

does not pertain to the proposed rulemaking in the **Federal Register** notice published on January 31, 1995; therefore, it is not appropriate for the Postal Service to address MATS in this notice.

One commenter stated that one postal official had previously expressed that proposed 39 CFR 501.13, which establishes the manufacturer's duty to report integrity weaknesses and design deficiencies, would apply only to security defects or weaknesses of design in a particular meter or model of postage meter. The commenter further suggested that the rule should not apply to information or knowledge received by a manufacturer relating to postage-meter tampering by a customer or to other potential security breaches unrelated to the design and operation of a postage meter.

The requirements for reporting security weaknesses and methods of meter tampering are directly related to the manipulation of the meter made possible because of design deficiencies. The manipulation of a meter in and of itself is evidence of a security weakness of the manufacturer's product. It is the manufacturer's obligation to report those incidents in which misuse occurs because someone can take advantage of such deficiencies. Additionally, the collection of this information will increase manufacturer's awareness of a problem with meter performance. The number of reported instances will help in determining the extent or seriousness of the situation.

One commenter noted that the standards in 39 CFR 501.13 do not provide sufficient clarity and due process regarding what needs to be reported.

The standards in 39 CFR 501.13 define the information that must be provided in general terms. If there is any doubt about information that must be reported, the Postal Service invites interested parties to submit requests for advisory opinions on an ad hoc basis.

The same commenter also stated that the standards in 39 CFR 501.14 and 501.23 lack sufficient clarity and ascertainable standards for imposing administrative sanctions.

The Postal Service sees no reason for including additional standards. The sanctions in these sections merely allocate the risk of loss entirely to the manufacturer only when the manufacturer fails to execute certain prescribed tasks. Once facts underlying the violation and costs and losses are proved, the manufacturer is held liable for costs and losses. Except as provided in these sections, no other factors are

considered, and thus no additional standards need be prescribed.

The same commenter also stated that 39 CFR 501.14 is arbitrary because it does not relate the sanction to losses actually caused by an alleged failure to report. The commenter suggested that the rule measure losses from the date when the defect should have been reported rather than the date of discovery.

The Postal Service does not agree. Sanctions are measured from the date when the manufacturer knows or should know information giving rise to the duty to report; hence, the measurement of damages and of duty to report are rationally related.

The commenter also stated that the proposed regulations would promote manufacturers' filing of numerous inconclusive reports to avoid liability. According to the commenter, such filings would place unnecessary strain on limited Postal Service resources and increase manufacturers' administrative costs. The commenter recommended that the Postal Service require manufacturers to report only those design deficiencies that, following testing, cause the manufacturer to conclude that a security threat exists.

The proposed regulations clearly articulate the manufacturer requirements for "preliminary" and "final" reporting. These requirements cover a substantial list of situations and occurrences relating to possible meter misuse. To limit reporting as the commenter suggested would undermine the ability of the manufacturers and the Postal Service to maintain control of the program. Although there might be some additional cost incurred by both parties, the risk of revenue losses would increase if the suggestion were adopted.

One commenter stated that the term "employees" should be deleted from the definition of manufacturer under 39 CFR 501.13(a). The definition of employee should be limited to the officers and those management employees of the manufacturer who have meter security responsibilities.

The Postal Service expects that each individual employed by a meter manufacturer is already charged with the responsibility to report meter security problems to the manufacturer's headquarters unit. To limit the definition as suggested would reduce the possible number of available sources of pertinent information. Field employees are important sources of information because they see meters in a live environment.

The commenter also suggested that the term "findings" should be deleted from 39 CFR 501.13(b)(1). Because

findings must be based on test results, the commenter believed that the term "findings" is unnecessary and will result in the filing of superfluous reports and in contributing to confusion about when the meter manufacturer's obligation to report arises.

The Postal Service does not accept the commenter's narrow reading of the term "findings," which refers to the discovery, awareness, determination, or perception of information relating to all meter activities. The term is not limited to those situations surrounding meter-testing results. Findings in the field are just as important as testing results because they enable on-site evaluations of meter performance and mailer practices.

One commenter believed that manufacturers should be required to file reports on security issues only when they concern common security design features present in meters approved for use in the United States. The commenter suggested that the scope of the rule be narrowed so that the manufacturer need only report information about meter security when a meter model in use in foreign jurisdictions is subsequently submitted to the Postal Service for approval.

The Postal Service does not agree; it must be apprised of problems relating to all postage meters of the authorized manufacturers, regardless of where the meters have been approved for distribution. Because all meters share many of the same components, a problem discovered in a foreign location may provide useful information about a meter approved for use in the United States.

B. Meter Manufacturers' Inspections

One commenter expressed concern about the meter security regulations proposed in 39 CFR 501.5 and 501.23. The commenter believed that high-volume and high-risk mailers are not clearly identified for increased meter inspections. The commenter recommended that the Postal Service identify these mailers by the Standard Industrial Codes for third-party mailers.

A high-volume mailer is defined as one who has annual metered postage exceeding \$12,000. Part B "Business Profile" of the license application (PS Form 3601-A) asks the applicant to report his or her annual estimated metered postage. The report is incremented to show usage exceeding \$12,000. This information can be used initially to identify high-volume mailers. Manufacturers may use the Standard Industrial Codes for third-party mailers, other codes as appropriate, and their own mailer