

public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Roger K. Wiebusch, Bridge Administrator, Commander (obr), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103-2832, (314) 539-3900, extension 2378.

**SUPPLEMENTARY INFORMATION:** The Elgin, Joliet & Eastern Railway Company requested a temporary deviation on September 23, 2002, for the operation of the drawbridge to allow the bridge owner time for preventative maintenance. The drawbridge operation regulations found at 33 CFR 117.393(d) require that the drawbridge be maintained in the open-to-navigation position and close only for the passage of rail traffic. This deviation allows the bridge to remain closed to navigation for four separate 28-hour intervals from 6 a.m., November 4, 2002, until 10 a.m., November 5, 2002, from 6 a.m., November 7, 2002, until 10 a.m., November 8, 2002, from 6 a.m., November 11, 2002, until 10 a.m., November 12, 2002 and from 6 a.m., November 14, 2002, until 10 a.m., November 15, 2002. Vessels not exceeding the vertical clearance of the drawbridge may pass under the drawbridge during repairs. There are no alternate routes for vessels transiting through mile 290.1 on the Illinois Waterway. The drawbridge will be incapable of opening for emergencies during the 28-hour repair periods.

The Elgin, Joliet & Eastern Railway drawbridge provides a vertical clearance of 24.6 feet above normal pool in the closed to navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. In order to repair and replace gear reducers, roller bearings, gears and shafts, the bridge must be kept inoperative and in the closed to navigation position. This deviation has been coordinated with waterway users. No objections were received.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 29, 2002.

**Roger K. Wiebusch,**  
*Bridge Administrator.*

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## POSTAL RATE COMMISSION

### 39 CFR Part 3001

[Docket No. RM2002-1; Order No. 1349]

#### Electronic Filing

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes electronic filing as the standard method for filing most formal documents in Commission proceedings. It resembles the proposal in most respects. However, it severs, for a separate docket, changes in filing requirements for library references and computer analyses. Some other differences between the proposal and the final rule include the establishment of two types of account holders, elimination of a hardcopy filing requirement for certain lengthy documents, and the Commission's assumption of responsibility for facilitating service when a blanket waiver is granted. This rule is expected to contribute to more efficient administration of the Commission's workload.

**DATES:** Effective date: January 7, 2003.

**ADDRESSES:** Send correspondence to Steven W. Williams, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268-0001.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202-789-6818.

**SUPPLEMENTARY INFORMATION:** Issuance of notice and order: October 21, 2003;

#### Regulatory History

See 66 FR 33034, June 20, 2001 (request for comments and technical conference).

See 67 FR 35766, May 21, 2002 (notice of proposed rulemaking).

#### Introduction

The Commission has concluded that it is feasible and desirable to make electronic filing of documents over the Internet the standard procedure for filing official documents with the Commission.

The Commission began laying the groundwork for the conversion from hardcopy to online filing in its notice and order concerning electronic filing (order no. 1317), issued June 13, 2001. That notice established docket no. T2002-1 as a vehicle for conducting a live test of its proposed online filing procedures. Drawing on its experience with that live test, the Commission issued its notice of proposed rulemaking in this docket on May 8, 2002. See order no. 1341, issued May 8, 2002, (67 FR

35766, Tuesday, May 21, 2002). That notice proposed amending the Commission's rules of practice to require that documents submitted to the Commission in official dockets be submitted online, unless a waiver is obtained. The notice included a User Guide describing proposed Filing Online operating procedures. Following publication of its proposed rules and operating procedures, the Commission conducted a Filing Online workshop on June 12, 2002 to provide those intending to participate in future dockets with instruction and hands-on training in those procedures.

Several times over the next several months, the Commission asked those who had participated in recent Commission proceedings to join it in testing Filing Online functions and system capacity. These tests were generally successful. The success of these training and testing procedures has led the Commission to conclude that the Filing Online system is sufficiently developed to warrant its immediate implementation as the standard system for receiving and disseminating documents in formal dockets.

The Commission has concluded that one part of its proposed rules requires further examination before it is implemented. That is the proposal that material filed as library references or computer analyses be filed in a form that can be read and executed on PC hardware. This proposal will be severed from this docket so that it can undergo an additional round of comment before it is implemented.

The rules implementing the Filing Online system that are adopted in this order will apply to subpart H of the Commission's rules of practice, which govern small post office closings. The Commission, however, contemplates making some refinements to subpart H procedures in the near future in order to take better advantage of the Filing Online system.

#### Summary

The amended rules of practice set out in attachment 1 to this order are final rules implementing the Filing Online system. They generally require that documents in formal proceedings before the Commission be filed through the Filing Online system. These final rules will take effect on January 7, 2003. They differ from the rules described in the notice of proposed rulemaking issued earlier in this docket (order No. 1341, issued May 8, 2002) in several minor respects.

The proposed rules provided for only one kind of account holder. The final

rules distinguish between two types of account holders. Primary Account Holders are those who represent themselves or clients before the Commission. They take responsibility for ensuring that filings submitted through their accounts are authentic, accurate, and authorized by the participant for whom they have been filed. Agent Account Holders are those to whom Primary Account Holders have delegated their authority to file documents with the Commission.

Current account holders who meet the definition of Primary Account Holders will automatically be designated Primary Account Holders by the Secretary. Current account holders who do not meet the definition of Primary Account Holders must reapply to become Agent Account Holders. Primary Account Holders may delegate their authority to file documents with the Commission to other Primary or Agent Account Holders by designating them on their Filing Online Profile Page.

The proposed rules required that certain kinds of lengthy documents be filed both online and in hardcopy form. Under the final rules, the only documents that will be accepted in hardcopy form are those for which a waiver of the online filing requirement has been obtained, designations of written-cross examination, and formal Postal Service requests to change rates or classifications.

The proposed rules required that word processing files be submitted in text-based portable document format (pdf) format, and that all other files that could be converted to text-based pdf files also be submitted in that form. Non-word-processing files could be submitted in their native format, but this was not required.

The final rules require that word processing files be submitted in text-based pdf format, but do not require other files to be submitted in that format. They strongly encourage, but do not require, that word-processing files be submitted in their native format as well. The final rules require that non-word-processing files that are submitted as attachments to host documents be submitted in their native format. Such files may be submitted in text-based pdf on a voluntary basis.

The final rules require that notice be given to the Secretary if a scanned pdf file is being submitted.

The Secretary has expanded the capability of the Filing Online system. As before, a file can be converted to text-based pdf format on line. Now it is also possible to integrate multiple text-based pdf files into a single text-based pdf file on line. This should make it

easier for account holders to produce a host document entirely in text-based pdf format.

