

June 25, 1999

The Honorable William Henderson
Postmaster General
United States Postal Services
475 L'Enfant Plaza, SW
Washington, DC 20260-0001

Dear Postmaster Henderson:

By way of introduction, the Office of Advocacy of the U.S. Small Business Administration (SBA) was established by Congress under Pub. L. No. 94-305 to advocate the views of small business before federal agencies and Congress.

On March 25, 1999, the United States Postal Services published a final rule on Delivery of Mail to Commercial Mail Receiving Agencies (CMRA) in the Federal Register, Vol. 64, No. 57, p. 14385. USPS received a total of 8,107 comments. Of those comments, only 10 supported the rule. Over 8,000 commenters, many of whom were CMRA owners and customers, opposed the proposal.

Recently, the Office of Advocacy has received a number of inquiries from small businesses about the CMRA rulemaking. In response to the inquiries, the Office of Advocacy held a roundtable discussion on June 11, 1999 with teleconference access for participants outside of the Washington, DC metropolitan area. Although the USPS was invited to the meeting, it did not send any representatives. After speaking with the participants, Advocacy is concerned about the possible ramifications that the rule may have on small businesses and the general public.

The CMRA Industry & Its Customers

Over the last few years, there has been a significant amount of growth in home based businesses. According to Census' Characteristics of Business Owners Survey, conducted in 1996 and published in 1997 (and co-sponsored by the Office of Advocacy along with MBDA in Commerce), approximately 60 percent of the 17.2 million businesses in the Census universe (all firms that showed receipts of >\$500 in 1992 and filed a tax return) were home-based. Home based businesses will continue to grow because of the advances in technology and the rapid growth of the Internet. It bears emphasis that these are legitimate businesses. Some will remain small and stay in the home. Others will grow and move out to larger facilities.

With the emergence of home based businesses, special needs evolved. The CMRA industry developed to provide services to consumers and small businesses that were not available through the traditional postal system. Specifically, the industry fills a "niche" need that not only acts as a depository for mail but also:

- provides a secure environment for receiving and holding special types of mail such as certified, registered, C.O.D., express, and packages for customers away from home for extended periods;
- provides a business address for home-based businesses;
- provides a private mailbox location for persons who need to conceal their home address (ex. battered women, attorneys with violent clients, small businesses that trade expensive merchandise);
- retrieves and forwards mail from the mailbox upon the telephone request of the renter; and
- checks the mailbox and notifies the renter of its contents.

In addition to providing a business address, the CMRA offers the small office/home based business time saving one-stop services such as packing, shipping, copying, faxing, office supplies, and more. The CMRA provides a secure mailbox location that protects the anonymity of vulnerable adults such as senior citizens and battered women. In addition, a CMRA may also provide an address for transient, homeless persons who need an address in order to receive entitlement checks.

Small businesses, especially start up companies, have limited resources and can utilize the multiple services provided by a CMRA for a minimal cost. The cost savings can enhance their productivity and increase their chances of success.

The Requirements of USPS Rule on CMRAs

The rule, which went into effect on April 26, 1999, imposes a number of requirements on CMRA owners and their customers. Among other things, the rule requires:

- CMRA owners or managers and each addressee to complete and sign a PS Form 1583, Application for Delivery of Mail Through Agent. CMRA agents or managers are required to verify and to match information on an application for a private mailbox (PMB) with information provided.
- CMRA customers to provide their actual address on the completed PS FORM 1583 to USPS.
- CMRA owners to submit a quarterly report to USPS with the names of new customers, current customers, and customers terminated within the last 12 months.
- CMRA customers to use the abbreviation PMB in their addresses rather than other terms such as Suite, Unit, Apartment, etc.

CMRA owners had to submit completed PS Form 1583s to USPS by June 24, 1999. CMRA customers must comply with the requirement that their addresses have the PMB designation within 6 months of the effective date of the rule (i.e. by October 26, 1999).

Alleged Intent & Purpose of the New Rule

USPS asserts that the changes are necessary to prevent fraud because it will establish the true address identity of mail delivered to a CMRA. USPS also contends that not providing the sender with information that the address is a CMRA is misrepresentation i.e. the sender assumes that the mail is being delivered to an actual street address and not a private mailbox. It contends the misrepresentation of a mailing address is not in the best interest of and may cause irreparable harm to the sender.

