

(2) A *pre-1972 sound recording* is a sound recording fixed before February 15, 1972.

(c) *Form and submission.* A rights owner seeking to comply with 17 U.S.C. 1401(f)(5)(A) must submit a schedule listing the owner's pre-1972 sound recordings using an appropriate form provided by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. The Office may reject any submission that fails to comply with these requirements.

(d) *Content.* A schedule of pre-1972 sound recordings shall contain the following:

(1) For each sound recording listed, the right's owner name, sound recording title, and featured artist;

(2) A certification that the individual submitting the schedule of pre-1972 sound recordings has appropriate authority to submit the schedule and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith.

(3) For each sound recording listed, the rights owner may opt to include additional information as permitted and in the format specified by the Office's form or instructions, such as publication date, or alternate title information.

(e) *Transfer of rights ownership.* If ownership of a pre-1972 sound recording changes after its inclusion in a schedule filed with the Office under this section, the Office will consider the schedule to be effective as to any successor in interest. A successor in interest may, but is not required, to file a new schedule under this section.

(f) *Legal sufficiency of schedules.* The Copyright Office does not review schedules submitted under paragraph (c) of this section for legal sufficiency, interpret their content, or screen them for errors or discrepancies. The Office's review is limited to whether the procedural requirements established by the Office (including payment of the proper filing fee) have been met. Rights owners are therefore cautioned to review and scrutinize schedules to assure their legal sufficiency before submitting them to the Office.

(g) *Filing date.* The date of filing of a schedule of pre-1972 sound recordings is the date when a proper submission, including the prescribed fee, is received in the Copyright Office. The filing date may not necessarily be the same date that the schedule, for purposes of 17 U.S.C. 1401(f)(5)(A)(i)(II), is indexed into the Office's public records.

(h) *Fee.* The filing fee to submit a schedule of pre-1972 sound recordings pursuant to this section is prescribed in § 201.3(c).

(i) *Third-party notification.* A person may request timely notification of filings made under this section by following the instructions provided by the Copyright Office on its website.

■ 5. Add § 201.36 to read as follows:

§ 201.36 Notices of contact information for transmitting entities publicly performing pre-1972 sound recordings.

(a) *General.* This section prescribes the rules under which transmitting entities may file contact information with the Copyright Office pursuant to 17 U.S.C. 1401(f)(5)(B).

(b) *Definitions.* For purposes of this section:

(1) Unless otherwise specified, the terms used have the meanings set forth in 17 U.S.C. 1401.

(2) A *pre-1972 sound recording* is a sound recording fixed before February 15, 1972.

(3) A *transmitting entity* is an entity that, as of October 11, 2018, publicly performs pre-1972 sound recordings by means of digital audio transmission.

(c) *Form and submission.* A transmitting entity seeking to comply with 17 U.S.C. 1401(f)(5)(B) must submit contact information using an appropriate form specified by the Copyright Office on its website and following the instructions for completion and submission provided on the Office's website or the form itself. The Office may reject any submission that fails to comply with these requirements. No notice or amended notice received after April 9, 2019 will be accepted by the Office.

(d) *Content.* A notice submitted under paragraph (c) of this section shall contain the following, in addition to any other information required on the Office's form or website:

(1) The full legal name, email address, and physical street address of the transmitting entity to which rights owners should send notifications of claimed violations of 17 U.S.C. 1401(a). A post office box may not be substituted for the street address of a transmitting entity. Related or affiliated transmitting entities that are separate legal entities (*e.g.*, corporate parents and subsidiaries) are considered separate transmitting entities, and each must file its own separate notice of contact information.

(2) The website(s) and/or application(s) through which the transmitting entity publicly performs pre-1972 sound recordings by means of digital audio transmission.

(3) A certification that the transmitting entity was publicly performing pre-1972 sound recordings by means of digital audio transmission as of October 11, 2018.

(4) A certification that the individual submitting the notice has appropriate authority to submit the notice and that all information submitted to the Office is true, accurate, and complete to the best of the individual's knowledge, information, and belief, and is made in good faith.

(5) The transmitting entity may opt to include alternate names for which the transmitting entity seeks application of 17 U.S.C. 1401(f)(5)(B)(iii), such as names that the public would be likely to use to search for the transmitting entity in the Copyright Office's online directory of transmitting entities publicly performing pre-1972 sound recordings by means of digital audio transmission, including names under which the transmitting entity is doing business and other commonly used names. Separate legal entities are not considered alternate names.

(e) *Fee.* The filing fee to submit a notice of contact information pursuant to this section is prescribed in § 201.3(c).