The proposed rules required that participants serve documents in hardcopy form on other participants who had obtained a waiver of the online filing requirement. Under the final rules, the Commission has assumed the duty of serving hardcopy documents on participants who cannot receive service on line.

The proposed rules required that participants who had obtained a waiver of the online filing requirements serve their documents on others in hardcopy form. Under the final rules, those participants may submit hardcopy documents to the Secretary. The Secretary will serve them by posting them on the Commission's Web site or, if necessary, mailing them in hardcopy form.

The final rules allow complex cross-examination exhibits to be served two calendar days before the appearance of the witness by filing them on line, or by providing them in hardcopy form to the witness's counsel, at the option of the cross examiner.

#### Public Comments

Five sets of written comments were received in response to the notice of proposed rulemaking in this docket.<sup>1</sup> Of the five commenters, four supported the proposal to require documents in formal dockets to be filed online, essentially as proposed. Based on their experience with the test phase, they regarded the Filing Online system as technically well designed, reliable, and user friendly. They praised its potential to speed the availability of needed documents, to simplify the management of their documents, and to reduce costs. They noted that to realize this potential, online filing must become the standard procedure for filing documents. Carlson Comments at 1, Major Mailer Association (MMA) Comments at 1–2, Office of the Consumer Advocate (OCA)

<sup>1</sup> Douglas F. Carlson Comments in Response to Order No. 1341 (Carlson Comments), were submitted on June 12, 2002. Comments of Major Mailers Association in Support of Proposed Filing Online Requirements (MMA Comments), Office of the Consumer Advocate Comments on Notice of Proposed Rulemaking to Require Filing of Documents in Electronic Form (OCA Comments), Comments of United States Postal Service on Postal Rate Commission Order No. 1341 Notice of Proposed Rulemaking to Require Filing of Documents in Electronic Form (Postal Service Comments), and Val-Pak Direct Marketing Systems, Inc. and Val-Pak Dealers' Association, Inc. Comments in Response to Commission Order No. 1341 (Val-Pak Comments) were submitted on June 21, 2002.

Comments at 1–2, Postal Service Comments at 1, 3.

*Val-Pak Direct Marketing Systems, Inc. (Val-Pak)*. Val-Pak suggests that the Commission's proposal to convert to an online filing system is premature. It proposes that the Commission expand the categories of documents that would have to be dual filed (filed in hard copy as well as electronic form) to include all interrogatory responses, written testimony, briefs, and "anything that potentially can be included in the formal record." It argues that these documents need to be filed in hard copy form to ensure that the docket record is reliably preserved. It asserts that there are other benefits of requiring material to be filed in hard copy form. It contends that hard copy is easier to read, annotate, organize, and recall. It argues that it is more efficient for the originator of a document to produce a batch of hard copies on a high-speed copy machine than for each recipient of that document to produce its own hard copy. Val-Pak Comments at 2.

Val-Pak also criticizes the Commission's proposal not to require testimony and briefs to be filed in hard copy if they are 20 pages or less in length. It argues that it would be cumbersome for participants to ascertain which briefs fall under this threshold, and therefore should be printed out by the participant. *Id.* at 3.

There is little reason for Val-Pak to fear that the record will not be reliably preserved unless the documents that comprise it are filed with the Commission in hardcopy form. The Commission will print a hard copy of every document filed on line in a formal docket and archive it, at least for the duration of that docket. Val-Pak's concern that hardcopy documents are easier to work with should not interfere with the transition to the filing online. While hardcopy documents might be easier to work with, this is not a reason to require documents to be in hardcopy form when they are initially filed with the Commission. Participants who prefer to work with hardcopy documents may print them at any time after the Commission has posted them on its Web site.

A more legitimate concern is Val-Pak's argument that having different filing requirements for testimony and briefs depending on their length will make it difficult for participants to determine whether they have assembled a complete set of such documents. Val-Pak Comments at 3. The Commission agrees that this is likely to complicate the tracking and archiving of such documents. This is one reason that the Commission has decided to drop this

proposal, and to apply the same filing requirements to all testimony and briefs, regardless of length.

*Major Mailers Association (MMA).* MMA generally supports the Commission's proposed Filing Online rules. It joins Val-Pak in criticizing the Commission's proposal to apply different filing requirements to testimony and briefs according to their length. It explains that in a typical rate proceeding it focuses on a few important issues, and regards remaining issues as "second tier" issues. It is only interested in receiving testimony and briefs in hardcopy form if they address issues it considers important. It believes that it is faster and more efficient to review testimony and briefs that address "second tier" issues if they are received only in electronic form. It argues that this belief is shared by most participants. Rather than requiring testimony and briefs over 20 pages to be filed in hardcopy form, it urges the Commission to adopt a "rule of reason" that would permit a participant to designate which testimony and briefs it would prefer to receive in hardcopy form. MMA Comments at 3-4. MMA's concern that it not be burdened with hard copies of testimony and briefs that it is unlikely to read in that form is resolved by the Commission's decision to drop its proposal to require that lengthy testimony and briefs must be filed in hardcopy form. Under the final rules adopted in this order, lengthy briefs and testimony will not be treated differently than other documents. Participants will be able to print lengthy testimony and briefs if they prefer to read them in hardcopy form.

MMA seeks clarification of one aspect of the Commission's proposed Filing Online procedures. It assumes that when an account holder uploads a file to the Commission's Web site in its native format, such as Microsoft Word, converts it to the required pdf format on the Commission's Web site, and submits it for filing, that the Commission posts both the native format file and the pdf file so that others can download them. When an account holder uses Adobe software to convert a file from native format to pdf on his own computer before submitting the document for filing, MMA asks whether the account holder is obligated to submit the file in native format as well. MMA argues that there should be such an obligation, since the native format file is likely to be more amenable to cutting, pasting, and searching than the pdf file. MMA also asks whether computer analyses, such as spreadsheets created in Microsoft Excel, are required to be filed and posted in their native format, and

not just posted as a scanned pdf file. MMA Comments at 4-5. The Postal Service also emphasizes the benefits of filing text documents in their native format. Rather than asking that filing in both pdf and native formats be required, however, it asks that it be encouraged as a courtesy to other participants. Postal Service Comments at 7.

It is advantageous for participants to file word processing files in both pdf and native formats for all of the reasons that MMA and the Postal Service cite. The Commission, however, believes that it is premature to make it mandatory to file word processing files in native format. Filing such files in native format raises minor security concerns. For example, account holders could occasionally have hidden annotations or legislative formatting in their native-format text documents which others could retrieve. If the account holder is not aware that these annotations are present, and regards them as confidential, the account holder might regret having submitted the document in native format. One solution, of course, is to check the document for hidden annotations before submitting it for filing. The Commission is searching for technical tools that might facilitate this process. For now, however, the Commission strongly encourages account holders to submit word processing files in native format, but it will not make it mandatory. If the account holder converts a native format file to a pdf file on the Commission's Web site, the option of deleting the native file before submitting the filing record to the Commission is still available. If a filing record submitted to the Commission contains both the native file and the pdf file, the Commission will post both files on its Web site.

