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POSTAL REGULATORY COMMISSION

39 CFR Part 3001

[Docket No. RM2016-6; Order No. 3048]

Procedures Related to Motions

AGENCY: Postal Regulatory Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission is proposing rules which standardize the procedure and timeframe by which interested parties file motions with the Commission as they relate to mail preparation changes and their compliance with the price cap rules. The Commission invites public comment on the proposed rules.

DATES: *Comments are due: [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Reply comments are due: [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].*

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission initiates this proposed rulemaking to request comments on a procedural rule for motions concerning mail preparation changes that require compliance with the price cap rules.

The primary purpose of the rulemaking is to ensure that the Postal Service properly accounts for the rate effects of mail preparation changes under § 3010.23(d)(2) of this chapter in accordance with the Commission’s standard articulated in Order No. 3047.¹ The proposed rule is intended to standardize the procedure and timeframe by which interested parties must file a motion with the Commission when they contend that a mail preparation change has a rate effect requiring compliance with the price cap rules.

II. Background

In Docket No. R2013-10R, the Commission issued Order No. 3047 and articulated a clear standard to determine when mail preparation changes require compliance with § 3010.23(d)(2). *Id.* Under § 3010.23(d)(2), a mail preparation change has a rate effect when the change results in the deletion and/or redefinition of a rate cell. *Id.* at 15. The Postal Service is required to comply with § 3010.23(d)(2) where the mail preparation change results in either the deletion of a previously available rate or significantly changes the basic characteristic of the mailing so that the rate cell is effectively “redefined.” *Id.* at 16. The

¹ Docket No. R2013-10R, Order Resolving Issues on Remand, January 22, 2016 (Order No. 3047).

Commission determined that the Postal Service has an affirmative burden to decide whether a mail preparation change requires compliance with the price cap rules as set forth under the Commission's standard. *Id.* at 20. Where the Postal Service determines that a mail preparation change has a rate effect, it must comply with the existing rules and procedures governing rate adjustments prior to implementing the change.

However, despite this affirmative burden, the possibility exists that the Postal Service may not recognize or account for all mail preparation changes that have rate effects. In that case, the current regulations do not provide a specific mechanism or timeframe by which interested parties can alert the Commission to mail preparation changes that they conclude have rate effects requiring compliance with § 3010.23(d)(2). Although the Commission's general motion rules would provide an avenue for motions concerning mail preparation changes, the rules do not set a timeframe by which motions must be made and the Commission believes the proposed rule is better suited to handle the specific issue at hand. In light of the complexity of administering the price cap, the timeframe set forth in the proposed rule is intended to promote certainty for the Postal Service and users of the mail when making operational changes.

In Order No. 3047 setting forth the standard, the Commission indicated that it would propose procedures whereby interested parties could submit motions concerning mail preparation changes that have rate effects. As a result, the proposed rule is intended to clarify and streamline the process by which mail

preparation changes that have rate effects may be reviewed by the Commission for compliance with the price cap rules.

III. Proposed Rule

The rule proposed in this notice of proposed rulemaking adds to the current § 3001.21. Proposed § 3001.21(d) requires interested parties to file a motion with the Commission upon actual or constructive notice of a mail preparation change that has a rate effect requiring compliance with § 3010.23(d)(2). This proposed section establishes a 30-day timeframe within which interested parties may file a motion concerning a mail preparation change, after which the Commission will either institute a proceeding or consider the motion within an ongoing matter.

The Commission proposes permitting interested parties to file a motion concerning a mail preparation change if the parties, in good faith, demonstrate that the change has a rate effect and requires compliance with the price cap rules. The proposed procedure is triggered by actual or constructive notice of the mail preparation change. Actual or constructive notice will occur when an interested party becomes aware of or should have reasonably become aware of the mail preparation change. The Commission intends for actual or constructive notice to occur when the Postal Service publishes written notice of the implementation of the mail preparation change. For example, the Postal Service commonly publishes notice of mail preparation changes in the **Federal Register**, Postal Bulletin, and on the RIBBS website.