Dated: October 11, 2018.

Karyn A. Temple,

Acting Register of Copyrights and Director of the U.S. Copyright Office.

Approved by:

Carla D. Hayden,

Librarian of Congress.

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POSTAL REGULATORY COMMISSION

39 CFR Part 3010

[Docket No. RM2016-6; Order No. 4850]

Mail Preparation Changes

AGENCY: Postal Regulatory Commission.
ACTION: Final rule.

SUMMARY: The Commission adopts a final rule concerning mail preparation changes. The rule as adopted removes reference to procedures relying on the existence of a substantive standard for mail preparation changes in response to the recent decision in *United States Postal Serv. v. Postal Reg. Comm'n*, 886 F.3d 1253 (D.C. Cir. 2018).

DATES: Effective November 15, 2018.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

In this Order, the Commission adopts a final rule concerning mail preparation changes. The final rule partially rescinds an existing Commission rule and is located at 39 CFR part 3010. The rule as adopted removes reference to procedures relying on the existence of a substantive standard for mail preparation changes in response to the recent decision in *United States Postal Serv. v. Postal Reg. Comm'n*, 886 F.3d 1253 (D.C. Cir. 2018).

II. Background

In Order No. 3047, the Commission developed a substantive standard to determine when a mail preparation change would constitute a “change in rates” under 39 U.S.C. 3622.¹ The standard established by the Commission in Order No. 3047 provided that mail preparation changes could have rate effects when they resulted in the deletion or redefinition of a rate cell as set forth by § 3010.23(d)(2).

In conjunction with Order No. 3047, the Commission initiated a rulemaking proceeding to develop procedures to ensure that the Postal Service properly applies the Commission’s standard when making a determination of whether a mail preparation change has a rate effect.² The final rule created a process that required the Postal Service to: (1) Provide public notice of all mail preparation changes in a single source; (2) affirmatively designate whether or not a change to a mail preparation requirement implicates the price cap; and (3) show by a preponderance of the

evidence, if the designation is challenged, that the price cap does not apply to the change.³ The Postal Service filed petitions for review challenging the Commission’s standard in Order No. 3047 and the final rule in Order No. 4393.

Shortly after the Commission adopted the final rule in this docket, the Court issued its decision in *United States Postal Serv. v. Postal Reg. Comm'n*, 886 F.3d 1253 (D.C. Cir. 2018) vacating the Commission’s standard in Order No. 3047. In response to the Court’s decision, the Commission and the Postal Service filed a joint motion to remand the petition for review of the final rule back to the Commission for further proceedings.⁴

On August 9, 2018, the Commission issued the notice of proposed rulemaking (NPR), setting forth a proposed rescission to the rule set forth in § 3010.23(d)(5) that created procedures concerning mail preparation changes.⁵ The NPR also provided an opportunity for public comment. Order No. 4751 at 5. The Commission proposed removing the components of the rule that require existence of a standard in order to be enforced, specifically: (1) The affirmative designation requirement; and (2) the evidentiary standard. *Id.* at 4. As explained in the NPR, both the affirmative designation and evidentiary burden parts of the rule were predicated on the existence of a substantive standard. *Id.* As that standard was vacated and a new standard does not yet exist, the proposed rule removed the affirmative designation requirement and evidentiary burden component from paragraph (d)(5) of this section. In the NPR, the Commission proposed to retain the publication requirement of the rule as it would remain independent of any standard. *Id.*

III. Review of Comments

On September 13, 2018, the Commission received comments in

³ See Petition for Review, *United States Postal Serv. v. Postal Reg. Comm'n*, 886 F.3d 1253 (D.C. Cir. 2018); Petition for Review, *United States Postal Serv. v. Postal Reg. Comm'n*, No. 18–1059 (D.C. Cir. Feb. 26, 2018).

⁴ See Unopposed Motion to Remand Case, *United States Postal Serv. v. Postal Reg. Comm'n*, No. 18–1059 (D.C. Cir. May 10, 2018).

