

potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B.

#### List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

#### Regulation

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

#### PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5; 49 CFR 1.46.

2. A new § 165.T13-002 is added to read as follows:

#### § 165.T13-002 Safety Zone: Puget Sound, Washington.

(a) *Location.* The following area is a safety zone: All waters within 300 yards of the tugs STACEY FOSS and RICHARD FOSS, the towline, and the barge NESTUCCA while in transit from Puget Sound Naval Shipyard, Bremerton, Washington, through U.S. navigable waters until south of Latitude 47°32' N., Queets, Washington, at 1 p.m. (PDT) on March 23, 1995.

(b) *Definitions.* A designated representative of the Captain of the Port is any Coast Guard commissioned,

warrant, or petty officer who has been authorized by the Captain of the Port, Puget Sound, to act on his behalf. The following officers have or will be designated by the Captain of the Port: the Coast Guard Patrol Commander and the senior boarding officer on each vessel enforcing the safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port or his designated representatives.

(d) *Effective dates.* This regulation becomes effective on March 22, 1995 at 5 a.m. (PDT). It terminates when the tugs STACEY FOSS and RICHARD FOSS and the barge NESTUCCA are south of Latitude 47°32' N., Queets, Washington, at 1 p.m. (PDT) on March 23, 1995, unless sooner terminated by the Captain of the Port.

Dated: February 10, 1995.

**R.K. Softye,**

*Captain, U.S. Coast Guard, Captain of the Port, Puget Sound.*

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#### POSTAL RATE COMMISSION

#### 39 CFR Part 3001

[Docket No. RM91-1; Order No. 1043]

#### Rules of Practice and Procedure

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is publishing final rules amending its rules of practice adopted in Order No. 1043, issued February 17, 1995. The rules are based on revisions submitted as a proposed settlement of issues in Docket RM91-1, a rulemaking addressing general improvements in the Commission's rules of practice. The proposed revisions were published in the **Federal Register** (59 FR 8576) and comments have been received and considered. The differences between the rules as proposed and as adopted reflect conforming changes, editorial improvements, or clarification of intent.

**EFFECTIVE DATE:** March 6, 1995.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, Legal Advisor (202) 789-6820.

**SUPPLEMENTARY INFORMATION:** Two settlement agreements involving proposed improvements to the Commission's rules of practice were presented to the Commission in this docket. In response to the settlement coordinator's motion transmitting these

agreements, the Commission incorporated the text of both agreements in a notice of proposed rulemaking, and requested comments. See 59 FR 8576, February 23, 1994. One involved a number of traditional, or standard, aspects of these rules, such as service and production specifications. This final rule adopts, with minor adjustments, revisions to the rules of practice contained in that proposal. The other proposed that participants be required to file certain documents in electronic form. Opposition to this settlement existed, and a new docket will shortly be established to further explore potential solutions to problems in this area.

The Commission received five comments. Four commenters expressed general support for the proposed revisions, but singled out one or more specific changes for additional discussion. One commenter expressed no opinion on the rules as whole, but sought clarification of one proposed change.

The Commission's evaluation of the settlement agreements and participants' comments leads to the publication of final rules that differ in several respects from the proposed rules. The main differences entail: the deletion of a proposed requirement related to filing documents in electronic form; the express exclusion of answers to interrogatories (and compelled answers) from the "special request" service practice otherwise applicable to discovery-related documents; removal of language restricting transcript corrections of Commission hearings to oral material; and clarification of minimum typeface size. Other differences reflect conforming changes and editorial improvements. A review of the rules and related comments follows.

#### Production Requirements (Rule 10(a)): Terminology and Formatting Instructions

Existing rule 10(a) sets forth specifications for production and preparation of documents filed with the Commission. The revision updates these requirements to reflect modern office technology and practice. For example, the final rule replaces the term "typewritten," which currently appears as the title of the subsection and in the first sentence, with the term "production" or "produced," as appropriate. In addition, the final rule increases the amount of space available for text by easing longstanding margin and line-spacing restrictions. It also replaces the existing requirement that text be double spaced with language allowing spacing of not less than one

and one-half lines. The former reference to "type no smaller than elite" is supplemented with a restriction against typeface sizes smaller than 12 points.

