Collection of Information

The Coast Guard anticipates that any future rulemaking will not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this advanced notice under the principles and criteria contained in Executive Order 12612. From the information available at this time, the Coast Guard cannot determine whether this potential rulemaking would have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Under the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Coast Guard must consider whether this potential rulemaking will result in an annual expenditure by state, local, and tribal governments, in the aggregate of $100 million (adjusted annually for inflation). If so, the Act requires that a reasonable number of regulatory alternatives be considered, and that from those alternatives, the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule be selected. The Coast Guard does not anticipate that any future rulemaking will result in such expenditures, but welcomes comments addressing the issue from interested parties.

Environment

The Coast Guard anticipates that any potential rulemaking would be categorically excluded from further environmental documentation in accordance with Commandant Instruction M16475.1C. Any such rulemaking would be designed to minimize the likelihood of maritime disasters with their attendant environmental consequences and to enhance the safety of participants, spectators, and other maritime traffic. Therefore, any potential rulemaking should have no environmental impact. The Coast Guard invites comments addressing possible effects that any such rulemaking may have on the human environment or addressing possible inconsistencies with any Federal, State, or local law or administrative determinations relating to the environment. It will reach a final determination regarding the need for an environmental assessment after receipt of relevant comments.

J.E. Schrinner,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 99–25448 Filed 9–29–99; 8:45 am]

BILLING CODE 4910–15–U

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM98–2; Order No. 1263]

Revisions To Library Reference Rule; Further Changes

AGENCY: Postal Rate Commission.

ACTION: Supplementary notice of proposed rule.

SUMMARY: This document addresses comments on a previous proposal to revise rules on the use of library references. It also presents another set of revisions for comment. The revisions are intended to improve administrative aspects of the library reference practice.

DATES: File comments by October 20, 1999.

ADDRESSES: Send comments on this proposal to Margaret P. Crenshaw, Secretary of the Commission, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 8, 1998, the Commission published order no. 1219 in the **Federal Register** (63 FR 47456) setting forth its initial proposal to revise rule 31(b) (39 CFR 3001.31(b)). The Commission received eight sets of comments on the proposal. In order no. 1223 (issued December 24, 1999), the Commission proposed further revisions. These were published in the **Federal Register** on December 24, 1998 (63 FR 71251). The Commission received three sets of comments on the amended version of the rule. Comments on both orders are available for public inspection in the Commission's docket section. They also can be accessed electronically at www.prc.gov. The Commission issued this order (no. 1263) proposing further revisions on September 23, 1999. It directed interested parties are invited to submit comments following publication of this proposal in the **Federal Register** (see Dates for the deadline) and directed the Secretary to cause this order to be published in the **Federal Register**, in accordance with all applicable regulations of the Office of the Federal Register.

Introduction

This is the third order the Commission has issued in a rulemaking revising rule 31(b) provisions on the practice of filing library references. It briefly describes previous proposals, addresses various comments, and presents further proposed revisions. The proposed changes reflect the same focus on limited administrative improvements as the earlier proposals, but place greater emphasis on the role of the notice in providing relevant information. Inclusion of a detailed preface or summary, which had been proposed as a mandatory requirement, is made optional. New provisions, based on a Postal Service analysis, identify six categories of library references. The proposal also clarifies when library references may be filed and when special requests for service can be made. The rule has been reorganized and renumbered to reflect these changes (consistent with Office of the Federal Register style.) Minor editorial revisions also have been made.

I. Summary of Initial Proposal (Order No. 1219)

The initial set of provisions issued in this rulemaking listed the circumstances when material could be filed as a library reference. The list reflected the practice that had grown up around the existing rule. It included the following independent considerations: When physical characteristics (such as bulk or volume) make service of the material unduly burdensome; when the material is of limited interest to the entire service list; when the material qualifies as a secondary source; when reference to the material is made easier or otherwise facilitated; or when otherwise justified by circumstances, as determined by the Commission or presiding officer.

The initial proposal also required those who file library references (''filers'') to provide detailed information and related disclosures about the material in both an accompanying motion and in a preface or summary contained in the library reference. This represented a change in practice, as the long-standing rule has required only a notice with minimal information. The proposal also required submission of an electronic version of material.