⁵ Notice of Proposed Rulemaking, August 9, 2018 (Order No. 4751). On the same day, the Commission filed an advance notice of proposed rulemaking (ANPR) to seek proposals for a new standard and process to determine when a mail preparation change requires price cap compliance in accordance with the Court’s decision vacating the standard. Docket No. RM2018–11, Advance Notice of Proposed Rulemaking, August 9, 2018 (Order No. 4750). The ANPR was published in the **Federal Register**, see 83 FR 40485 (Aug. 15, 2018).

response to the NPR from the Association for Postal Commerce (PostCom), the Postal Service, and the Public Representative.⁶

PostCom Comments. PostCom supports the premise behind partial rescission of the rule, acknowledging that the rule referencing a standard “cannot be enforced in the absence of a standard.” PostCom Comments at 1. However, PostCom does not support rescission of the rule at this time. *Id.* Instead, PostCom suggests the Commission “temporarily suspend enforcement of the portion of the rule that the Commission is proposing to eliminate.” *Id.*

To support its request for the Commission to temporarily suspend enforcement of the rule as opposed to rescission through rulemaking, PostCom points to the Commission’s intention to develop an appropriate standard in a separate rulemaking.⁷ PostCom submits that elimination of the portion of the rule relying on a substantive standard is unnecessary because the current procedures “will apply equally well to the final standard established by the Commission.” PostCom Comments at 2. PostCom states that the procedures only rely on the “existence of” a substantive standard and not the contents of that substantive standard. *Id.* at 3. PostCom points to the fact that the Commission itself indicated the separation between the substantive standard and the applicability of the final procedural rule, noting that the Commission stated that the Court’s disagreement with the substantive standard would not affect the final rule. *Id.* As a result, PostCom submits that it is “imprudent to eliminate these procedures at this time” and that elimination of the rule now will only require more rulemaking in the future should the Commission set a new standard. *Id.*

Postal Service Comments. The Postal Service supports partial rescission of the rule that relies on existence of a substantive standard. Postal Service Comments at 1–3. In the Postal Service’s view, “compliance with the procedural rule necessarily would require application of the substantive standard” for mail preparation changes. *Id.* at 2. The Postal Service agrees with the Commission’s proposal to rescind the portion of the rule that “requires the

⁶ Comments of the Association for Postal Commerce, September 13, 2018 (PostCom Comments); United States Postal Service Comments on Notice of Proposed Rulemaking, September 13, 2018 (Postal Service Comments); Public Representative Comments on Notice of Proposed Rulemaking, September 13, 2018 (PR Comments).

⁷ *Id.* at 2 (citing Order No. 4751 at 4; Order No. 4750).

¹ The standard in Order No. 3047 was developed in response to remand from the United States Court of Appeals for the District of Columbia (the Court) in *United States Postal Serv. v. Postal Reg. Comm'n*, 785 F.3d 740 (D.C. Cir. 2015). For a complete history of the proceedings underlying the Commission’s promulgation of a standard for mail preparation changes, see Docket No. R2013–10, Order on Price Adjustments for Market Dominant Products and Related Mail Classification Changes, November 21, 2013, at 5–35 (Order No. 1890); Docket No. R2013–10R, Order Resolving Issues on Remand, January 22, 2016 (Order No. 3047); Docket No. R2013–10R, Order Resolving Motion for Reconsideration of Commission Order No. 3047, July 20, 2016 (Order No. 3441).

² Order Adopting Final Procedural Rule for Mail Preparation Changes, January 25, 2018, at 22–23 (Order No. 4393). The Order Adopting Final Procedural Rule for Mail Preparation Changes was published in the **Federal Register** on February 1, 2018. See 83 FR 4585 (Feb. 1, 2018).

Postal Service affirmatively to designate whether a given mail preparation change requires compliance with the price cap rules” and the portion concerning the evidentiary burden. *Id.*

The Postal Service also indicates that it has already complied with the publication requirement that the Commission proposes to retain in the rule. *Id.* at 3.

Public Representative Comments. The Public Representative supports the Commission’s proposal to rescind portions of the procedural rule concerning mail preparation changes “subject to reinstatement depending upon the outcome of the Commission’s review of the applicable standard for determining whether a rate increase is in compliance with § 3010.23(d)(2).” PR Comments at 1–2.

He notes that it would be futile to require the Postal Service to affirmatively designate whether a change requires compliance with § 3010.23(d)(2) when there is no standard to measure compliance. *Id.* at 7. With respect to the evidentiary portion of the rule, requiring the Postal Service to provide by a preponderance of the evidence that a mail preparation change does not require compliance with § 3010.23(d)(2), he contends that compliance with this provision would be “a very difficult proposition without any standard to serve as a target.” *Id.* at 8. Further, parties would be “unable to determine the information needed to rebut the Postal Service’s determination” without an operative standard. *Id.*

The Public Representative also supports the Commission’s retention of the single source reporting requirement. *Id.* at 5–6.

