

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Rules Pursuant to 39 U.S.C. 404a )

Docket No. RM2013-4

**VALPAK DIRECT MARKETING SYSTEMS, INC. AND  
VALPAK DEALERS' ASSOCIATION, INC.  
INITIAL COMMENTS ON NOTICE OF  
PROPOSED RULEMAKING  
(July 29, 2013)**

On June 5, 2013, the Commission issued Order No. 1739, "Notice of Proposed Rulemaking Establishing Rules Pursuant to 39 U.S.C. 404a." The Order set July 29, 2013 as the deadline for comments and set August 28, 2013 as the deadline for reply comments. *See 78 Fed. Reg. 35826* (June 14, 2013). Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. ("Valpak") jointly submit the following initial comments.

**COMMENTS**

The proposed regulations would establish an innovative optional procedure to accelerate resolution of complaints brought under section 404a where the complainant chooses to elect that procedure. *See* proposed Part 3033. The Commission recognizes that such a procedure can "place additional burdens and due process limitations" on a complainant as distinguished from the traditional procedures, yet it continues to allow the traditional procedures in such cases that require the discovery process and other types of due process that may be necessary for the adjudication of the claims.

Subject to the comments set out below, Valpak agrees with the Commission:

that the additional burdens on the participants for complaints filed under the proposed accelerated procedures, while real, are justified and outweighed by the significant benefits of bringing the important issues raised in section 404a

complaints to a prompt, potentially less costly resolution. [Order No. 1739, p. 13.]

**I. The Accelerated Procedures for 404a Complaints May Be Suitable for All Complaints.**

The Commission describes the accelerated process as one “tailored to the specific circumstances of complaints alleging violations of the prohibited actions specified in section 404a” (Order No. 1739, p. 11), and prohibits any accelerated case from including claims arising under any other statute or regulation. *See* proposed section 3033.1(b). However, the Commission does not explain why such a process would be uniquely suited to 404a claims and not suited to non-404a claims.

With the additional burdens and due process limitations being primarily borne by the complainant, the Commission should consider extending the accelerated process to all complaint cases where the complainant is “in possession of the information and documents necessary to show” the Postal Service’s allegedly wrongful action. The benefits of having certainty and speedy resolution of complaints can exist in other non-404a cases. Order No. 1739 states that the policy guidance behind the accelerated process is based on “[t]he Commission’s experience with the GameFly complaint and others.” Although none of the previous complaints involved section 404a claims, if the rules are truly designed to “accelerate resolution of complaints while still providing appropriate due process” (*id.*, p. 10), then all complaints could stand to benefit from these processes.

Lastly, if expedited procedures were not made available for all complaints, where a complaint is based on 404a claims as well as non-404a claims, the complainant would be

required to choose either to waive the other claims (*see* Order No. 1739, p. 18 n.12) or to forgo the accelerated process and use the process under Part 3030 (*see id.*, p. 18).

## II. The Accelerated Procedures Unwisely Limit Input to the Commission.

The proposed accelerated procedures provide for participation by “interested persons who can demonstrate that intervention **is necessary** to protect their interests and that they be **directly impacted** by a decision on the merits.” Order No. 1739, p. 21 (emphasis added); *see also* proposed section 3033.11(a). Such interested persons must file a motion within 10 days of the answer being filed, and the motion must contain the basis for the claim to intervene and attach the person’s full statement of their entire argument (limited to addressing the complaint and answer). *See* proposed rule 3033.11(b)-(e). Further, the proposed rules implicitly eliminate the opportunity for comment provided in all other cases by eliminating the applicability of Rule 3001.20b. *See* proposed rule 3033.1(d).

The Commission seeks to establish a high bar for mailers to simply provide some written input to the Commission. A mailer could have an important interest that is being “indirectly” impacted rather than “directly” impacted. It is impossible for the Commission to evaluate whether comments are truly “necessary” to that mailer. Moreover, complaint cases of any kind can raise important issues and result in Commission decisions which set precedents that affect other mailers at a later time. Mailers and other interested persons should be allowed to provide input that they believe will be helpful to the Commission in resolving the complaint, particularly involving the interpretation of statutes.

It does not take an inordinate amount of time for the Commission to read some mailer comments. If the comments are helpful in reaching a proper decision, that is good for all. If

they are extraneous, they can be disregarded. Even without rules to reduce mailer comment, the proposed accelerated timeline should adequately serve the Commission's stated purpose that "the Commission and the parties will not have to spend time and resources responding to [those who] attempt to change its focus." Order No. 1739, pp. 21-22.

Respectfully submitted,

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