The latter change responds to one commenter's request for clarification of the proposed change regarding minimum allowable typeface size. This commenter, David Popkin, notes that point size, which the proposed rule adopts as the new standard, is inappropriate because points represent letter height, not characters per inch. Mr. Popkin raises the possibility that in adopting new terminology, the proposed rule inadvertently imposes stiffer restrictions on typeface size than currently exist. If so, the imposition of these restrictions would be contrary to the thrust of other proposals, which generally provide participants with more, rather than less, flexibility. The Commission's resolution of this issue is influenced by two considerations. One is the absence of any affirmative indication that the settlement signatories intended to impose more stringent restrictions on type size than currently exist. The other is the assumption that the signatories wanted to reflect the emergence of word processing equipment, which often includes software containing proportional typefaces expressed in characters per inch. The Commission views these as complementary, rather than competing, interests that can be reconciled with a minor revision. Accordingly, the rule as adopted retains the existing reference to elite type, but adds language recognizing the growing use of typefaces expressed in characters per inch or points.

#### **Action on Proposed Rule Requiring Documents To Be Filed in Electronic Form (Rule 10(d)) Deferred**

The proposal concerning electronic filing was agreed to by some, but not all, of the participants in the underlying rulemaking proceeding. The Postal Service, which did not support the proposal, reiterated its opposition to this change during the comment period. It asserted that it had encountered difficulty in generating diskette versions of its Docket No. R94-1 testimony and raised concerns about the potential for administrative problems. The Service further stated its conviction that this rule would not enhance efficiency or ease the burden on participants in the absence of uniform standards and an acceptable method of authentication. The Newspaper Association of America conditioned its support of the electronic filing provision on the Service's willingness to comply with it. The Office of the Consumer Advocate (OCA),

which was a signatory to the non-unanimous settlement on electronic filing, reiterated its support for adoption of the rule as proposed but also formally requested that publication of the electronic filing rule be followed by notice of the Commission's interest in requiring that extensive database information be provided on CD-ROM media.

The Commission believes that the benefits of filing documents in electronic form are substantial. However, the Commission's review of the proposed rule and the record that has been developed in the underlying docket indicate that important questions about the scope, intent and adequacy of the rule as proposed remain unanswered. Moreover, the success of this type of change depends heavily on the cooperation of the Postal Service and other active participants. The Service's opposition leads the Commission to defer action on the proposed rule pending an opportunity for a more focused discussion. This discussion could include consideration of a requirement addressing the filing of extensive database information on CD-ROM, as suggested by the OCA. Accordingly, the Commission plans to publish an advance notice of proposed rulemaking to further explore this topic.

#### **Service Requirements Related to Discovery Requests (Rule 12(b) and Rules 25 Through 27)**

Existing rule 12(b), which addresses service by parties, generally requires that all documents be served upon all participants. This requirement has the potential to impose a burden on participants. In the interest of easing the service burden, the proposed settlement provision carved out an exception to rule 12(b)'s blanket service rule for discovery requests pursuant to rules 25 (interrogatories), 26 (requests for production of documents) and 27 (requests for admissions). It also added the direction that "Special requests for service by other participants shall be honored" and a sentence providing that special requests may be served upon participants conducting discovery and was to identify the witness(es) involved.

The preamble in the notice of proposed rulemaking acknowledged that a settlement conference participant had questioned whether the proposed revision accurately reflected the position of the conferees, as the terms applicable to service of answers appear to differ from those applicable to service of discovery requests and objections thereto. This participant's understanding was that the conferees intended for the "special request"

provision to apply across-the-board. In recognition of this comment, the Commission indicated that in the absence of opposition, it would make appropriate changes reflecting a uniform service requirement.

However, another conferee has submitted a comment objecting to applying the new "special request" requirement to the service of discovery answers. This commenter apparently supports retention of rule 12(b)'s requirement of "automatic" service upon all participants for these filings. The commenter expresses no opposition to the "special request" practice for being served with discovery requests or objections.

This system of limited service of discovery requests and objections was followed in the most recent omnibus rate case, Docket R94-1. While some parties chose to serve documents even when no special request had been received, this new system allowed interested intervenors to reduce the cost of participation if they wished to do so. The Commission believes that formalizing the practice of limited service of discovery requests and objections can considerably reduce the burden of participation in Commission proceedings. Given that participants' interest in answers to interrogatories may differ from their interest in the initial questions or objections thereto, and the Commission's indication that it would honor objections to across-the-board application of the service requirement, the rule as adopted does not apply to the service of answers to interrogatories (or compelled answers). Instead, answers to interrogatories will be subject to the general service requirement. By extension, service of compelled answers and supplemental answers should also follow the general rule.

