

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

Before Commissioners: George Omas, Chairman;
Dana B. Covington, Sr., Vice Chairman;
Ruth Y. Goldway; and Tony Hammond

Notice and Service in Expedited Dockets

Docket No. RM2003-4

NOTICE AND ORDER REVISING THE COMMISSION'S
RULES OF PRACTICE FOR EXPEDITED DOCKETS TO
REFLECT NEW FILING ONLINE PROCEDURES

(Issued March 7, 2003)

On October 21, 2002, the Commission issued Order No. 1349 amending its rules of practice. This Order made submitting documents via the Internet using the Commission's Filing Online system the standard method for filing documents in Commission proceedings. The effective date of the new filing system was January 7, 2003.

The Commission's rules of practice provide expedited procedures for considering Postal Service Requests for a recommended decision on certain, narrowly defined changes to postal rates, classifications, or terms of service. Currently, the Commission has four sets of rules authorizing expedited proceedings that seek to achieve expedition, in part, through special accelerated notice, service, intervention, or discovery procedures. They were adopted before Filing Online became the standard procedure for filing and serving documents in formal Commission dockets. Filing Online now provides a faster and more effective means for performing most of these functions. The Commission is eliminating or simplifying these special procedures, as appropriate, wherever standard Filing Online procedures provide a faster and more effective alternative.

In 1989, the Postal Service proposed, and the Commission adopted, a set of special rules for processing “Express Mail Market Response Rate” requests. See Order No. 836, issued August 10, 1989, and 39 CFR §§ 3001.57-60. They are designed to allow such requests to be processed within 90 days of filing. 39 CFR § 3001.60. To help speed the processing of such requests, existing Rule 59(c)(1) authorizes persons wishing to participate in such a proceeding to register their name and business address with the Commission. Registrants are automatically made parties to a Market Response Rate proceeding at the time that the Request is filed. Existing Rule 59(c)(2) requires the Postal Service to hand deliver a copy of its Request on the day that it is filed to Registrants who maintain a service address in the Washington metropolitan area, and to serve other Registrants with a copy by Express Mail. Rule 59(c)(3) requires the Postal Service to send by Express Mail to all participants in the most recent omnibus rate case, a notice briefly describing its Market Response Rate Request, the special rules under which it was filed, and advising them of the deadline for intervention.

This registration and notification scheme provides a model for three other sets of rules authorizing expedited proceedings. Almost identical provisions are included in the set of rules for processing “expedited minor classification cases” [see 39 CFR § 3001.69b(b),(c), and (d)], the rules for “expedited review to allow market tests of proposed mail classification changes” [see 39 CFR § 3001.163 (b), (c), and (d)], and the rules for “expedited review of requests for Provisional Service Changes of Limited Duration” [see 39 CFR § 3001.173(b),(c), and (d)].

For each of these four sets of rules, the purpose of these special notice, intervention, and service procedures was to accelerate the processing of these requests. The Commission’s Filing Online system and related electronic document handling procedures can now serve this purpose more quickly and more effectively.

Under the Commission’s electronic document handling procedures, there is no longer a need to maintain a list of registrants who are entitled to receive a hard copy of a Postal Service Request of one of these special types promptly after it is filed. On the Commission’s website, an interested person may define a “Document Alert” rule that

will result in notice from the Commission by e-mail when the Postal Service files a Request to institute a proceeding of any kind, expedited or otherwise. That person should be able to download the Request from the Commission's website within 30 minutes of the time that the Request was accepted for filing by the Commission. This is earlier than the person would have received hard copy delivery of the Request from the Postal Service. Because Requests under these expedited rules are expected to be much smaller and simpler documents than omnibus rate Requests, downloading them from the Commission's website is unlikely to strain the computing resources of any interested person. Under the Commission's electronic document handling procedures, therefore, the opportunity to register to promptly receive a hard copy of a Request in an expedited proceeding does not provide an additional benefit of any significance to interested persons.

As noted above, the existing registration scheme includes a provision that automatically makes a person on the register an intervenor in any docket that the Postal Service institutes under these various sets of expedited procedures. The only rationale for this procedure that can be inferred from the administrative history of this rule is that this reduces the delay involved in intervening. For example, there was no thought that registrants should be required to intervene and respond to discovery as a condition of registration, since they were allowed to withdraw as intervenors at any time. See Memorandum of United States Postal Service in Response to Presiding Officer's Ruling No. RM88-2/1 at 7. As a means of accelerating intervention, registration is now obsolete. Under Filing Online, persons interested in intervening may accomplish this almost instantaneously by filing a notice of intervention under a temporary account. See 39 CFR § 3001.9(e).