USPS further asserts that the rule is necessary to assure that mail is delivered properly. It alleges that delivery to a mailbox facility interferes with the sorting process. Its automated system may not be able to process an address that has suite, apartment, or unit on it if the computer believes that it is a single dwelling. In the instances where the user states that it is a post office box, the system may send it to the local post office rather than the CMRA.

Office of Advocacy Concerns

Six Month Phase-In Period

The Office of Advocacy acknowledges and appreciates the fact that the USPS has given small businesses and other CMRA users a six month phase- in period, not part of the original proposed rule, to comply with the rule's requirements and to notify their customers of the new "PMB" address designation. The Office of Advocacy, however, has questions about whether the additional six months is sufficient for making the transition. There is a significant amount of cost involved in changing letterhead and other business materials to comply with the rule. Requiring a small business to make such an expenditure may be burdensome if it has recently invested in a shipment of business materials. Did USPS estimate the cost of changing the business materials and of notifying customers of the change in the address?

In addition to the quantifiable cost of new business materials, small business owners are also concerned about the potential loss of customers due to the automatic return of mail that does not have the necessary "PMB" designation in the address. Did USPS estimate the amount of revenue a small business may lose by USPS returning mail to customers who rely on outdated information obtained from the old business materials? What accommodations will the USPS allow for reliance on mailing address information on materials already in circulation/

There is legitimate concern that requiring home based businesses to use "PMB" in their addresses may unnecessarily stigmatize a legitimate home based business. Did USPS consider that the "PMB" designation may unfairly "stigmatize" a legitimate home based business and cause it harm?

USPS contends that the “PMB” designation is necessary to prevent fraud. Exactly how will the “PMB” designation deter or detect fraud? Is there documentation that the occurrence of fraud significantly is significantly greater at CMRA facilities than in the use of traditional post office boxes? Were other alternatives considered? USPS’s failure to raise and answer such questions invites cynicism about USPS’s true intent and whether USPS is using its monopoly power to eliminate competition.

The Office of Advocacy recognizes that USPS is an independent agency that is not bound by the Administrative Procedures Act (APA) and, therefore, is not bound by the requirements of the Regulatory Flexibility Act (RFA)¹. If it were, USPS would be required to determine whether a regulation has a significant economic impact on a substantial number of small entities. If the rule would have a significant economic impact, the agency would be required to prepare an economic analysis of the rule and consider alternatives that may be less burdensome to small businesses. *See*, 5 U.S.C. §§601-612. Although the RFA does not prevent an agency from implementing a rule, it does require that agencies be informed of and sensitive to the impacts that a particular rule may have on small entities.

USPS did publish the proposed rule for public comment. In doing so, the USPS could have benefited from the type of economic analysis and consideration of alternatives that is required by the RFA. Such an analysis would have encouraged a productive public dialogue on the issues raised by the proposal during the comment period. This might have led to mutually acceptable solution to the issues raised in the CMRA comments.

Although USPS is an independent entity, it does have public policy responsibilities to implement sound decisions. The Office of Advocacy, therefore, urges the USPS to reconsider its decision to finalize the CMRA rule and to give thoughtful consideration to possible alternatives that may satisfy the objectives of the rule without unnecessarily compromising the interests of small businesses and the general public welfare.

I would appreciate an opportunity to discuss this matter in greater detail. If you have any questions about this matter, please feel free to contact me at (202) 205-6533.

Sincerely,

¹ The Office of Advocacy is required by §612(a) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) to monitor agency compliance with the RFA. The Chief Counsel of Advocacy is authorized to appear as *amicus curiae* in regulatory appeals from final agency actions, and is allowed to present views with respect to compliance with the RFA, the adequacy of the rulemaking record with respect to small entities, and the effect of the rule on small entities. *Id.* On March 28, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act (SBREFA), Pub. L. 104-121, which made a number of significant changes to the RFA, the most significant being provisions to allow judicial review of agencies' compliance with the RFA. 5 U.S.C. § 611.

Jere W. Glover
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Office of Advocacy