II. Second Proposal (Order No. 1223)

A. Summary of Provisions

The second set of revisions eliminated the motion requirement. It reinstated the notice, specifying that it include the same type of information and disclosures the motion would have had to provide. It retained the separate preface requirement. The proposal limited the circumstances justifying submission of a library reference by requiring consideration of the material's physical characteristics (as they relate to service) in conjunction with one of the other long-recognized circumstances. It also clarified requirements for the contents of the notice; increased the number of hard copies required to be filed from one to two; and limited special requests for service.

B. Summary of Comments

The Commission received comments from the Postal Service, the Office of the Consumer Advocate (OCA) and David Popkin (Popkin) on the second version of the rule. Further Comments of the United States Postal Service (February 1, 1999); Renewed Request for Informal Conference and OCA Comments in Response to Order No. 1223 on Proposed Revisions to Commission Rules on Library References (February 1, 1999); and Correspondence of David B. Popkin (January 23, 1999). (Hereafter, ''Postal Service Comments,'' ''OCA Comments,'' and ''Popkin Comments.'')

C. Commenters' Positions in General

The Postal Service's position. The Service provides this perspective on its practice with respect to library references:

> In past general rate cases, the Postal Service typically has not filed as a 'library reference' material it intended to be admitted directly into the evidentiary record. Rather, such material has been filed as testimony. In Docket No. R97–1, however, this historical practice may have become obscured. As a result of the events of that proceeding, the Postal Service now anticipates (and would even in the absence of this rulemaking) that more material of the type that in the past may have been submitted as library references will simply be filed as testimony.

Postal Service Comments at 9 (footnotes omitted).

The Commission believes that the Service's representations regarding future filings provide a sound basis for assuming that the most serious problems associated with library references in Docket No. R97–1 will not recur. At the same time, the Commission finds that improvements in the basic administration of the library reference practice are still needed. In particular, the Commission wants to insure that the notice accompanying each library reference provides information that adequately identifies the contents and discloses how it relates to an issue or may be used in a case. Also, the Commission believes the practice of filing library references should be limited to appropriate circumstances and categories of material.

Other concerns. The Service objects to the proposal's across-the-board application to all library references, as well as to many specific provisions. It claims further revisions are needed if the Commission's apparent objectives are to be achieved without unduly burdening the Postal Service. The Service renews its request for an informal conference, but says the focus could be narrower than originally proposed. In support of this approach, the Service claims (without detailed explanation) that problems and solutions could be explored more efficiently in a conference than through the written comment-and-reply process.

The Service also notes that it has identified six categories of library references, and suggests that these groupings could serve as a basis for discussion at the conference. However, it further states that it believes five of the six categories—all but ''All Other Material''—should be exempt from the proposed requirements (as amended to reflect other concerns the Service raises). The Service's rationale is that to the extent there was legitimate controversy over library references in Docket No. R97–1, all of the material at issue was within proposed Category 6 (All Other Material). Postal Service Comments at 1–2.

The OCA's position. The OCA generally asserts that the Commission's proposal is not sufficiently thorough. It urges further amendments incorporating some of the suggestions it offered in its initial comments. These include a comprehensive cross-walk or ''road map'' linking library references to witnesses; a continuing obligation to update the cross-walk; and production of survey data at the time survey results are filed, along with specific relief if such data are not contemporaneously filed. OCA Comments at 1–3.

The OCA asks that the Commission provide an avenue of relief if the new requirements are ignored or abused and seeks clarification of the circumstances under which a library reference can be filed. Id. at 2. It notes that it continues to believe that adjustments that are closely, but not necessarily directly related to, the library reference practice could be included in this rulemaking. Id. The OCA also questions the adequacy of the Commission's explanation of how it balanced the burdens associated with the library reference practice. Id. at 5–6. It emphasizes that reviewers shoulder a considerable burden, especially if the Commission does not require the Service to provide (and update) a cross-walk between testimony and library references. Id. at 6.

Mr. Popkin's position. Mr. Popkin raises a concern about his ability to participate in an economical and effective manner, given that he does not work or reside in the Washington, DC area. In particular, he emphasizes the need for requiring the filer to provide a detailed description of the contents of library references. He also supports extending the right to make a special request for service to all library references. Popkin Comments at 1.