Accordingly, under the revised rules adopted in this Order, the provisions found in these four sets of expedited docket rules that contemplate delivery of hardcopy Requests to a list of registrants and their automatic intervention will be deleted.

As noted above, these four sets of expedited procedures currently require the Postal Service to mail a notice to all participants in the most recent omnibus rate case

that briefly describes its Request, the special rules under which it was filed, and alerts them of the deadline for intervention. This function is also one that can be performed faster and more effectively under the Commission's electronic document handling system. Under the revised rules adopted in this Order, the Postal Service must still prepare a notice summarizing its Request to institute an expedited docket. Rather than mailing it to all participants in the most recent omnibus rate case, however, the Postal Service will be required only to file that notice online. The Commission will then post the notice on its Daily Listing Page of its website, where the public may view it and download it immediately. This will provide those actively monitoring the Daily Listing Page with notice that a Request to institute an expedited docket has been filed, and will provide it earlier than under the current notice procedure.

The Commission's electronic document handling system can also provide notice to those who do not actively monitor its website. An important part of that system is the "Document Alert" feature. As discussed above, it allows a person to choose a notification rule that will result in an e-mail from the Commission when the Postal Service files a Request to institute a Commission proceeding of any kind, including an expedited proceeding. Using the "Document Alert" function, an interested person will receive immediate notice of the filing of such a Request. The Daily Listing page can then be accessed to view and download either the notice summarizing the Request, or the Request itself, depending on the person's degree of interest. This electronic notice will be both earlier, and more effective, than receiving a hard copy notice in the mail.

The Commission will soon mail to every person that participated in the most recent omnibus rate case (Docket No. R2001-1) a letter that will specifically describe this use of the "Document Alert" function, and will include a Filing Online User Guide that explains how to take advantage of it.

The implementation of Filing Online makes an additional revision of the rules governing Express Mail Market Response Rate requests appropriate. In order to accelerate motion practice, existing Rule 59(e)(4) provides that objections to discovery requests made in such proceedings be made within 10 days of the discovery request,

and served “by hand, facsimile, or expedited delivery.” There is no comparable provision in the other three sets of expedited procedures addressed by this Order. Since filing objections online will provide a faster way to communicate them to the questioning party, these special service requirements will be deleted from Rule 59(e)(4).

The minor revisions made in this Order to these four sets of expedited procedures conform their filing and service provisions to the general Filing Online rules. They do so while preserving or increasing the expedition that they were originally designed to provide. Since these changes are not prejudicial to the interests of any prospective participants in Commission proceedings, the Commission considers it appropriate to make these revision without first issuing a Notice of Proposed Rulemaking.

It is ordered:

1. The revisions to §§ 59(c) and (e)(4); §§ 69b(b) through (d); §§ 163(b) through (d); and §§ 173(b) through (d) of the Commission’s rules of practice, as set forth in the attachment to this Order, shall take effect 30 days from their publication in the Federal Register.
2. The Secretary shall cause this Order to be published in the Federal Register.

By the Commission
(SEAL)

Steven W. Williams
Secretary

Subpart B Rules Applicable to Requests for Changes in Rates or Fees

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§ 3001.59 Market Response Rate Requests — expedition of public notice and procedural schedule.

(a) * * *

(b) * * *

(c)(l) Persons who are interested in participating in Express Mail Market Response Rate Request cases may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.60. Parties may withdraw from a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60 it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60, it shall on that same day file a notice that briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.60, and identify the last day for filing a notice of intervention with the Commission.

(d) * * *

(e) * * *

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be filed within 10 days in the form of a Motion to Excuse from Answering. Responses to Motions to Excuse from Answering must be filed within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

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Subpart C Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

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§ 3001.69b Expedited minor classification cases — expedition of procedural schedule.

(a) * * *

(b) Persons who are interested in participating in proceedings to consider Postal Service requests for minor changes in mail classification may intervene pursuant to § 3001.20. Parties may withdraw from a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of §§ 3001.69 through .69c, it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(d) When the Postal Service files a request under the provisions of §§ 3001.69 through .69c, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a request for a minor change in mail classification to be considered under §§ 3001.69 through .69c, and identify the last day for filing a notice of intervention with the Commission.

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Subpart I Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes

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§ 3001.163 Procedures — expedition of public notice and procedural schedule.

(a) * * *

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to conduct a market test may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a Market Test Request to be considered under §§ 3001.161 through .166, and identify the last day for filing a notice of intervention with the Commission.

Subpart J Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration

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§ 3001.173 Procedures — expedition of public notice and procedural schedule.

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(a) * * *

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to establish a provisional service may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of a Request for Establishment of a Provisional Service to be considered under §§ 3001.171 through .176, and identify the last day for filing a notice of intervention with the Commission.