

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

Before Commissioners:

Dan G. Blair, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Tony L. Hammond

Amendment to Rules of Practice and Procedure

Docket No. RM2009-4

ORDER ELIMINATING OBSOLETE RULES OF PRACTICE

(Issued May 11, 2009)

I. BACKGROUND

This final rule amends part 3001 of the Postal Regulatory Commission's rules of practice and procedure, 39 CFR part 3001, by removing subparts B, C, F, G, I, J, K, and L. As explained below, these rules have been rendered obsolete by the passage of the Postal Accountability and Enhancement Act (PAEA), Public Law No. 109-435, 120 Stat. 3218 (2006).

The PAEA transformed the Postal Rate Commission into the Postal Regulatory Commission (Commission); repealed several key sections of title 39 of the United States Code; and added a number of new statutory provisions to title 39. The result was a major change in the Commission's regulatory responsibilities and authorities. In response to the changes made by the PAEA, the Commission, on October 29, 2007, established a new system of ratemaking which was markedly different from the prior

regulatory regime. Docket No. RM2007-1, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2009 (Order No. 43).

Because of changes made by the PAEA and Order No. 43, subparts B, C, F, G, I, J, K, and L of part 3001 of the Commission's rules of practice are obsolete and are being removed to avoid uncertainty and confusion.

II. DISCUSSION

A. 39 CFR Part 3001, Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

Part 3001, subpart B, was adopted in 1971 and covered requests by the Postal Service for the issuance of recommended decisions by the Postal Rate Commission on proposed changes in rates and fees. 36 FR 396 (January 12, 1971). Subpart B implemented section 3622 of the Postal Reorganization Act (PRA). Section 201(a) of the PAEA struck PRA sections 3621 and 3622 from title 39 of the United States Code and replaced those two sections with the following new sections: sections 3621 and 3622 (applicable to market dominant products) and sections 3631 through 3634 (applicable to competitive products).

To implement these statutory changes, the Commission, in Order No. 43, promulgated new regulations as parts 3010 and 3015. Those latter parts now govern rate changes for market dominant and competitive products, respectively.

The repeal of 39 U.S.C. 3621 and 3622; the addition of new sections 3621, 3622, and 3631 through 3634 to title 39; and the adoption of parts 3010 and 3015 to the Commission's rules of practice and procedure have, together, rendered subpart B of part 3001 obsolete. Accordingly, the Commission is removing subpart B.

- B. 39 CFR Part 3001 Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule; Subpart I—Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes; Subpart J—Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration; and Subpart K—Rules for Use of Multi-Year Test Periods

Subparts C, I, J, and K of part 3001 of the Commission's rules of practice and procedure cover requests for establishing or changing the Mail Classification Schedule (MCS); requests for expedited review of market tests of proposed mail classification changes; requests for expedited review of proposed provisional service changes of limited duration that will supplement, but not alter, existing mail classifications and rates; and requests for multi-year test periods for proposed services. All four of these subparts implemented PRA section 3623, which dealt with the establishment and modification of the MCS. Subpart C was originally adopted in 1971. 36 FR 396 (January 12, 1971). Subpart C was amended, and subparts I, J, and K were adopted by Order No. 1110 issued by the Postal Rate Commission on May 7, 1996. 61 FR 24447 (May 15, 1996).¹

Section 201(b) of the PAEA repealed PRA section 3623. On October 29, 2007, the Commission established a new MCS that categorized products as either market dominant or competitive. The Commission viewed the new MCS as a "vehicle for presenting the product lists with necessary descriptive content." Order No. 43, at 101, *citing* Docket No. RM2007-1, Order Proposing Regulations to Establish a System of Ratemaking, August 15, 2007, ¶ 4003 (Order No. 26). The authority to establish a new MCS was derived from the Commission's power under 39 U.S.C. 3642 to consider modifications to the market dominant and competitive product lists. See Order No. 26,

¹ These subparts were initially subject to a sunset provision and expired on May 15, 2001. On September 24, 2001, the Postal Rate Commission reissued each of the three subparts for an additional five years. Docket No. RM2001-3, Notice and Order Adopting Final Rule, September 24, 2001; 66 FR 54436 (October 29, 2001). On November 8, 2006, the Postal Rate Commission again reissued these three subparts for an additional five years. See Docket No. RM2006-1, Order Adopting Amendments to the Rules of Practice and Procedure, November 8, 2006; 71 FR 66675 (November 16, 2006).