D. Commission Response

Response to the Service's general concerns. The Commission has considered the Service's request for a conference, but is not convinced that this approach would be a more efficient way of developing improvements. The Service has not presented persuasive reasons why the issues under consideration are not suited to the notice-and-comment format traditionally used for changes of this nature. It is also not clear that a conference would elicit any more (or better informed) participation than the notice-and-comment approach. Therefore, the Commission plans to proceed with the rulemaking format.

In response to the Service's concern over the rule's ''one-size fits all'' approach, the Commission notes that the underlying proposal assumed that participants would avail themselves of the opportunity to seek waiver of all or part of the proposed provisions (under rule 22) whenever appropriate. To make clear that waiver is an option, the Commission is adding a provision similar to that in rule 54(r). The proposed language reads as follows:

> Upon the filing of a motion showing good cause, the Commission may waive one or more of the provisions relating to library references. Motions seeking waiver may request expedited consideration and may seek waiver for categories of library references.

The Commission considers this approach preferable to the Service's suggestion, which sets up a structure for categorizing library references, only to exempt all but one category from application of the rule. The Commission nevertheless believes the proposed categories have considerable utility for a

number of purposes, including as a frame of reference when requests for waiver are filed or when special requests for copies are made. Therefore, the proposed rule identifies and defines them essentially as suggested by the Service.

Response to OCA's general concerns. The OCA requests more extensive cross-referencing to library references than the Commission has proposed and wants survey data to be provided when the survey results are initially filed. In the rule proposed here, the Commission is not including the requested approach to survey data, as it believes this expands the rulemaking beyond the limits established early on. However, the Commission is adopting a limited cross-referencing requirement. The Commission does agree with the basic OCA premise that the rule should clearly set out the current expectation that testimony and exhibits presented in Commission proceedings should contain adequate citation for specifically referenced source material. Therefore, language is added to rule 31(b) to make current expectations more explicit. See rules 31(k) and 54(o).

With respect to the adequacy of the explanation of burden, the Commission assumed it was clear that complying with the new provisions would fall most heavily on the Service, as it generally files the most library references. Eliminating mandatory motion practice was one means of reducing burden on the Service. Increasing the amount of information provided in the notice was a way of reducing a reviewer's burden.

A comprehensive cross-walk linking testimony and library references would further assist a reviewer, but the Commission is not convinced that the job of preparing one, at least on the scale required for omnibus cases, is as simple as the OCA asserts. There are complexities associated with the Service's preparation of a formal request, and the Commission does not seek to add to them unnecessarily by mandating preparation of a cross-walk, unless it becomes apparent that this is essential as a matter of due process. However, should the Service prepare even a limited or partial cross-walk in the course of organizing its filing, the Commission hopes this document (and any updates) would be made available to the entire service list on a voluntary basis. Additionally, discovery requests for such information are permissible.

The elimination of the motion requirement, as the OCA notes, also eliminates an explicit avenue for relief, should the notice be deficient (or not filed at all). The Commission has considered the need for providing a specific enforcement mechanism in its revised proposal to address other situations, but has concluded that an aggrieved reviewer can seek redress either informally (preferably by asking the filer to provide any missing information) or by seeking special relief from the Commission.

Response to Popkin. The retention of requirements specifying that certain information and disclosures be made in the notice addresses Popkin's concerns about a reviewer's ability to determine the contents of a library reference. The Commission continues to believe that opportunities to make a special request for service of material filed as a library reference should be limited. In maintaining this position, the Commission notes its expectation that the Service (and other filers) will be including in testimony and exhibits much of the type of information that has been filed as a library reference in the past.

III. The Service's Proposed Library Reference Categories

The Service has grouped the library references it filed in Docket No. R97–1 into six categories. The categories are Reporting Systems Material (Category 1); Witness Foundational Material (Category 2); Pure Reference Material (Category 3); Material Provided in Response to Discovery (Category 4); Disassociated Material (Category 5); and All Other Material (Category 6). *See generally* Postal Service Comments at 16–27.

Under the Service's approach, Category 1 consists of library references relating to the Service's statistical cost and revenue reporting systems and their primary outputs. The Service notes that this category could be further subdivided into two groups, with one consisting of documentation (such as handbooks and manuals) and the other consisting of data generated by the reporting systems, related reports, or any data compilations generated in the process of producing final reports. Id. at 16–17.

Category 2 (Witness Foundational Material) consists of material relating to the testimony of specific witnesses. The Service says this material provides access to the information identified by rule 31 as necessary to the establishment of a proper foundation for receiving into evidence the results of studies and analyses. It also notes that much of this information is typically provided, at least in part, in electronic format. Id. at 20.