IV. Commission Analysis

The comments reflect general support for the removal of portions of the procedural rule concerning mail preparation changes that rely on the existence of a substantive standard. PostCom suggests an alternative procedure to temporarily suspend enforcement of the rule as opposed to formally rescinding portions of this rulemaking.

When promulgating the final rule concerning mail preparation changes, the Commission intended for it to apply regardless of how the Court modified the standard. Order No. 4393 at 14. However, the Court did not modify the standard, it vacated it in its entirety. The components of the procedural rule in § 3010.23(d)(5) requiring the Postal Service to provide an affirmative designation of compliance and setting an evidentiary burden require the

existence of a standard. While the Commission has initiated an advance notice of proposed rulemaking to gather proposals for a new standard, the Commission cannot predict the outcome of those proceedings. *See* Order No. 4750.

Although PostCom may be correct that a temporary suspension of a procedural rule is within the Commission’s authority, a rulemaking is more appropriate for the present situation. As this procedural rule was promulgated via notice and comment rulemaking, the Commission will use the same process to rescind a major portion of the rule.⁸

Accordingly, the Commission adopts a final rule that rescinds two components of the rule requiring an affirmative designation and evidentiary burden. For the affirmative designation portion of the rule, the Postal Service would be unable to designate whether a particular mail preparation change requires compliance with § 3010.23(d)(2) because it no longer has a standard to apply to determine compliance. Similarly, the Postal Service could not show it made a correct determination by a preponderance of the evidence without having a standard. Parties would also be unable to rebut the Postal Service’s determination with information absent a standard. For these reasons, removing those portions of the rule is appropriate.

The remaining part of the rule requires the Postal Service to provide published notice of all mail preparation changes in a single source. The Commission retains this portion of the rule because it provides notice and transparency for all mail preparation changes and does not rely on existence of a standard.⁹ As noted in the NPR, the Postal Service has complied with this requirement and the Postal Service states in its comments that it will continue to comply with this portion of the rule. Accordingly, the Commission revises § 3010.23(d)(5) to require the Postal Service to publish notice of all mail preparation changes in a single, publically available source.

V. Regulatory Flexibility Act Analysis

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the

⁸ *See Perez v. Mortgage Bankers Ass’n*, 135 S.Ct. 1199, 1206 (2015) (citing *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (Section 1 of the Administrative Procedure Act mandates that “agencies use the same procedures when they amend or repeal a rule as they used to issue the rule in the first instance.”)).

⁹ *See also* Order No. 4393 at 8–10 (justification for the reporting requirement).

impact of those rules on small entities. *See* 5 U.S.C. 601, *et seq.* (1980). If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply. *See* 5 U.S.C. 605(b).

The Commission’s primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have an impact on participation in Commission proceedings, but impose no further financial obligation upon any entity. For entities other than the United States Postal Service, participation is strictly voluntary. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

VI. Ordering Paragraphs

It is ordered:

1. Part 3010 of title 39, Code of Federal Regulations, is revised as set forth below the signature of this Order, effective 30 days after publication in the **Federal Register**.

2. 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 3010

Administrative practice and procedure, Postal Service.

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

Part 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

■ 1. The authority citation of part 3010 continues to read as follows:

Authority: 39 U.S.C. 503; 3662.

■ 2. Amend § 3010.23 by revising paragraph (d)(5) to read as follows:

§ 3010.23 Calculation of percentage change in rates.

* * * * *

(d) * * *

(5) *Procedures for mail preparation changes.* The Postal Service shall

provide published notice of all mail preparation changes in a single, publicly available source. The Postal Service shall file notice with the Commission of the single source it will use to provide published notice of all mail preparation changes.

* * * * *

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA-HQ-OAR-2017-0548; FRL-9985-35-OAR]

RIN 2060-AU29

Air Quality Designations for the 2015 Ozone National Ambient Air Quality Standards; Corrections

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: The Environmental Protection Agency (EPA) is correcting errors in the regulatory text regarding the designation of certain areas in nine states for the 2015 ozone national ambient air quality standards (NAAQS). The designation rules were signed by the EPA Administrator on November 6, 2017, and April 30, 2018. The errors include typographical and formatting errors and the omission from the regulatory tables of several counties designated as attainment/unclassifiable. The EPA is correcting the errors consistent with the rulemaking record. The affected areas are located in California, Illinois, Indiana, Kentucky, Michigan, Montana, Ohio, Pennsylvania and Virginia.

DATES: The effective date of this rule is November 15, 2018.