MMA also observes that filing computer analyses in native format should be considered mandatory under rule 31(k)(3)(i). It notes that common spreadsheet software allows the analyst to embed formulae and assumptions in spreadsheets that are lost if they are converted to pdf. It further notes that spreadsheets in pdf format must be converted back to their native format before they can be modified or manipulated. For these reasons, MMA urges the Commission to make it clear that account holders must file a native-format version of their computer analyses. MMA Comments at 5. The Postal Service expresses related concerns. It questions whether the Commission's admonition in its notice of proposed rulemaking that "[a]ny collateral files that can be produced in text-based pdf must also be submitted in

that form" is well considered. It argues that some Excel files can be converted to a text-based pdf format, but that doing so eliminates most of their embedded utility.

In its notice of proposed rulemaking, the Commission proposed filing rules that did not make filing computer analyses or spreadsheet analyses in their native formats mandatory. The rules as proposed required computer analyses to be filed in text-based pdf form if they were part of a host document. If they were filed as attachments to a host document, the proposal required that they be filed in text-based pdf form where possible. Otherwise they allowed them to be filed in their native format. See order no. 1341, issued May 8, 2002, at 4.

The parties' comments have persuaded the Commission to reconsider how its format requirements should apply to computer and spreadsheet analyses. The Commission agrees that it is highly desirable to have computer and spreadsheet analyses filed in their native format for the reasons that MMA and the Postal Service cite. Filing such analyses in native format is already required in most circumstances to satisfy the Commission's documentation rules [such as rules 31(k)(2) and (3) and rule 54(o)]. This is because in most circumstances detailed assumptions, formulae, and sources for numbers are not fully disclosed in testimony or other text documents.

Computer and spreadsheet analyses are typically filed as attachments to host documents. The Filing Online rules authorized by this order require that computer and spreadsheet analyses filed as attachments to a host document be filed in their native format. Filing them in native format, such as Excel, Lotus, or Quattropro, will preserve the ability to read embedded formulae and the ability to manipulate the files. As the Postal Service points out, Excel and similar files are not very useful in pdf format because their embedded formulae cannot be read, and the numbers cannot be manipulated. Accordingly, the Filing Online rules authorized by this order do not require that computer and spreadsheet analyses filed as attachments to host documents be provided in pdf format. Text-based documents filed as attachments to host documents, however, are required to be submitted in text-based pdf format, whenever possible. This will maximize the amount of filed material that can be included in Filing Online's searchable database.

Another way to maximize the amount of material that will be included in Filing Online's searchable database is

for the Commission to be notified if an account holder has submitted a scanned pdf as an attachment to a host document. If the Commission is notified that an attached pdf was scanned, it can OCR it in an attempt to convert it to a searchable text-based pdf format. The Commission, however, cannot tell whether an attachment with a “.pdf” extension is text-based or scanned at the time that it is submitted without opening and testing it. To make sure that scanned pdfs are flagged and OCRed, the Filing Online User Guide will instruct the account holder to note in the “Comment” box provided on the “Create Filing Record” or the “Edit Filing Record” page if the pdf attached to a host document is a scanned pdf.

Rather than provide tables or graphs generated in Excel or similar formats in a separate file attached to a host document, an account holder may choose to integrate them into a host document and to explain and annotate them in the host document thoroughly enough to satisfy the Commission’s documentation rules. The filing rules authorized by this order require that host documents and all their components be submitted in text-based pdf format. If such material is thoroughly documented in the host document, account holders will not be required to provide it as native format attachments as well. Supplemental files containing such material in native format are useful, however, for reasons already described, and account holders are encouraged to provide them.

Participants should be aware that the host document in text-based pdf format that they are required to provide under Filing Online must be a single file that reads continuously from beginning to end. If Excel-based tables or figures are inserted into the host document, or intended to be a part of the host document as appendices, they should not be submitted as separate files that other participants would have to download separately and reassemble in order to obtain a coherent host document. In order to make it easier for account holders to include material generated in Excel or similar formats in a host document that is a single text-based pdf file, an “Assemble PDF” function has been added to the Filing Online system.

The “Assemble PDF” function will allow an Account Holder to upload an Excel, Lotus, or Quattropro file, convert it to pdf format, print it, and then decide if it needs to be manipulated in one of several ways. One way would be to simply add it to the end of an existing text-based pdf file. The “Assemble PDF” function, however, also provides an

account holder with a way to excerpt designated pages from one or more Excel files, reorder them, and append them to an existing pdf file. If an account holder wants to insert Excel-based material at various points in an existing pdf file, this is most easily done by “embedding” the material at the desired points, but it could also be done in a multi-step process using the “Assemble PDF” function that the Commission has provided.

Embedding, or the various features of the “Assemble PDF” function, will help the account holder produce a host document that consists of a single text-based pdf file in order to satisfy the requirements of the Filing Online system. These techniques will be effective if the analyst who has generated the Excel or similar material has set print areas appropriately, and provided any needed headers and footers, prior to converting the Excel material to pdf format.

*Revised format requirements.* Because the file format requirements for the Filing Online system that appear in the current User Guide differ in minor ways from those described in the notice of proposed Rulemaking, it will be helpful to summarize them.

- Host Documents and other word processing-based files must be submitted as text-based pdf files. The Commission urges that they be submitted as native files as well, but does not require it.
- Files that are not word-processing based (spreadsheet, computer language, scanned files, etc.) must be submitted as native files if they are attached to a host document. They may be submitted as text-based pdf files as well.
- Scanned pdf files must be designated as such at the time they are submitted.

*Douglas F. Carlson.* Douglas Carlson joins Val-Pak and MMA in criticizing the Commission’s proposal to apply different filing requirements to testimony and briefs according to their length. He argues that few briefs or testimonies would avoid the hardcopy filing requirement since few would be less than the 20-page threshold. He complains that the expense of filing and serving such documents in hardcopy form discourages participation in Commission proceedings. He argues that raising the threshold to 30 pages would mitigate this burden, as well as the burden of downloading and printing large numbers of such documents filed by others on deadline days. The OCA supports this proposal. OCA Comments at 3.