Category 3 (Pure Reference Material) consists of previously published material provided for the convenience of the reader. The Service says this category includes materials such as entire books, portions of books, articles, reports, manuals, handbooks, and contracts. Id. at 22. Category 4 (Material Provided in Response to Discovery) consists of material provided in response to discovery requests. Id. at 23. Category 5 (Disassociated Material) consists of material provided by a party, at the request of another, from which the filing party wishes to be disassociated. The Service characterizes this as material filed ''under protest,'' when the filing party wishes to make clear that it is neither vouching for, nor in any way sponsoring, the material that is provided. Id. at 26. Category 6 (All Other Material) consists of library references not fitting any of the other categories. Id. at 27.

IV. Section-by-Section Summary

The following discussion assumes that the changes referred to are being made to the second set of rules issued in Order No. 1223 (also referred to here as the underlying proposal). Numbering reflects Office of Federal Register style preferences.

A. Paragraph (b)(1) of Section 31

General introduction to provisions on documentary material. The underlying proposal left this provision unchanged from the version currently in effect, except for minor editorial and organizational changes. These included changing the heading from ''Documentary'' to ''Documentary material—(1) General.'' Also, the last two sentences of this provision (which address the evidentiary status of material contained in library references) were relocated to a separate paragraph under section 31(b)(2) and captioned ''Status of library references.''

Commenters positions. No commenter addresses the minor changes the Commission proposed in this subsection, but the OCA asks that a sentence be added to emphasize the need for specific references in all testimony and exhibits. The proposed language reads: ''Exhibits prepared for Commission proceedings shall cite with specificity the page and, if necessary for comprehension, the line number, of specific portions of testimony, exhibits, library references or other referenced material.'' OCA Comments at 8.

Commission response. The Commission supports adequate citation to sources in all filings, and adopts a variation on the OCA's proposal.

B. Underlying Paragraph (b)(2) of Section 31—General Presentation of Provisions on Library References

To reduce the need for extensive renumbering of succeeding provisions in the Commission's rules of practice, both of the previous versions organized the provisions on library references into a newly-designated paragraph 31(b)(2). This approach is retained in the set of rules proposed here. Further changes affecting the numerical designation of internal subdivisions are identified below.

C. Underlying Paragraph 31(b)(2)(i)

Definition of library reference; recognition of related practice; circumstances for filing. In the underlying proposal, the first sentence stated that a library reference is a generic term or label that may be used to identify or refer to certain documents or things filed with the Commission's document room. The second sentence stated that the practice of filing library references is authorized primarily as a convenience to filing participants and the Commission. The third sentence identified the situations or circumstances when a library reference may be filed. These included when the physical characteristics make compliance with service requirements burdensome and any one of the following factors exist: limited interest; status as a secondary source; when reference to the material would be facilitated; or when otherwise justified by circumstances.

The formulation of the first sentence generated no opposition. It appears in the version presented here as it did in the underlying version. Following this sentence, the Commission is adding a new provision identifying and describing six categories of library references. The wording closely tracks the Postal Service's suggestions. This addition (paragraph (b)(2)(i) of section 31) reads as follows:

Participants are encouraged to identify and refer to library reference material in terms of the following categories:

Category 1—Reporting Systems Material (consisting of library references relating to the Postal Service statistical cost and revenue reporting systems, and their primary outputs); Category 2—Witness Foundational Material (consisting of material relating to the testimony of specific witnesses, primarily that which is essential to the establishment of a proper foundation for receiving into evidence the results of studies and analyses); Category 3—Reference Material (consisting of previously published material provided for the convenience of the reader, such as books, chapters or other portions of books, articles, reports, manuals, handbooks, guides, and contracts); Category 4—Material Provided in Response to Discovery (consisting of material submitted in answer to discovery requests); Category 5—Disassociated Material (consisting of material provided at the request of another, from which the filing party disassociates itself, especially in terms of vouching for or sponsoring the material); Category 6—All Other Material (consisting of library references not fitting any of the other categories).

