

review is necessary, the employee or former employee should not comply with the order. Where necessary, the employee should appear at the time and place set forth in the subpoena. If legal counsel cannot appear on behalf of the employee, the employee should produce a copy of this subpart and respectfully inform the legal tribunal that he/she has been advised by counsel not to provide the requested testimony and/or produce documents. If the legal tribunal rules that the subpoena must be complied with, the employee shall respectfully decline to comply, citing this section and *United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

6. The second sentence of § 1.12 is revised to read as follows:

§ 1.12 Regulations not applicable to official request.

* * * Cases of doubt should be referred for decision to agency counsel (as defined in § 1.11(b)(1)).

Dated: March 11, 2003.

David D. Aufhauser,
General Counsel.

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POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003-4; Order No. 1362]

Rule of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: The Commission recently implemented a comprehensive electronic (online) document handling system. This system's ability to provide rapid notice of filings has overtaken practices that were adopted some time ago to address certain situations where there was special interest in expediting notice of Postal Service requests and distribution of other documents. Accordingly, the Commission is making minor conforming changes to four sets of provisions to align them with the new online system. These changes preserve or increase the expedition these provisions were originally designed to provide.

DATES: This rule is effective April 16, 2003.

ADDRESSES: Submit comments via the Commission's Filing Online system, which can be accessed at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

Regulatory History

66 FR 33034
67 FR 67552
68 FR 46

Background

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 through 3001.60. 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)).

Rationale for Making Minor Conforming Changes

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.