Mr. Carlson assumes that the rationale for the Commission’s proposed rule that

lengthy briefs and testimonies be filed and served in hardcopy form as well as on line is a need to avoid the crush of downloading and printing numerous large documents on the same day and the need to avoid congestion in the Commission’s docket section. As an alternative to raising the 20-page threshold, he proposes that briefs and testimonies filed in advance of the filing deadline be excused from the hardcopy requirement. Carlson Comments at 2. The OCA opposes this alternative. It argues that it would give opponents a procedural advantage if they were to receive advance notice of arguments in testimony or briefs, particularly for reply briefs. OCA Comments at 3.

The Commission has decided to drop its proposed rule that would have required lengthy testimony and briefs to be filed and served in hardcopy form. This will eliminate the source of the objections voiced by Mr. Carlson. The recent expansion of capacity of the Commission’s Filing Online system, and the tests of that capacity, indicate that congestion of that system is unlikely, even on days of anticipated peak demand. Accordingly, account holders should be able both to upload documents, and to download and print documents on peak filing days, without unreasonable delay. Account holders will be able to print any briefs or testimony that they prefer to review in hardcopy form without having to first determine whether the documents fall on one side or the other of a page-based threshold.

*Postal Service.* The Postal Service generally supports the proposal to make online filing the standard filing procedure in formal dockets, although it cautions that some additional testing of the Postal Service’s ability to download filed documents in live dockets would be desirable before a major case is filed. It suggests that further refining of the proposed Filing Online rules is needed in the following respects.

The Postal Service assumes that the portions of proposed rules 9, 10, and 11 that allow a waiver of the requirement that documents be filed online apply “only to a participant who is wholly excluded from Filing Online.” Postal Service Comments at 4. It says that responses to discovery sometimes require that material other than electronic documents be provided, such as videotapes or Priority Mail envelopes, or documents that were generated by non-standard software. It reasons that paragraph (b)(2)(vii) of the current library reference rule (39 CFR 31(b)(2)(vii)) could still accommodate such material if it were made a library reference and an appropriate notice of

filing the library reference were submitted online. It observes that this would increase the number of library references, but would avoid the need to process motions for waivers of the online-filing requirement. *Id.*

The Postal Service wrongly assumes that proposed rules 9 through 11 would not authorize waivers for individual filings. The language of those rules is explicit that both the online-filing requirement and waivers of that requirement apply on a document-by-document basis. Proposed rule 9(a) provides that “[t]he filing of each written document \* \* \* shall be made using the Internet (Filing Online) \* \* \* unless a waiver is obtained.” Proposed rule 10(a) states that the online-filing requirement (as well as the account holder requirement) applies on a document-by-document basis. It provides that “(e)ach document filed with the Commission must be submitted through Filing Online by an account holder unless a waiver is obtained.” Proposed rule 12(a)(2) states that the online service requirement and the exceptions to that requirement apply on a document-by-document basis. Proposed rule 12(a) provides that “[e]ach document filed in a proceeding via the Internet by an account holder shall be deemed served \* \* \*. Proposed rule 12(a)(2) states that there is an exception to the online service requirement for “[a] document that must be served on a participant that the Commission or presiding officer has determined is unable to receive service through the Commission’s Web site.” (Emphasis in the above quotations has been supplied.) In contrast to the above quoted provisions, proposed rule 12(b) makes an exception to the online service requirement available to participants who are unable to file documents online.

Close reading of proposed rules 9 through 12 (which are made final rules by this order) makes it clear that waivers of the online filing requirement are available on both a document-by-document basis, and on a participant basis. If it is feasible to provide material to be filed in electronic form, participants are obligated under these rules to do so, and to file them online. Even if a participant did not originally obtain a document in electronic form, such as a newspaper clipping, but he can readily scan it to produce a legible pdf, he is obligated to do so, and to attach it to a host document, such as an interrogatory answer. A document is eligible to be treated as a library reference only if it is not feasible to generate a legible document in electronic form that can be attached to

a host document and filed online. This is consistent with the Commission’s policy to minimize the number of library references.

The Postal Service believes that a problem may be created by the gap that would occur between the time that the Filing Online system generates a receipt for a document that has been submitted for filing, and the time that it is accepted and posted on the Commission’s Web site.

In its notice of proposed rulemaking, the Commission indicates that when the Filing Online system receives an electronic document that an account holder has submitted for filing, it will issue an electronic receipt to the account holder indicating the time that it was received. It explains that the Commission’s docket section would then review the document for compliance with its rules before accepting it as filed. Acceptance would be indicated by posting the document on the Daily Listing page of the Commission’s Web site. See order no. 1341, issued May 8, 2002, at 6–7.

The Postal Service speculates that under the current hardcopy system, when a document is submitted at the docket window the docket staff reviews it for compliance with the Commission’s filing rules, and then applies a date stamp indicating that it has been accepted for filing. It contrasts this with the Commission’s proposed Filing Online procedures, where the docket section would first issue an electronic receipt for a document, then review it for compliance with filing rules. The Postal Service suggests that the scope of the review that the docket section would perform prior to acceptance of a document submitted online would be broader than under the current hardcopy system (for example, determining whether a document is a single-or a multiple-purpose document) and that the authority for such review needs to be clarified. Postal Service Comments at 4–5.

Contrary to the Postal Service’s assumption, under the current hardcopy filing system, the docket section date stamps a document when it is received. It then reviews it for compliance with the Commission’s filing rules. The date stamp indicates only the time that the document was received. It does not indicate that the document was accepted for filing.

Proposed Filing Online procedures would parallel the current hardcopy procedure. The Commission would issue an electronic receipt to indicate the time that the document was received, and then review it for compliance with filing rules. The

difference would be that under Filing Online, the Commission would affirmatively indicate that a document had been accepted for filing by posting it on its Web site. Under current hardcopy filing procedures, if a date-stamped document is determined to be in compliance with the Commission’s filing rules, the Commission takes no further action.

The Postal Service is correct, however, that Filing Online would impose filing requirements beyond those that currently apply to hardcopy documents. While the general filing requirements will continue to be set forth in the Commission’s rules of practice, some of the more detailed requirements, such as the role of the host document, and the formats that are acceptable, will be published only on the Commission’s Web site in the Filing Online User Guide. Reserving such detailed filing requirements for the Filing Online User Guide is necessary because the technical features of the Filing Online system can be expected to continually evolve, and Filing Online procedures will need to evolve with them. It would not be practical to have to continually amend the Commission’s rules of practice through notice and comment rulemaking procedures as the Filing Online system evolves.

The Postal Service points out that under rule 9 as it was proposed in the notice of proposed rulemaking, the Secretary is authorized to reject filings if they do not comply with an applicable “statute, rule, regulation, or order.” It suggests that if Filing Online requirements do not take the form of a “statute, rule, regulation, or order” the Secretary may not use them as grounds for rejection. Postal Service Comments at 4–5.