Because of the addition of this language, the second sentence in the underlying version is redesignated as paragraph (b)(2)(ii) of section 31. The Commission has considered, but rejected, a change in the wording of this sentence based on the Postal Service's observation that in some instances, such as when it complies with a request for production of documents under rule 26, filing material as a library reference may be a convenience for the requesting party. The Commission notes that the reference to convenience is qualified with the term ''primarily.'' This leaves open other possibilities, such as the situation the Service raises; therefore, this provision is not revised.

D. Underlying Paragraph (b)(2)(i)(A)–(E) of Section 31

Circumstances under which a library reference may be filed. The OCA points out that the Commission's revision links physical characteristics that presumably make service unduly burdensome with one of the circumstances enumerated in the following subsections. The OCA contends that this is contrary to the sense of the initial proposal, and asserts that this restricts the filing of library references to documents too burdensome to serve. OCA Comments at 12.

Commission response. The presentation in the underlying version was based on the Commission's assessment that the practice of filing library references should be limited, in accordance with the original intent of the rule. (The size of a document in terms of number of pages was a major concern when the rule was originally promulgated.) It also recognized that as the ability to produce material in electronic format increases, there are likely to be fewer instances when material is too voluminous to serve in the traditional hard-copy sense.

The Commission is retaining the more limited approach of the underlying version in the accompanying set of rules, but is revising it in two respects. First, the provision for filing when otherwise justified by circumstances—which now appears as paragraph (b)(2)(i)(E) of section 31—is established as a consideration independent of physical characteristics. It appears as paragraph (b)(2)(iii) of section 31. Second, a provision is added as paragraph (b)(2)(ii) of section 31 to recognize that a filer may seek to comply with a discovery request for production of documents or things by making the material available as a library reference, without the need for special approval or waiver.

Special requests. In the underlying version, the Commission proposed limiting special requests to situations meeting the terms of section 31(b)(2)(i)(A) and (B)—when the physical characteristics of the material would make service unduly burdensome and the material was of limited interest. The filer was to provide a copy of the requested material within three days or, in the alternative, inform the requesting participant of certain matters, including when the material would be available. The Commission's commentary noted that absence of a specific authorization for special requests in other instances did not automatically foreclose a participant from making a request.

The Service observes, with respect to special requests, that it ''has serious concerns about any draft provision which might be construed to entitle parties to copies of substantial portions of the set of library references filed with the case.'' Postal Service Comments at 6–7. It says: ''In this respect, directly limiting application of the 'extra copy' provisions of the proposed procedures by reference to the categories suggested by the Postal Service * * * would likely be more effective.'' Id. at 8.

Mr. Popkin notes that he has had a problem in the past with obtaining material that has been filed as a library reference. It appears that the material in question may have been filed in response to a request for production of documents (under rule 26). As the Service notes, the terms of rule 26 direct the responding party to make the material available for inspection and copying, but do not require service.

Special requests are a challenging issue. The Commission continues to oppose an across-the-board allowance for special requests. It also believes that the growing ability to produce and distribute most material in an electronic format reduces the need for participants to make special requests for hard-copy service. Also, the Commission believes that exposing the filer of a library

reference to the potential for repeated requests for service diminishes the extent to which the practice of filing a library reference is a convenience.

Based on further consideration of these points and others raised by the commenters, the Commission proposes a separate provision on special requests. This provision sets out the basic policy that special requests for service are not encouraged and that no blanket requests for service of library reference material may be made. It further provides that special requests must be made in the form of a detailed motion.

E. Underlying Paragraph (b)(2)(ii) of Section 31—Filing Procedure

In the underlying version, this paragraph states that library references are to be accompanied by a contemporaneous notice, and specifies that two hard copies of the material are to be filed. It also outlines the information that is to be included in the notice. The filer must describe what the material consists of or represents; how the material relates to the participant's case or to issues in the proceeding; and whether the material contains a survey or survey results. Filers must also address certain matters related to the material's potential use as evidence and its relationship to other documents. These include disclosing whether the participant anticipates seeking admission of the material into evidence; identifying authors or others who make a material contribution; identifying related documents; identifying portions of the material that may be entered into evidence; and identifying the expected sponsor. A companion provision, in underlying paragraph 31(b)(2)(iii), requires library references to include a preface, and sets out the information and disclosures that must be presented therein.

Commenters' positions. The Postal Service acknowledges that it opposed the motion requirement, but says it is not satisfied with the Commission's notice alternative because it does nothing to lessen the burden on the Postal Service. Instead, the Service says it ''merely substitutes what amounts to virtually the same content requirements for the required notice as were initially proposed for the motion.'' Postal Service Comments at 2–3.

