

By direction of the Commission,
Commissioner Ohlhausen dissenting.

Donald S. Clark,
Secretary.

Note: The following dissent will not appear in the Code of Federal Regulations.

Dissenting Statement of Commissioner Maureen K. Ohlhausen

I voted against the Commission's Final Revised Interpretations of the Magnuson-Moss Warranty Act (MMWA) Rule because it retains Rule 703.5(j)'s prohibition on pre-dispute mandatory binding arbitration.¹

Since the last Rule review in 1997, two federal appellate courts have held that the MMWA does not prohibit binding arbitration.² Noting the federal policy favoring arbitration expressed in the Federal Arbitration Act (FAA),³ these courts concluded that the MMWA's statutory language and legislative history did not overcome the presumption in favor of arbitration and that the purposes of the MMWA and the FAA were not in inherent conflict. The courts also declined to give the Commission's contrary interpretation *Chevron* deference.⁴ Although some lower courts have reached a different conclusion, there is no circuit court precedent upholding the Commission's interpretation of the MMWA in Rule 703.5(j). Additionally, in several recent cases, the Supreme Court has indicated a strong preference for arbitration.⁵

The courts have sent a clear signal that the Commission's position that MMWA prohibits binding arbitration is no longer supportable.⁶ When faced with such a signal, the Commission should not reaffirm the rule in question. I therefore respectfully dissent.

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¹ I do not object to the other final actions taken in this review.

² See *Walton v. Rose Mobile Homes, LLC*, 298 F.3d 470 (5th Cir. 2002); *Davis v. Southern Energy Homes, Inc.*, 305 F.3d 1268 (11th Cir. 2002).

³ 9 U.S.C. 1. See *Shearson/Am. Express Inc. v. McMahon*, 482 U.S. 220 (1987) (noting that the presumption of the FAA is that arbitration is preferable and Congress must clearly override that presumption if it is to be disregarded).

⁴ *Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (holding that courts defer to an agency's interpretation of a statute if "(1) Congress has not spoken directly to the issue; and (2) the agency's interpretation 'is based on a permissible construction of the statute'").

⁵ See, e.g., *Am. Express Co. v. Italian Colors Rest.*, 133 S. Ct. 2304 (2013), *AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740 (2011).

⁶ See *Davis*, 305 F.3d at 1280 ("[T]he FTC's interpretation of the MMWA is unreasonable, and we decline to defer to the FTC regulations of the MMWA regarding binding arbitration in written warranties.").

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 16

[Docket No. FDA-2015-N-0011]

Regulatory Hearing Before the Food and Drug Administration; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is updating an authority citation for the Code of Federal Regulations. This action is technical in nature and is intended to provide accuracy of the Agency's regulations.

DATES: This rule is effective July 20, 2015.

FOR FURTHER INFORMATION CONTACT:

Mary E. Kennelly, Office of Regulatory Affairs, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 4338, Silver Spring, MD 20993-0002, 240-402-9577, FDASIAImplementationORA@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In a previous rulemaking, the authority citation for 21 CFR part 16 was inadvertently altered to omit 28 U.S.C. 2112 and changed 21 U.S.C. 467f to 21 U.S.C. 467F. FDA is reversing those changes such that 28 U.S.C. 2112 and 21 U.S.C. 467f are included in the list of authority citations for 21 CFR part 16.

List of Subjects in 21 CFR Part 16

Administrative practice and procedure.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 16 is amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

■ 1. The authority citation for 21 CFR part 16 is revised to read as follows:

Authority: 15 U.S.C. 1451-1461; 21 U.S.C. 141-149, 321-394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201-262, 263b, 364.

Dated: July 15, 2015.

Leslie Kux,

Associate Commissioner for Policy.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3020

[Docket Nos. MC2010-21 and CP2010-36]

Update to Product Lists

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is updating the product lists. This action reflects a publication policy adopted by Commission order. The referenced policy assumes periodic updates. The updates are identified in the body of this document. The product lists, which is re-published in its entirety, includes these updates.

DATES: *Effective date:* July 20, 2015.

Applicability dates: March 31, 2015, Parcel Return Service Contract 6 (MC2015-41 and CP2015-53); April 8, 2015, Priority Mail Contract 121 (MC2015-43 and CP2015-54); April 8, 2015, Parcel Select Contract 9 (MC2015-44 and CP2015-55); April 8, 2015, Priority Mail & First-Class Package Service Contract 3 (MC2015-45 and CP2015-56); April 21, 2015, Priority Mail Express & Priority Mail Contract 17 (MC2015-47 and CP2015-58); April 21, 2015, Priority Mail Contract 122 (MC2015-46 and CP2015-57); May 1, 2015, Priority Mail & First-Class Package Service Contract 4 (MC2015-48 and CP2015-60); May 12, 2015, Priority Mail Express & Priority Mail Contract 18 (MC2015-49 and CP2015-61); May 27, 2015, Global Expedited Package Services Contracts Non-Published Rates 6 (MC2015-23 and CP2015-65); May 28, 2015, Parcel Return Service Contract 7 (MC2015-50 and CP2015-72); May 28, 2015, Parcel Return Service Contract 8 (MC2015-51 and CP2015-73); June 9, 2015, Priority Mail Contract 124 (MC2015-53 and CP2015-81); June 9, 2015, Priority Mail Contract 123 (MC2015-52 and CP2015-80); June 16, 2015, Priority Mail Contract 125 (MC2015-54 and CP2015-82).

FOR FURTHER INFORMATION CONTACT:

David A. Trissell, General Counsel, at 202-789-6800.

SUPPLEMENTARY INFORMATION: This document identifies updates to the product lists, which appear as 39 CFR Appendix A to Subpart A of Part 3020—Mail Classification Schedule. Publication of the updated product lists in the **Federal Register** is addressed in the Postal Accountability and Enhancement Act (PAEA) of 2006.

Authorization. The Commission process for periodic publication of updates was established in Docket Nos. MC2010-21 and CP2010-36, Order No. 445, April 22, 2010, at 8.