To clarify the Secretary’s rejection authority, final rule 9(d) includes non-compliance with “filing instructions published by the Secretary” among the grounds for which the Secretary may reject a filing. For purposes of rule 9(d), it will be sufficient if the Secretary’s filing instructions have been published on the Commission’s Web site.

The Postal Service was prompted to raise the issue of the Secretary’s rejection authority by a comment made by the Secretary’s staff during the Filing Online workshop held on June 12, 2002. The Postal Service understood the staff to have asserted that a pleading that serves two separate purposes would be rejected. Postal Service Comments at 5.

The Secretary’s staff meant to articulate a more limited requirement. The staff meant to assert that pleadings that would normally be submitted as separate documents if they were filed in

hardcopy form should be submitted in separate Filing Records if they are submitted online. As an example of documents that would be filed separately if they were in hardcopy form, the staff mentioned a motion to accept interrogatory answers as late filed, and the interrogatory answers themselves. The staff was emphasizing the importance of submitting only one host document per Filing Record. Associating each host document with a unique Filing Record makes it easier to identify and archive documents. The staff did not mean to assert that a host document could serve only one purpose.

The Postal Service's comments, however, have drawn the Commission's attention to the desirability of requiring that each host document have a separate procedural purpose. Compound pleadings and composite motions are difficult to track and archive. If each pleading has a distinct procedural purpose it will be easier to associate it with a unique Filing Record and unique set of record identifiers. This should make it easier to track and archive pleadings. In particular, it should make it easier to track motions. Because each motion will be submitted with its own Filing Record, and would have a unique file identifier, it will make it less likely that a motion would "fall through the cracks" and fail to be addressed. Accordingly, the requirement that each host document serve a separate procedural purpose will be included in the Filing Online User Guide.

Under this requirement, as noted, a motion for acceptance of late-filed interrogatory answers and the interrogatory answers themselves would be filed as separate host documents in separate Filing Records. Of course, a motion that is conditioned on the disposition of another motion should prominently refer to the motion upon which it is conditioned, even though it is filed separately.

Requiring participants to plead for distinct kinds of relief and file separate host documents submitted in separate Filing Records should not add significantly to the time or expense of filing those documents if they are filed electronically. It should, however, make tracking and archiving more efficient for both the Commission and the participants.

The Postal Service observes that under the proposed rules, a participant may obtain a blanket waiver of the requirement that documents be filed online. It notes that it will be difficult to reap the benefits that an online filing system can provide if blanket waivers are commonly granted. It argues that

almost all participants in past Commission proceedings have demonstrated their ability to participate electronically. It observes that even if there are future participants who do not have their own Internet connections, they should be able to access the Commission's Web site from a public library. Under these circumstances, it argues, the bar should be set quite high for anyone desiring to be excused from participating online. Postal Service Comments at 5-6.

The Postal Service discusses the burden of serving hardcopy documents on a participant who has obtained a waiver, and the burden that such a participant has of serving hardcopy documents on others. It argues that the Commission should assume responsibility for serving documents on such participants. It asserts that the Commission could consolidate all documents that need to be served on such a participant each day, and send them in a single package. This, it contends, would avoid much duplication of effort by other participants. It argues that service of hardcopy documents by a participant with a waiver also should be facilitated by the Commission. It argues that such a participant could mail or fax documents to the Commission, which could then digitize them and post them on its Web site, again avoiding duplication of effort. It argues that to be consistent with the expedited service that would characterize the Filing Online system, a participant with a waiver should be required to mail its documents to the Commission by Express Mail or facsimile transmission. It goes on to argue that service of a hardcopy document by the Commission on behalf of a participant with a waiver should be considered to be effective on the date that it is received by the Commission, presumably because the Commission will have posted the document on the day that it was received. The Postal Service suggests that this would make service computation dates consistent for all participants, whether or not they were required to file online. Postal Service Comments at 5-6.

The Commission agrees with the Postal Service that almost all participants in recent Commission proceedings have shown that they can interact with the Commission's Web site and are likely to be able to participate in the Filing Online system. The Commission expects to be able to provide participants with sufficient technical assistance to ensure that they can effectively use the Filing Online system. Under these circumstances, a

participant will have a heavy burden of persuasion to overcome if it wishes to obtain a blanket waiver of the online filing requirements adopted in this order.

If a participant were to obtain a blanket waiver, the Commission will assume responsibility for serving that participant with the documents filed by other participants. As the Postal Service validly observes, the Commission could avoid duplication of effort on the part of other participants by consolidating into a single mailing each day the documents that must be served on a participant with a blanket waiver. The assumption of this responsibility by the Commission is reflected in revised rule 12(a)(2). Similarly, if a participant were to obtain a blanket waiver, the Commission would facilitate service of documents by that participant on others. Under rule 12(b), a participant with a blanket waiver would deliver hardcopy documents that it wished to serve on others to the Secretary by hand or First-Class Mail. Such documents would be deemed served when they are posted on the Commission's Web site. If for some reason such documents cannot be converted to electronic form by the Commission and posted on its Web site, they will be deemed served when the Secretary posts them as First-Class Mail.

Under a system where filing documents online is the norm, the need for filing hard copies of documents with the Commission will remain, although these instances are expected to be rare. In the notice of proposed rulemaking, proposed rule 10(b) specified that when participants are required to file documents with the Commission in hardcopy form, that they must provide the Commission with an original and 24 conforming copies. Proposed rule 10(c) specified that when participants who have obtained a waiver of the online filing requirements choose to file documents on computer media, that they must provide the Commission with an original and three conforming copies. Upon further reflection, the Commission has determined that the number of conforming copies that must be provided to the Commission under either rule 10(b) or rule 10(c) should be reduced to two.

In the rare instance when a participant has a document that it cannot digitize and file online, yet it still can feasibly serve on participants in hardcopy form (perhaps a newspaper article that it is unable to scan), the Commission is likely to be able to digitize it and to distribute it internally by posting it on its Web site. Accordingly, the Commission generally will not need to be provided with

enough hard copies of such documents to circulate them internally. Exceptions may be formal rate or classification requests. The Postal Service has been cooperative in providing as many copies of formal requests as the Commission needs.

Among the Filing Online rules contained in the notice of proposed rulemaking was rule 10(a)(2), which stated that “[d]ocuments filed online must satisfy computer system compatibility requirements specified by the Secretary.” The notice indicated that the Secretary would publish these requirements on the Commission’s Web site in the form of instructions in the Filing Online User Guide. See order no. 1341 at 11–12. To date, the Secretary has identified and published only a few technical requirements for interfacing with the Filing Online system.

For the basic document filing function, the only technical restrictions are the formats in which documents must be submitted. Enhanced functions, such as batch downloading and batch printing, require that specified utilities be downloaded from the Commission’s server.

