

ORDER NO. 1462

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

Before Commissioners: George Omas, Chairman;
 Dawn A. Tisdale, Vice Chairman;
 Ruth Y. Goldway; and
 Tony Hammond

Classification Changes for Express
Mail Second Day Service

Docket No. MC2006-4

NOTICE AND ORDER INSTITUTING DOCKET NO. MC2006-4 FOR
CLASSIFICATION CHANGES TO CLARIFY EXPRESS MAIL
SECOND DAY SERVICE

(Issued April 18, 2006)

Notice is hereby given that pursuant to 39 U.S.C. § 3623(b), the Commission is instituting a mail classification case to consider and clarify the language of the Domestic Mail Classification Schedule (DMCS) pertaining to Express Mail Second Day service. This classification case is in response to the issues brought to light in Count 3 of the Complaint on Express Mail filed under 39 U.S.C. § 3662 and docketed by the Commission as Docket No. C2005-1,¹ and upon the statements, proffers and admissions offered by Postal Service counsel in the Postal Service's Answer in that proceeding.²

The Commission's views on the necessity and desirability for DMCS clarification on Express Mail Second Day service are explained in more detail in Order No. 1461. The primary focus of this proceeding is on how best to clearly state in the DMCS the

¹ Douglas F. Carlson Complaint on Express Mail, February 18, 2005 (Complaint).

² Answer of United States Postal Service, May 5, 2005 (Answer).

scope of Second Day Express Mail service that the Postal Service intends to provide its customers. As it stands, several DMCS provisions call for second day delivery, when, in certain limited circumstances, the Postal Service has admitted that it does not expect to provide delivery until the third or fourth day. Delivery on the third or fourth day is nonetheless second delivery day delivery – mail that would have been delivered on the second calendar day except that Sunday or holiday delivery is not available at that particular destination. This proceeding is an attempt to promptly remedy that inconsistency and harmonize the “refund” section of the Express Mail DMCS language regarding Second Day service with the “availability” section.³

Intervention. Those wishing to be heard in this matter are directed to file a notice of intervention on or before May 3, 2006. The notice of intervention shall be filed using the Internet (Filing Online) at the Commission’s website (www.prc.gov), unless a waiver is obtained for hardcopy filing. Rules 9(a) and 10(a) [39 CFR §§ 3001.9(a) and 10(a)]. Notices should indicate whether participation will be on a full or limited basis and may include procedural suggestions. See rules 20 and 20a [39 CFR §§ 3001.20 and 20a]. No decision has been made at this point on whether a hearing will be held in this case.

Notice of Inquiry. The current “availability” subsection of the Expedited Mail section of the DMCS is as follows:

Current DMCS Language:

123 Next Day Service and Second Day Service

123.1 Availability of Services. Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for second day delivery.

The Commission recognizes that, “[o]ver time, because of ambiguities or imprecise language, it becomes necessary to amend the DMCS to clarify or correct language that

³ Compare DMCS section 182.4 with section 123.1.

has led to misinterpretations in the application of the DMCS to specific types of mail matter.” PRC Op. C85-1, ¶ 066. In that light, the Commission proposes to clarify the current DMCS language regarding the availability of Second Day service. The Commission proposes changes based upon statements made by the Postal Service in its Answer to the Complaint filed in C2005-1 as to the service it intends to provide its customers.⁴ Clarification is especially important since, as the Postal Service noted, the “refund” provision only provides for refunds for Second Day service if an Express Mail package is not delivered on the second delivery day.⁵ This anomalous result occurs even if second calendar day delivery is promised to a customer and yet the mailpiece is not delivered until the second delivery day, see DMCS section 182.4. Accordingly, the Commission proposes the following clarifying changes to the current DMCS:

Proposed Clarification to DMCS:

123 Next Day Service and Second Day Service

123.1 Availability of Services. Next Day and Second Day Services are available at designated retail postal facilities to designated destination facilities or locations for items tendered by the time or times specified by the Postal Service. Next Day Service is available for overnight delivery. Second Day Service is available for delivery on the second delivery day as specified by the Postal Service.

Participants are invited to submit comments on the proposed DMCS changes presented above on or before May 3, 2006. Reply comments may be submitted on or before May 10, 2006.

Necessity of a prehearing conference. Given the limited scope of this proceeding, the Commission will determine an appropriate procedural schedule after

⁴ Specifically, the “Postal Service admits that, when customers send Express Mail on Fridays to destinations for which Next Day Service is not available, or when customers’ Express Mail is accepted on Fridays after the cut-off time for Next Day Service, their Express Mail is guaranteed for delivery on Monday (or Tuesday, if Monday is a holiday) unless the destination ZIP Code is one in which Sunday and holiday delivery is available.” Answer at 13.

⁵ *Id.* at 11-12.

evaluating comments on its Notice of Inquiry. Participants shall file pleadings identifying and discussing the matters that would indicate the need to schedule a prehearing conference or a hearing, along with other matters referred to in this ruling by May 3, 2006.

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

It is ordered:

1. The Commission establishes Docket No. MC2006-4, Classification Changes for Express Mail Second Day Service to consider clarifying the DMCS language related to Second Day Express Mail service and other germane issues.
2. The Commission will sit en banc in this proceeding.
3. The deadline for filing notices of intervention is May 3, 2006.
4. Notices of intervention shall indicate the nature of the intervening party's participation in the case.
5. Participants are invited to submit comments on the Notice of Inquiry and the proposed DMCS change on or before May 3, 2006. Reply comments may be submitted on or before May 10, 2006.

6. Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, is designated to represent the interests of the general public.
7. The Secretary shall arrange for publication of this document in the *Federal Register*.

By the Commission

(SEAL)

Steven W. Williams
Secretary