The OCA says it does not seek reinstatement of the motion requirement, but raises a concern that there is no clear avenue of relief for those who believe a filing participant has failed to satisfy the new requirements. It asks that the Commission explicitly provide one. OCA Comments at 1–2.

Commission response. Given the minimal information that has been provided in many notices, adoption of almost any new requirements would entail more effort from the Service or any other participant filing a library reference. However, the Commission believes that most of its proposed requirements are sound, and retains many of them in the final version. However, as discussed below, it is eliminating the preface as a mandatory item in library references.

Contents of the required notice. The Service supports requiring a description of the contents of the library reference and an explanation of how it relates to other material in the case. However, it asserts that requiring the filing party to state whether the material contains a survey or survey results, can ''safely be omitted'' because it is unclear why a special provision should be devoted exclusively to an indication of this nature. Postal Service Comments at 12.

The Service also claims that certain other requirements are ''of mixed utility.'' For example, it notes that the notice is to set forth the reason why the material is being designated as a library reference. The Service observes that while wanting to know why the library reference is being submitted is understandable in the abstract, the reasons are usually fairly obvious in practice, especially for those involving entire categories the Service requests be exempted from the rules. Id. The Service also questions the provision requiring identification of authors or others materially contributing to the preparation of the library reference. Id. As an example, it cites the production of a spreadsheet, and questions why the filer must provide the identity of individuals who only assist in its preparation. Id. at 13.

The underlying version also includes a requirement that the filing participant disclose whether the material contains survey results. Both the Service and the OCA address this provision, but their interests are significantly different. The OCA's concern is that the Commission's proposal is not an adequate substitute for its original request that the Commission require survey data to be filed at the time the survey results are submitted. The Service, on the other hand, asks why this requirement is included, since it expects this information would be provided in the required description.

Commission response. Although the Service asserts that the reason for filing a library reference is ''usually fairly obvious,'' the Commission continues to believe that the notice would be of more assistance to reviewers if this information is provided. The underlying version required filers to address this in terms of the circumstances set out in the rule. Given the addition of the list of categories, the Commission proposes that filers identify the category of the material as well.

The Commission believes the Service reads too much into the requirement for identification of ''authors or others materially contributing to the preparation of the library reference.'' The rule does not require filing participants to list those providing clerical, secretarial, or related administrative assistance in connection with the material. The ''others'' referred to should be presumed to stand in essentially the same relationship to the material as does an ''author.'' In providing direction regarding the interpretation of this phrase, the Commission expects filing participants and reviewers to exercise good judgment in complying with this requirement. For example, in the case of a spreadsheet prepared by an assistant, it may be adequate to indicate that the material was prepared under the direction of a certain witness.

With respect to survey results, the Commission notes that it regarded the OCA's original suggestion regarding contemporaneous filing of survey results among those that were beyond the scope of this limited rulemaking. However, the Commission also believed that one objective of the rule—more extensive disclosure of the contents of the material contained in the library reference—would be enhanced if survey results were specifically identified. As surveys may require more extensive or more expert analysis than other material, the Commission continues to believe it is appropriate for this information to be disclosed. However, in line with the Service's observation that survey results are the type of description that might be provided in response to the requirement of a general disclosure of contents, the wording of the accompanying set of rules is amended to reflect this. Several minor editorial changes are made to other provisions to clarify the extent of the required disclosures.

The OCA's proposal that this paragraph include a requirement for a cross-walk or ''road map.'' In line with its interest in a cross-walk, the OCA proposes adding the following paragraph to this provision:

> The filing shall include a listing, by witness, of those witnesses who rely upon or cite to the library reference together with specific references to pages and schedules in testimony and exhibits where the library reference is cited. The listing shall be

updated as additional library references are filed.

OCA Comments at 7.

Commission response. The Commission declines to adopt the proposed amendment, for reasons discussed earlier.

F. Underlying paragraph (b)(2)(iii) of Section 31

Labels, descriptions (including information to be provided in a preface or summary with library reference itself), and related disclosures. The first sentence of the underlying provision directs the filing participant to use standard notation to label the library reference and to comply with any additional requirements that may be imposed by the presiding officer or the Commission. This provision has not been controversial. It is retained in the third version, but the caption is changed to ''Labeling'' to reflect a change in the organization of the rule. The second sentence in the underlying paragraph is replaced with text identifying the inclusion of a detailed preface as an option. It is also redesignated.