The Commission’s Web site contains a list of word processing, browser, and PC/MAC combinations that have been tested and found to be compatible with the Filing Online system. In its comments, the Postal Service infers that this (rather than the Filing Online User Guide) is the list of system compatibility requirements that the Secretary is authorized to prescribe under proposed rule 10(a)(2). It observes that there are some word processing applications that are absent from that list even though they can produce rich text format (RTF) files. It argues that it would not be prudent to bar participants from using various applications or platforms simply because they have not yet been tested. Because this list of tested platforms does not actually prescribe software or hardware that must be used in order to participate in Filing Online, the Postal Service asks what effect proposed rule 10(a)(2) is intended to have. Postal Service Comments at 7.

In arriving at its conclusion that the list of tested platforms published on the Commission’s Web site was meant to implement proposed rule 10(a)(2), the Postal Service apparently overlooked the portion of the discussion of rule 10(a)(2) in the notice of proposed rulemaking that explains that the Secretary will prescribe system compatibility requirements in the Filing Online User Guide. See order no. 1341 at 11–12. The Secretary has not attempted to restrict the applications, browsers, or hardware that an account

holder may use to access the Filing Online system. The Commission agrees with the Postal Service that it would not be prudent to limit the software or hardware that account holders may use simply because they have yet not been tested by the Commission. The Secretary will continue to post on the Commission’s Web site, separate from the list of technical requirements, a list of software/hardware combinations that have been tested and found to be compatible with the system. It should prove useful to participants that might be deciding how to configure systems that they expect to use to access Filing Online.

Proposed rule 10 has been revised to reflect the refinements described above to Filing Online’s format requirements. As a result of these revisions, proposed rule 10(a)(2) now appears as final rule 10(a)(5).

Password security is the final issue that the Postal Service’s comments address. The Postal Service notes the Commission’s admonition that regular password changes augment security. It asks the Commission to consider adding software that would force account holders to make regular password changes. Postal Service Comments at 8. In the Commission’s view, the benefits of this change could be outweighed by the inconvenience it would cause to account holders who properly manage their passwords.

*Change in the definition of account holders.* Additional experience with the Filing Online system since the notice of proposed rulemaking was issued has prompted the Commission to refine the definition and role of account holders. Currently, some account holders represent themselves in proceedings before the Commission, some are attorneys who represent clients in proceedings before the Commission, and some are paralegals or secretaries who file documents on behalf of attorney representatives.

Currently, account holders must undertake the duties and obligations associated with the subscription requirement that is found in rule 11(e). These include warranting that the material submitted for filing is authorized by the participant that the account holder represents, and is authentic and accurate. Authority to provide these assurances resides with the person appearing in a proceeding on his or her own behalf or on behalf of a participant, rather than with a secretary or paralegal. Accordingly, the Commission has decided that there is a need to distinguish between types of account holders to better reflect the duties that they assume. Principal

account holders are those that are able to undertake the obligations of rule 11(e) because they are appearing on their own behalf or that of a client. An agent account holder is one to whom a principal account holder has delegated authority to submit material for filing on the principal’s or a client’s behalf. When an agent account holder files material, the subscription obligations of rule 11(e) remain with the principal account holder who authorized the filing.

The Commission’s decision to distinguish between types of account holders will not require most current account holders to take further steps to retain their Filing Online account. If a current account holder represents himself, herself, or a client, before the Commission, the Filing Online system will automatically treat such an account holder as a principal account holder.

A current account holder who does not qualify as a principal account holder, however, will have to reapply for a Filing Online account to be recognized as an agent account holder. A revised account holder application that distinguishes between principal account holders and agent account holders is provided with this order as attachment 2. After receiving a new user name and password, the agent account holder’s ability to file through Filing Online will depend on the delegations of authority that appear on the Profile Pages of principal account holders. Principals will have to update their Profile Pages by furnishing, in the space provided, the user name of each agent account holder to whom they wish to delegate authority to file documents online. Agent account holders may have multiple principals. Similarly, principals may delegate their authority to file documents to other principals, as well as to agents, by furnishing the appropriate user names on their Profile Pages. Principals who delegate their authority to file to others must take responsibility for updating their Profile Pages to reflect any changes in the identity of their delegates or agents.

User Activity Pages will be modified to reflect the distinction between principal account holders and agent account holders. An agent account holder’s User Activity Page will show each document that the agent is working on, or has submitted for filing in the previous two days, and which principal has authorized it. A principal account holder’s User Activity Page will show each document that the principal is working on, or has submitted for filing in the previous two days, and any agent that is assisting with the document.

*Designations.* Under current rule 30(e)(2), designations of written cross-

examination must be served in hardcopy form at least three working days before the witness is scheduled to appear for oral cross-examination. Under Filing Online, notice of these designations must be served by filing them online with the Commission. To make this clear, final rule 30(e)(2) will add the phrase "in accordance with rules 9 through 12" to the language imposing the requirement that designations be served. Current rule 30(e)(2), however, also requires that two hard copies of the designations served shall simultaneously be submitted to the Secretary of the Commission. The Commission then incorporates these hard copies in the set of designations for that witness that is received into the record during oral cross-examination. This Commission function will be performed more efficiently if the designations furnished to the Commission remain in hardcopy form. To clarify that designations of written cross-examination that are furnished to the Commission are to remain in hardcopy form, final rule 30(e)(2) will employ the phrase "two hard copies of the documents" to the language imposing this requirement.

*Cross-examination exhibits.* As initially proposed, rule 30(e)(3) would have required a participant who wished to employ complex exhibits in oral cross-examination of an opposing witness to file those exhibits online two calendar days before the scheduled appearance of the witness. As adopted in this order, rule 30(e)(3) gives the participant the option of filing such cross-examination exhibits online or providing them to counsel for the witness in hardcopy form. This flexibility will accommodate exhibits that cannot be digitized and submitted online.

The specific procedures that are proposed for filing documents online with the Secretary of the Commission are set forth in the Filing Online User Guide, which may be accessed from the Filing Online Login Page on the Commission's Web site (URL: <http://www.prc.gov>). A hardcopy of the Filing Online User Guide that has been revised to reflect the final Filing Online rules adopted in this order will also be mailed to each person who was on a service list of any Commission docket that was active within the past two years. It will also be mailed to anyone else that requests it.

Under the Filing Online procedures adopted in this order, each individual who wishes to represent a participant in a Commission proceeding must be a principal account holder. If a principal account holder wishes to delegate his

authority to file documents in a proceeding, the individual to whom this authority is delegated must first become an agent account holder. An individual may become a principal account holder or an agent account holder by filling out the account holder application available by contacting the Secretary (See **ADDRESSES**) and mailing it to the Secretary. Order no. 1341, issued May 8, 2002, describes the contractual duties that an account holder undertakes, and the procedures to be followed in obtaining a permanent password.

