opinion under Section 3661.

B. The Benefits of an Advisory Opinion Proceeding

The Postal Service asserts that “reviewing the proposed CET adjustment in the instant proceeding better balances the dueling interests recognized in *Buchanan*—Postal Service managerial freedom and the public’s opportunity to present its views on decisions that affect them” and that the views of interested parties have already been adequately expressed in the current docket. Postal Service Reply Comments at 8. The three-part test originally formulated in *Buchanan* (and used by the Commission in subsequent advisory opinion and complaint dockets) adequately balances these dueling interests by ensuring that only those changes that are meaningful, nationwide, and in the nature of postal services trigger the advisory opinion requirement of Section 3661. See *Buchanan*, 508 F.2d at 262-64. In *Buchanan*, the Fifth Circuit expressly considered these interests, and the Commission sees no reason to revisit that calculus here (and indeed, the Postal Service has not requested that it do so). See *id.*

Where all three *Buchanan* factors have been met, advisory opinion proceedings offer numerous benefits to the public. First, the 90-day timeframe allows the affected mailers additional time to prepare and adjust their business practices to accommodate the change in postal services. See 39 C.F.R. § 3020.112.

Second, the advisory opinion process also provides the general public and the Commission with additional information regarding the planned change via the opportunity to review the following: the informal presentation given by the Postal Service during the pre-filing conference, the Postal Service’s written filings (including direct testimony and library references), the technical conference, the Postal Service’s responses to discovery, any rebuttal and surrebuttal testimony, the presentations at the hearing, the written briefs filed by the parties, and the Commission’s advisory opinion. See 39 C.F.R. §§ 3020.111, .114-.123. Additionally, a party to the proceeding may

participate in discovery; conduct written examination of witnesses; and conduct limited oral cross-examination. See 39 C.F.R. §§ 3010.142(a); 3020.122(e).

Third, the advisory opinion process accords the public and the Commission the opportunity to provide informed and useful feedback to the Postal Service regarding its proposal. Members of the public may: participate in the pre-filing conference for the Postal Service to consider feedback prior to filing its formal request that the Commission render an advisory opinion, participate in the technical conference, and file statements of position. See 39 C.F.R. §§ 3020.111, .115, .123(g). Further, parties that intervene in the proceeding may offer rebuttal testimony, participate in the hearing on the record, and file written briefs. See 39 C.F.R. §§ 3010.142(a); 3020.122(e). The advisory opinion process is intended to better inform the Postal Service in its decision-making process and provide a different perspective for the Postal Service to consider. See Docket No. N2014-1 Advisory Opinion at 7. In this docket, these benefits should aid affected Periodicals mailers, members of the public that may receive Periodicals in the mail, and the Postal Service.

V. COMMISSION ANALYSIS OF THE POSTAL SERVICE'S OTHER PLANNED MODIFICATIONS

With respect to the Postal Service's proposed revision to the long haul exception, inclusion of Reply Mail in measurement, and other non-substantive grammatical revisions, the Commission approves these changes. As noted above and in Order No. 6178, there have been no comments directly adverse to these proposals and they appear to be improvements over the existing SPM Plan. Order No. 6178 at 5. The Commission commends the Postal Service for its efforts to improve the quality of service performance measurement and encourages the Postal Service to consider the suggestions raised by the commenters aimed at future improvements.

VI. CONCLUSION

In this docket, the Postal Service seeks to, among other things, advance the CET applicable to Periodicals by several hours. As discussed in detail above, this change will have the effect—for mailers of over half of Periodicals mailpieces—of adding an extra day to the expected delivery of their items. This change will occur on a nationwide basis. As such, under the test enumerated in *Buchanan*, this change qualifies as a nationwide change in the nature of postal services and is subject to the advisory opinion requirement of Section 3661. Therefore, before implementing this proposed change, the Postal Service must obtain an advisory opinion from the Commission regarding this modification.

With respect to the Postal Service's proposed revision to the long haul exception, inclusion of Reply Mail in measurement, and other non-substantive grammatical revisions, the Commission approves these changes.

This order resolves the pending issues and Docket No. PI2022-3, Public Inquiry on Modification of Service Performance Measurement Plan, is hereby closed.

VII. ORDERING PARAGRAPHS

It is ordered:

1. The Commission does not approve the proposed modifications to the Service Performance Measurement Plan as presented in the United States Postal Service Notice of Filing Changes to Service Performance Measurement Plan Document, filed April 22, 2022, and corrected in the Notice of United States Postal Service of Filing Errata to United States Postal Service Notice of Filing Changes to Service Performance Measurement Plan Document, filed, May 20, 2022, insofar as they relate to the Postal Service's plan to change the critical entry times for Periodicals. The Commission orders the Postal Service, should it intend to implement its proposed change to the critical entry times for Periodicals,

to file a request for an advisory opinion pursuant to 39 U.S.C. § 3661(b) and in accordance with 39 C.F.R. part 3020.

2. The Commission approves the remaining proposed modifications to the Service Performance Measurement Plan as presented in the United States Postal Service Notice of Filing Changes to Service Performance Measurement Plan Document, filed April 22, 2022, and corrected in the Notice of United States Postal Service of Filing Errata to United States Postal Service Notice of Filing Changes to Service Performance Measurement Plan Document, filed, May 20, 2022. Specifically, the Commission approves only as to the Postal Service's proposed revision to the long haul exception, inclusion of Reply Mail in measurement, and other non-substantive grammatical revisions.
3. Docket No. PI2022-3, Public Inquiry on Modification of Service Performance Measurement Plan, is hereby closed.

By the Commission.

Erica A. Barker
Secretary