ADDRESSES: The EPA has established a docket for the designation actions for the 2015 ozone NAAQS under Docket ID No. EPA-HQ-OAR-2017-0548. All documents in the docket are listed in the index at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in the docket or in hard copy at the EPA Docket Center, EPA WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington,

DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742.

In addition, the EPA has established a website for the ozone designation rulemakings at <https://www.epa.gov/ozone-designations>. The website includes the EPA's final designations, as well as designation recommendation letters from states and tribes, the EPA's 120-letters notifying the states whether the EPA intends to modify the state's recommendation, technical support documents, responses to comments and other related technical information.

FOR FURTHER INFORMATION CONTACT: Denise Scott, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Mail Code C539-01, Research Triangle Park, NC 27711, phone number (919) 541-4280 or by email at: scott.denise@epa.gov.

SUPPLEMENTARY INFORMATION:

I. What are the errors being corrected?

This rule corrects errors in the regulatory text designating certain areas for the 2015 ozone NAAQS as provided in the designation rules signed by the EPA Administrator on November 6, 2017 (November 16, 2017; 82 FR 54232), and on April 30, 2018 (June 4, 2018; 83 FR 25776). The EPA is correcting the errors consistent with the rulemaking record. The affected areas are located in California, Illinois, Indiana, Kentucky, Michigan, Montana, Ohio, Pennsylvania and Virginia. The corrections for each state are discussed below and the corrected regulatory text is provided at the end of this action.

California

The EPA is correcting two errors in the regulatory table for California for designations promulgated in the April 30, 2018, ozone designations rule. The EPA is moving the entry for the "Butte County, CA" nonattainment area so that the area will be listed in alphabetical order and, thus, will be listed before the entry for the "Calaveras County, CA" nonattainment area. The EPA is also correcting a typographical error in the entry for the "Pechanga Band of Luiseño Mission Indians of the Pechanga Reservation" nonattainment area by revising "Pu'eskaMountain" to read "Pu'eska Mountain."

Illinois

The EPA is correcting the regulatory table for Illinois to include McHenry

County and Monroe County as attainment/unclassifiable areas. The EPA is adding those counties to the regulatory table, consistent with the rulemaking record for the April 30, 2018, ozone designations rule. The EPA is also moving the entry for "Bond County" so that it will be listed in alphabetical order and, thus, will be listed before the entry for "Boone County."

McHenry County, Illinois, is part of the Chicago-Naperville, Illinois-Indiana-Wisconsin (IL-IN-WI), Combined Statistical Area (CSA).¹ The EPA's final Technical Support Document (TSD) for the Chicago-Naperville, IL-IN-WI nonattainment area states that, "EPA's area of analysis is the Chicago-Naperville, IL-IN-WI CSA, which includes the following 19 counties: Bureau, Cook, DeKalb, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, LaSalle, McHenry, Putnam, and Will in Illinois, Jasper, Lake, LaPorte, Newton, and Porter in Indiana, and Kenosha in Wisconsin. The EPA applied the five factors recommended in its guidance to the area of analysis to determine the nonattainment boundary." In the TSD section, "Conclusion for the Chicago, IL-IN-WI Area," the EPA identified the portions of Illinois that were being designated as part of the nonattainment area and stated, "All remaining Illinois portions of the Chicago-Naperville, IL-IN-WI CSA are designated consistent with the Illinois' recommendations as attainment/unclassifiable for the 2015 ozone NAAQS: Bureau, DeKalb, Kankakee, LaSalle, McHenry, and Putnam Counties.* * *" The EPA's final TSD for the Chicago-Naperville, IL-IN-WI nonattainment area is located in the docket for the April 30, 2018, designations rule (document number EPA-HQ-OAR-2017-0548-0418) and is the key document setting forth the designations for the Chicago-Naperville, IL-IN-WI CSA.

Monroe County, Illinois, is part of the St. Louis, Missouri-Illinois (MO-IL) Core Based Statistical Area (CBSA). The EPA's final TSD for the St. Louis, MO-IL nonattainment area states, "The EPA

¹ Lists of Core Based Statistical Areas and Combined Statistical Areas and their geographic components are provided at <https://www.census.gov/programs-surveys/metro-micro/about/omb-bulletins.html>. The Office of Management and Budget (OMB) adopts standards for defining statistical areas. The statistical areas are delineated based on United States Census Bureau data. The lists are periodically updated by the OMB. The EPA used the July 2015 update (OMB Bulletin No. 15-01), which is based on application of the 2010 OMB standards to the 2010 Census, 2006-2010 American Community Survey, as well as 2013 Population Estimates Program data.