#### Text of Amended Revisions

For the reasons discussed above, the Commission hereby amends subpart A of its rules of practice and procedure as set forth below to this order.

##### *It is ordered:*

1. The Commission adopts the provisions below as the final rules amending 39 CFR 3001.6, 9–13, 20, 20a, 26–28, 30, 31 and 42.

2. These rules will take effect on January 7, 2003.

3. Changes to 39 CFR 3001.31(b)(2)(vii) and 3001.31(k)(3) that were proposed in the notice of proposed rulemaking (order no. 1341, issued May 8, 2002), will be addressed in a subsequent docket.

4. The Secretary shall cause this notice and order adopting final rule to be published in the **Federal Register**.

By the Commission.

Steven W. Williams,  
Secretary.

#### List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service

For the reasons stated in the Preamble, the Commission adopts the following amendments to 39 CFR part 3001.

#### 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, 3663.

#### Subpart A—Rules of General Applicability

2. Amend § 3001.6 by revising paragraphs (b) and (c) to read as follows:

##### **§ 3001.6 Appearances.**

\* \* \* \* \*

(b) *Authority to act.* When an officer of any participant or an attorney acting in a representative capacity appears in person, submits a document to the Commission online as a Principal

Account Holder, or signs a paper filed with the Commission, his/her personal appearance, online submission, or signature, shall constitute a representation to the Commission that he/she is authorized to represent the particular participant in whose behalf he/she acts. Any person appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of his/her authority to act in such capacity.

(c) *Notice of appearance and withdrawal of appearance.* An individual intending to appear before the Commission or its presiding officer in a representative capacity for a participant in a proceeding shall file with the Commission a notice of appearance in the form prescribed by the Secretary unless that individual is named in an initial filing of the participant whom he/she represents as a person to whom communications from the Commission in regard to the filing are to be addressed. A person whose authority to represent a participant in a specific Commission proceeding has been terminated shall file a timely notice of withdrawal of appearance with the Commission.

\* \* \* \* \*

3. Revise §§ 3001.9 through 3001.13 to read as follows:

#### **§ 3001.9 Filing of documents.**

(a) *Filing with the Commission.* The filing of each written document required or authorized by these rules or any applicable statute, rule, regulation, or order of the Commission, or by direction of the presiding officer shall be made using the Internet (Filing Online) pursuant to § 3001.10(a) at the Commission's Web site <http://www.prc.gov>, unless a waiver is obtained. If a waiver is obtained, a hardcopy document may be filed either by mailing or by hand delivery to the Office of the Secretary, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268–0001 during regular business hours on a date no later than that specified for such filing.

(b) *Account holder.* In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a principal account holder or an agent account holder (Filing Online account holder). The authority of the principal account holder to represent the participant on whose behalf the document is filed must be valid and current, in conformance with § 3001.6. The authority of an agent account holder to submit documents for

a principal account holder must be valid and current. A principal account holder must promptly inform the Secretary of any change in his/her authority to represent participants in a proceeding or any change in the authority delegated to an agent account holder to submit documents on his/her behalf.

(c) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule or order authorized by the Commission shall be accepted for filing. In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a Filing Online account holder.

(1) Subject to § 3001.9(d):

(i) A document submitted through Filing Online is filed on the date indicated on the receipt issued by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's Web site.

(ii) A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's Web site.

(2) Any document received after the close of regular business hours or on a Saturday, Sunday, or holiday, shall be deemed to be filed on the next regular business day.

(d) *Rejected filings.* Any filing that does not comply with any applicable rule or order authorized by the Commission may be rejected. Any filing that is rejected is deemed not to have been filed with the Commission. If a filing is rejected, the Secretary or the Secretary's designee will notify the person submitting the filing, indicating the reason(s) for rejection. Acceptance for filing shall not waive any failure to comply with this part, and such failure may be cause for subsequently striking all or any part of any document.

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

(a) *Documents.* Each document filed with the Commission must be submitted through Filing Online by an account holder, unless a waiver is obtained.

(1) The text of documents filed with the Commission shall be formatted in not less than one and one-half spaced lines except that footnotes and quotations may be single spaced. Documents must be submitted in Arial 12 point font, or such program, format, or font as the presiding officer may designate.

(2) The Secretary may prescribe additional format requirements for

documents submitted through Filing Online.

(3) The form of documents filed as library references is governed by § 3001.31(b)(2)(iv).

(4) Requests for changes in rates and classifications, including supporting documentation, shall be filed both online and in hardcopy form pursuant to paragraph (b) of this section.

(5) Documents filed online must satisfy Filing Online system compatibility requirements specified by the Secretary in the Filing Online User Guide, which may be accessed from the Filing Online page on the Commission's Web site, <http://www.prc.gov>.

(6) Documents requiring privileged or protected treatment shall not be filed online.

(b) *Hard copies.* Each document filed in paper form must be produced on letter-size paper, 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 .75 inches, except that 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. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service must be printed from a text-based pdf version of the document, where possible. Otherwise, they may be reproduced by any duplicating process that produces clear and legible copies. Participants in proceedings conducted under subpart H who are unable to comply with these requirements may seek to have them waived. Each person filing a hardcopy document with the Commission must provide an original and 2 fully conformed copies of the document required or permitted to be filed under this part, except for a document filed under seal, for which only the original and two (2) copies need be filed. The copies need not be signed but shall show the full name of the individual signing the original document and the certificate of service attached thereto.

(c) *Computer media.* A participant that has obtained a waiver of the online filing requirement of § 3001.9(a) may submit a document on standard PC media, simultaneously with the filing of one printed original and two hard copies, provided that the stored document is a file generated in either Acrobat (pdf), Word, or WordPerfect, or Rich Text Format (rtf).

#### **§ 3001.11 General contents of documents.**

(a) *Caption and title.* The caption of each document filed with the Commission in any proceeding shall

clearly show the docket designation and title of the proceeding before the Commission. The title of such document shall identify each participant on whose behalf the filing is made and include a brief description of the document or the nature of the relief sought therein (e.g., motion for extension, brief on exceptions, complaint, notice of intervention, answer to complaint).

(b) *Designation of individuals to receive service.* Each notice of intervention filed pursuant to § 3001.20 or § 3001.20a must state the name, full mailing address, telephone number, and e-mail address of up to two individuals designated to receive service of hardcopy documents relating to the proceeding.

(c) *Contents.* In the event there is no rule, regulation, or order of the Commission which specifically prescribes the contents of any document to be filed, such document shall contain a proper identification of the parties concerned and a concise but complete statement of the relief sought and of the facts and citations of authority and precedent relied upon.