The proposed procedure also ties notice to the “implementation date of the change.” The Commission intends this provision to cover changes where the Postal Service either immediately implements a mail preparation change or provides published notice that it intends to implement a mail preparation change on a date certain. For example, the Postal Service routinely implements mail preparation changes at the same time notice of the change is provided to the mailer. It is at this time the 30-day clock to file a motion with the Commission would be triggered. Alternatively, when the Postal Service publishes notice of a mail preparation change that it intends to implement on a date certain in the future, the 30-day clock would be triggered upon notice of the implementation date, not from the actual date of implementation.

The Full Service IMb change serves as an example of how the proposed 30-day timeframe would work. The Full Service IMb change was published as a revision to the Postal Service’s Domestic Mail Manual and set forth in a **Federal Register** notice on April 18, 2013.² In the Notice, the Postal Service indicated it planned to implement this change to the IMb requirements beginning on January 26, 2014. *Id.* Accordingly, under the Commission’s proposed rule, mailers would be required to file a motion with the Commission within 30 days of the Notice (by May 20, 2013, allowing for a Monday filing), not within 30 days of the January 26, 2014 implementation date.

² 78 FR 23137 (April18, 2013) (Notice).

The proposed procedure is intended to provide a reasonable but definite timeframe by which interested parties may challenge a mail preparation change where the Postal Service has failed to indicate that it would be subject to the price cap rules. The Commission intends for the proposed rule to encourage the Postal Service to affirmatively designate only those changes that require compliance with § 3010.23(d)(2). For example, in a **Federal Register** notice implementing a mail preparation change that implicated the price cap, the Postal Service would confirm that the change would be subject to the price cap. For a change that does not implicate the price cap, the **Federal Register** notice would be silent and the absence of such a designation will inform mailers that the Postal Service does not recognize this change as requiring price cap compliance.

The procedure is also intended to allow the Postal Service to implement mail preparation changes with limited disruption. The proposed rule is not intended to stay implementation of any mail preparation change required by the Postal Service, rather it is intended to set forth a reasonable timeframe by which users of the mail may file a motion with the Commission where such mail preparation changes may have rate effects. The proposed rule does not change the Postal Service's burden to first determine whether the mail preparation change has a rate effect under the Commission's standard articulated in Order No. 3047. The proposed rule also does not change the Postal Service's obligation to comply with the rules regarding the price cap, which require the Postal Service to adjust for the effects of mail preparation changes that result in

the introduction, deletion, or redefinition of a rate cell. Rather, the proposed rule provides an avenue for interested parties to raise the possibility that the Postal Service may have erred by failing to account for the price cap impact of a mail preparation change.

IV. Comments Requested

Interested persons are invited to provide written comments concerning the proposed rule. Comments are due no later than 30 days after the date of publication of this notice in the **Federal Register**. All comments and suggestions received will be available for review on the Commission's Web site, <http://www.prc.gov>.

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

IV. Ordering Paragraphs

It is ordered:

1. Docket No. RM2016-6 is established for the purpose of receiving comments on the proposed change to part 3001, as discussed in this Order.
2. Interested persons may submit comments no later than 30 days from the date of the publication of this notice in the **Federal Register**.
3. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as the Public Representative in this proceeding.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Stacy L. Ruble,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

Part 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation of part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

2. Amend § 3001.21 by adding paragraph (d) to read as follows:

§ 3001.21 Motions

* * * * *

(d) *Motions concerning mail preparation changes.* Motions regarding mail preparation changes are challenges to instances where an announced mail preparation change does not contain a Postal Service indication that the change has a rate effect requiring compliance with § 3010.23(d)(2) of this chapter.

Motions may be filed by any interested party and shall set forth with particularity the mail preparation change at issue and the grounds by which the mail preparation change must comply with § 3010.23(d)(2) of this chapter. Motions concerning mail preparation changes must be filed at least 30 days after a party has actual or constructive notice of the implementation date of the change.

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