#### **Grace Period for Filing Signature Pages (Rule 25(b))**

Existing rule 25(b) requires that answers to interrogatories be signed by the person responding to them. The proposed rule allows a 10-day grace period for filing signature pages if the witness involved is not available to sign the answers when filed. The terms of the rule recognize an exception to the general service requirements by providing that signature pages filed under this circumstance need be served only on the Commission, and not on participants. This provision was part of the unopposed settlement, and it generated no opposition during the recent comment period. The Commission agrees that this change

would be beneficial, and adopts the change as proposed.

### Responsibilities of Limited Participants (Rule 20a(c))

Existing rule 20a(c) provides that limited participants are not required to respond to discovery requests. The final rule qualifies this exception by requiring limited participants to respond to discovery requests when those requests are directed specifically to testimony limited participants have submitted. This provision was part of the unopposed settlement, submitted by the OCA, and generated no opposition during the most recent comment period. Accordingly, the rule is adopted as proposed.

### Transcript Corrections (Rule 30(i))

Existing rules do not explicitly address the scope of transcript corrections. The change proposed in the settlement agreement, as a new subsection (i) in rule 30, specifies that transcript corrections should be limited to corrections of material substantive error in the transcription of oral statements made at the hearing. The Commission agrees that clarification of the informal practice that has developed is useful, and welcomes this change. However, as official reporters sometimes transcribe written material presented at hearings as well as oral statements, the Commission believes it would be preferable to eliminate the restriction to "oral statements." With this modification, the rule is adopted as proposed.

### Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Commission certifies that this rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

### List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For reasons set out in the preamble, 39 CFR part 3001 is amended as follows:

## PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

2. Section 3001.10 is amended by revising paragraph (a) to read as follows:

### § 3001.10 Form and number of copies of documents.

(a) *Production.* If not printed, documents filed with the Commission shall be produced on paper of letter size, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than 0.75 inches, except tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. The impression shall be on only one side of the paper unless there are more than ten pages. The text shall be not less than one and one-half spaced except that footnotes and quotations may be single spaced. Any typeface not smaller than elite or a comparable size expressed in points or characters per inch may be used. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service may be reproduced by any duplicating process that produces clear and legible copies.

\* \* \* \* \*

3. Section 3001.12 is amended by revising paragraph (b) to read as follows:

### § 3001.12 Service of documents.

\* \* \* \* \*

(b) *Service by the parties.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such groups as may be directed by the Commission or presiding officer except for discovery requests governed by §§ 3001.25 (a) and (c), 3001.26 (a) and (c), and 3001.27 (a) and (c). Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

\* \* \* \* \*

4. Section 3001.20a is amended by revising paragraph (c) to read as follows:

### § 3001.20a Limited participation by persons not parties.

\* \* \* \* \*

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participants may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participants may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the

Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participants having substantially like interests and positions to join together for any or all of the above purposes. Limited participants are not required to respond to discovery requests under § 3001.25 through § 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participants provided in the proceeding; however, limited participants, particularly those making contentions under 39 U.S.C. 3622(b)(4), are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

5. Section 3001.25 is amended by revising paragraphs (a), (b), (c) and (d) to read as follows:

### § 3001.25 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall serve a copy upon the Postal Service. Special requests for service by other participants shall be honored.

(b) *Answers.* Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The party responding to the interrogatories shall serve the answers on the party who served the interrogatories within 20 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. The answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to

sign the answer when filed, a signature page must be filed within ten days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time.

Objections are to be signed by the attorney making them. The party objecting to interrogatories shall serve the objections on the party who served the interrogatories within 10 days of the service of the interrogatories. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory and the Postal Service. Special requests for service by other participants shall be honored.

(d) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the party who moved to compel the answer within 10 days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

6. Section 3001.26 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 3001.26 Requests for production of documents or things for purpose of discovery.**

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to a request shall serve the objection on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request for production. Special requests for service by other participants shall be honored.

7. Section 3001.27 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 3001.27 Requests for admissions for purpose of discovery.**

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes

of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests for admissions shall serve the objections on the party requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request. Special requests for service by other participants shall be honored.

8. Section 3001.30 is amended by adding paragraph (i) to read as follows:

**§ 3001.30 Hearings.**

(i) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a material substantive error in the transcription made at the hearing.

Issued by the Commission on February 17, 1995.

**Margaret P. Crenshaw,**

*Secretary.*

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**39 CFR Part 3001**

[Docket No. RM95-1; Order No. 1042]

**Rules of Practice and Procedure**

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a petition filed by the United States Postal Service, the Postal Rate Commission initiated this rulemaking to consider re-enactment of special rules of practice and procedure applicable to Postal Service requests to change Express Mail rates in response to