Elimination of mandatory inclusion of a preface or summary. The underlying proposal requires that material designated as a library reference include a preface or summary addressing the following points: the proceeding and document or issue involved; the identity of the designating participant; the identity of the sponsoring witness or witnesses (or the reason why this cannot be provided); to the extent feasible, other library references or testimony that utilize information or conclusions developed therein; and whether the library reference is an update or revision to a library reference filed in another Commission proceeding.

Commenters' positions. The Service says that to the extent it agrees information listed in this subsection is necessary, the information has been provided in the vast majority of instances. However, it also contends that not all of the information is necessary. It further notes that in some instances, such as when the material is a pre-existing document, it may be difficult or impossible to comply, and not necessary if the notice is adequate. Id. at 13–14. It also objects to the requirement of identifying ''other library references or testimony that utilize information or conclusions developed therein'' to the extent it calls for an exhaustive list of all downstream testimony or library references, but agrees to the extent it applies to material developed primarily to support a particular study or testimony.

Commission response. The version proposed here makes inclusion of a detailed preface or summary an option. In addition, the Commission is requiring some of the disclosures that were to be included in the preface to be set forth in the expanded notice requirement.

G. Subsection 31(b)(2)(iv)—Electronic Versions of Library References

The underlying version requires an electronic version, or an explanation of why an electronic version cannot be provided.

Commenters' positions. The Service observes, in connection with this requirement, that the universe of library references can largely be bifurcated into those which exist as library references because they are entirely electronic or have an electronic component, and those consisting of voluminous hard copy material for which no electronic version is available. It further says that increasingly, voluminous hard copy material is not likely to be filed if an electronic version could be filed more easily. The Service believes the intended result will be substantially achieved with or without any formal rule change. Id. at 15–16. It says it would prefer a rule which simply encourages parties to file electronic versions of library reference material whenever possible. Id. at 16.

Commission response. The Commission acknowledges the trend toward increased filing of material in an electronic format, but declines to alter the proposed provision in the manner suggested by the Postal Service. However, the Commission amends this provision to encourage the inclusion of a preface containing the information and disclosures required to be provided in the notice. The Commission believes that including a detailed preface would assist reviewers in instances where the notice is not readily available.

H. Underlying Paragraph (b)(2)(v) of Section 31—Status of Library References

This provision remains unchanged, but it is redesignated.

I. Waiver

As explained earlier, the Commission anticipated that the Service or other filers would file a motion for waiver of operation of various library reference provisions when deemed appropriate. To make clear this option exists, the Commission is including a specific provision (described earlier.)

J. Number of Copies

The accompanying version retains the requirement (in the underlying version) that two hard copies be provided. This language appears in a separate provision.

V. Set of Rules

The set of rules the Commission is proposing follows.

Dated: September 23, 1999.

Margaret P. Crenshaw,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure; Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend 39 CFR part 3001 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, 3622–24, 3661, 3662.

2. Amend § 3001.31 by revising paragraph (b) to read as follows:

§ 3001.31 Evidence.

* * * * *

(b) *Documentary material.*—(1) *General.* Documents and detailed data and information shall be presented as exhibits. Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference shall provide the location of that information within the library reference with sufficient specificity to permit ready reference, such as the page and line, or the file and the worksheet or spreadsheet page or cell. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the participant offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the participant offering the same to the other participants or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

(2) *Library references.* (i) The term ''library reference'' is a generic term or label that participants and others may use to identify or designate certain documents or things (''material'') filed with the Commission's docket section. To the extent possible, material filed as a library reference shall be identified and referred to by participants in terms of the following categories:

Category 1—Reporting Systems Material (consisting of library references relating to the Service's statistical cost and revenue reporting systems, and their primary outputs); Category 2—Witness Foundational Material (consisting of material relating to the testimony of specific witnesses, primarily that which is essential to the establishment of a proper foundation for receiving into evidence the results of studies and analyses); Category 3—Reference Material (consisting of previously published material provided for the convenience of the reader, such as books, chapters or other portions of books, articles, reports, manuals, handbooks, guides, and contracts; Category 4—Material Provided in Response to Discovery (consisting of material provided in response to discovery requests); Category 5—Disassociated Material (consisting of material at the request of another, from which the filing party wishes to be disassociated, is not vouching for or sponsoring the material provided); Category 6—All Other Material (consisting of library references not fitting any of the other categories).