¶ 4001. Regulations governing the market dominant and competitive product lists are contained in part 3020 of the Commission's rules.

The repeal of 39 U.S.C. 3623; the enactment by the PAEA of 39 U.S.C. 3642; and the adoption of the new MCS by Order No. 43 have rendered subparts C, I, J, and K of part 3001 of the rules of practice and procedure obsolete. Accordingly, the Commission is removing those subparts.

C. Subpart F—Rules Applicable to the Filing of Testimony by Intervenors

Subpart F of part 3001 was originally adopted in 1973 and provides rules for the filing by intervenors of relevant and material evidence in rate and classification proceedings. 38 FR 7536 (March 22, 1973).

The enactment of the PAEA and the adoption of regulations governing rate and classification changes in parts 3010, 3015, and 3020 render subpart F of part 3001 obsolete. Unless otherwise ordered by the Commission or a Presiding Officer, evidence can be filed in a Commission proceeding pursuant to rule 31 in subpart A to part 3001.

D. Subpart G—Rules Applicable to the Filing of Reports by the U.S. Postal Service

PRC Order No. 203, Docket No. RM2008-4, April 16, 2009, adopted new periodic reporting rules and placed those rules in a new part 3050. That same order removed rules 3001.102 and 3001.103 from subpart G of part 3001. Through inadvertence, rule 3001.101, the sole remaining rule in subpart G, was left unaffected. Since rule 3001.101 serves no remaining purpose, subpart G is being removed.

E. Subpart L—Rules Applicable to Negotiated Service Agreements

Subpart L of part 3001 was adopted by the Postal Rate Commission during 2004 and provided rules for negotiated service agreements. 69 FR 7574 (February 18, 2004). Subpart L implemented PRA sections 3622 and 3623.

In addition to repealing sections 3622 and 3623, the PAEA enacted a new section 3622 to title 39. Section 3622(c)(10) provides the current basis for market dominant negotiated service agreements. New part 3010 adopted by Order No. 43 includes a new subpart D containing rules for rate adjustments for market dominant negotiated service agreements.

The repeal of 39 U.S.C. sections 3622 and 3623; the enactment by the PAEA of a new section 3622 to title 39; and the adoption of the new subpart D to part 3001 have rendered subpart L of part 3001 obsolete. Accordingly, the Commission is removing subpart L.

III. EFFECTIVE DATE

Notice and comment are not required under the Administrative Procedure Act (APA) when a rulemaking involves “interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice[.]” 5 U.S.C. 553(b)(A). The elimination of subparts B, C, F, G, I, J, K, and L of part 3001 of the Commission’s rules of practice and procedure therefore does not require notice and the opportunity for public comment.

Generally, a rule becomes effective not less than 30 days after publication in the *Federal Register*. A rule may become effective sooner if it is an interpretative rule, a statement of policy, or if the agency finds good cause to make it effective sooner. 5 U.S.C. 553(d). Since the statutory bases for the rules of practice being eliminated have been repealed and since new rules reflecting the current statutory scheme have been adopted, the Commission finds that good cause exists to make the rule promulgated by this Order effective upon its publication in the *Federal Register*.

IV. CONCLUSION

In consideration of the foregoing, the Commission removes subparts B, C, F, G, I, J, K, and L of part 3001 of its rules of practice and procedure.

It is Ordered:

1. Subpart 3001, subparts B, C, F, G, I, J, K, and L are hereby removed from the Commission's rules of practice and procedure.
2. Removal of the subparts referred to in paragraph 1 is effective upon publication of this Order in the *Federal Register*.
3. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Steven W. Williams
Secretary