(ii) The practice of filing a library reference is authorized primarily as a convenience to filing participants and the Commission under certain circumstances. These include when the physical characteristics of the material, such as number of pages or bulk, are reasonably likely to render compliance with the service requirements unduly burdensome; and one of the following considerations apply:

(A) Interest in the material or things so labeled is likely to be so limited that service on the entire list would be unreasonably burdensome, and the participant agrees to serve the material on individual participants upon request within three days of a request, or to provide, within the same period, an explanation of why the material cannot be provided within three days, and to undertake reasonable efforts to promptly provide the material; or,

(B) The participant satisfactorily demonstrates that designation of material as a library reference is appropriate because the material constitutes a secondary source. A secondary source is one that provides background for a position or matter referred to elsewhere in a participant's case or filing, but does not constitute essential support and is unlikely to be a material factor in a decision on the merits of issues in the proceeding; or,

(C) Reference to, identification of, or use of the material would be facilitated if it is filed as a library reference; or

(D) The material is filed in compliance with a discovery request for production of documents or things.

(iii) *Other circumstances.* If a participant considers it appropriate to file material as a library reference, but for the inability to satisfy the terms set out in paragraphs (b)(2)(ii)(A)–(D) of this section, the material may be filed (by means of a notice) subject to the following conditions:

(A) Inclusion in the accompanying notice of a detailed explanation of the reason for filing the material under this provision;

(B) Satisfaction of all other applicable requirements relating to library references; and

(C) the Commission's right to refuse acceptance of the material in its docket room and its right to take other action to ensure participants' ability to obtain access to the material.

(iv) *Filing procedure.* Participants filing material as a library reference shall provide contemporaneous written notice of this action to the Commission and other participants, in accordance with applicable service rules. The notice shall:

(A) Set forth the reason(s) why the material is being designated as a library reference, with specific reference to paragraphs (b)(2) (ii) and (iii) of this section;

(B) Identify the category into which the material falls and describe in detail what the material consists of or represents, noting matters such as the presence of survey results;

(C) Explain in detail how the material relates to the participant's case or to issues in the proceeding;

(D) Identify authors or others materially contributing to substantive aspects of the preparation or development of the library reference;

(E) Identify the documents (such as testimony, exhibits, an interrogatory) or request to which the library reference relates, to the extent practicable;

(F) Identify other library references or testimony relied upon or referred to in the designated material, to the extent practicable;

(G) Indicate whether the library reference is an update or revision to a another library reference and, if it is, clearly identify the predecessor material; and

(H) To the extent feasible, identify portions expected to be entered and the expected sponsor (if the participant filing a library reference anticipates seeking, on its own behalf, to enter all or part of the material contained therein into the evidentiary record).

(v) *Labeling.* Material filed as a library reference shall be labeled in a manner consistent with standard Commission notation and any other conditions the presiding officer or Commission establishes.

(vi) *Optional preface or summary.* Inclusion of a preface or summary in a library reference addressing the matters set out in paragraphs (b)(2)(iv)(A)–(H) of this section is optional.

(vii) *Electronic version.* Material filed as a library reference shall also be made available in an electronic version, absent a showing of why an electronic version cannot be supplied or should not be required to be supplied. Participants are encouraged to include in the electronic version the information and disclosures required to be included in the accompanying notice.

(viii) *Number of copies.* Except for good cause shown, two hard copies of each library reference shall be filed.

(ix) *Special requests.* Special requests for service of material filed as a library reference are not encouraged. Special requests must be made in the form of a detailed motion setting forth the reasons why service is necessary or appropriate.

(x) *Waiver.* Upon the filing of a motion showing good cause, the Commission may waive one or more of the provisions relating to library references. Motions seeking waiver may request expedited consideration and may seek waiver for categories of library references.

(xi) *Status of library references.* Designation of material as a library reference and acceptance in the Commission's docket section does not confer evidentiary status. The evidentiary status of the material is governed by this section.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6448–4]

RIN 2060–AI45

Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of t-Butyl Acetate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to revise EPA's definition of volatile organic