(d) *Improper matter.* Defamatory, scurrilous, or unethical matter shall not be included in any document filed with the Commission.

(e) *Subscription.* Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that he/she has read the document being subscribed and filed; that he/she knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified in the document with full power and authority so to do; that to the best of his/her knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that such document is not filed for purposes of delay.

(1) For a document filed via the Internet by an account holder, the subscription requirement is met when the document is filed with the Commission.

(2) For a hardcopy document filed under either § 3001.10(b) or (c), the original shall be signed in ink by the individual filing the same or by an authorized officer, employee, attorney, or other representative and all other copies of such document filed with the Commission and served on the participants in any proceeding shall be fully conformed thereto.

(f) *Table of contents.* Each document filed with the Commission consisting of 20 or more pages shall include a table

of contents with page references. For briefs see § 3001.34.

(g) *Certificate of service.* A certificate of service signed in ink must be attached to the original of each hardcopy document filed with the Commission showing service on all participants in a proceeding as prescribed by § 3001.12. All copies filed and served shall be fully conformed thereto.

#### § 3001.12 Service of documents.

(a) *Service by account holders.* Each document filed in a proceeding via the Internet by an Account Holder shall be deemed served on all participants when it is accepted by the Secretary and posted on the Commission's Web site, except that:

(1) A document subject to § 3001.10(a)(4) must meet the service requirements that apply to hardcopy documents as well as those that apply to documents filed online.

(2) A document that must be served on a participant that the Commission or presiding officer has determined is unable to receive service through the Commission's Web site shall be served on such participant by the Secretary by First-Class Mail.

(b) *Service by others.* If the Commission or presiding officer has determined that a participant is unable to file documents online, documents filed by that participant must be delivered to the Secretary by hand or First-Class Mail. Such documents will be deemed served upon all participants when they are accepted by the Secretary and posted on the Commission's Web site. If such documents cannot be posted on the Commission's website, they will be deemed served on all participants when the Secretary posts them as First-Class Mail.

(c) *Service by the Commission.* Except as provided in this section, each document issued by the Commission or presiding officer shall be deemed served upon the participants in the proceeding upon its posting by the Commission on its website. Service of Commission documents on any participant that the Commission or presiding officer has determined is unable to receive service through the Commission Web site shall be by First-Class Mail.

(d) *Hardcopy documents.* Each participant filing a hardcopy document in a proceeding shall serve such document upon each person on the proceeding's service list, unless that person is subject to paragraph (b) of this section, or the Commission or presiding officer otherwise directs.

(e) *Limitation on extent of hardcopy service.* To avoid the imposition of an

unreasonable burden upon participants, the Commission or the presiding officer may, by appropriate order, limit service of hardcopy documents to service upon participants intending to actively participate in the hearing, or upon a person or persons designated for properly representative groups, or by requiring the making of documents available for convenient public inspection, or by any combination of such methods.

(f) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participant. The service list for each current proceeding will be available on the Commission's Web site <http://www.prc.gov>. Each participant is responsible for ensuring that its listing on the Commission's Web site is accurate, and should promptly notify the Commission of any errors.

(g) *Method of hardcopy service.* Service of hardcopy documents may be made by First-Class Mail or personal delivery, to the address shown for the individuals designated on the Secretary's service list. Service of any hardcopy document upon the Postal Service shall be made by delivering or mailing six copies thereof to the address shown for the individual designated in the Secretary's service list.

(h) *Date of hardcopy service.* Whenever service is made by mail, the date of the postmark shall be the date of service. Whenever service is made by personal delivery, the date of such delivery shall be the date of service.

(i) *Form of hardcopy certificate of service.* The certificate of service of hardcopy documents shall show the name of the participant or his/her counsel making service, the date and place of service, and include the statement that "I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice."

#### § 3001.13 Docket and hearing calendar.

The Secretary shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The Secretary shall maintain a hearing calendar of all proceedings that have been set for hearing. Proceedings shall be heard on the date set in the hearing order, except that the Commission may for cause, with or without motion, at any time with due notice to the parties advance or postpone the date of hearing. All documents filed in a docket, other than

matter filed under seal, and the hearing calendar may be accessed remotely via the Commission's Web site, or viewed at the Commission's docket section during regular business hours.

4. Amend § 3001.20 by revising paragraph (c) to read as follows:

#### § 3001.20 Formal intervention.

\* \* \* \* \*

(c) *Form and time of filing.* Notices of intervention shall be filed no later than the date fixed for such filing in any notice or order with respect to the proceeding issued by the Commission or its Secretary, unless in extraordinary circumstances for good cause shown, the Commission authorizes a late filing. Notices of intervention shall conform to the requirements of §§ 3001.9 through 3001.12.

\* \* \* \* \*

5. Amend § 3001.20a by revising paragraph (a) to read as follows:

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

\* \* \* \* \*

(a) *Form of intervention.* Notices of intervention as a limited participator shall be in writing, shall set forth the nature and extent of the intervenor's interest in the proceeding, and shall conform to the requirements of §§ 3001.9 through 3001.12.

\* \* \* \* \*

6. Amend § 3001.26 by revising paragraphs (a) through (c) and paragraph (e) to read as follows:

#### § 3001.26 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 propound to any other participant in a proceeding written, sequentially numbered interrogatories, by witness, 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 propounding the interrogatories shall file them with the Commission in conformance with §§ 3001.9 through 3001.12. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery

request may be filed after the initial discovery period ends. They must be filed within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the participant who asked the question, and the number and text of the question. 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 participant responding to the interrogatories shall file the answers in conformance with §§ 3001.9 through 3001.12 within 14 days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(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 that 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 shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within 10 days of the filing of the interrogatories.

\* \* \* \* \*

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel a more responsive answer, or an 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 filed in conformance with

§§ 3001.9 through 3001.12 within seven days of the date of the order compelling an answer or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

\* \* \* \* \*

7. Amend § 3001.27 by revising paragraphs (a) through (c) and paragraph (e) to read as follows:

**§ 3001.27 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 that constitute or contain matters, not privileged, that are relevant to the subject matter involved in the proceeding and that are in the custody or control of the participant to whom the request is addressed. 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 its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* The participant responding to the request shall file an answer with the Commission in conformance with §§ 3001.9 through 12 within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section.

(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 with particularity the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections shall be filed with the

Commission in conformance with §§ 3001.9 through 3001.12 within 10 days of the request for production.

\* \* \* \* \*

(e) *Compelled answers.* Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection is found not to be valid. Such compelled documents or things shall be made available to the participant making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing. When complying with orders to produce documents or things, notice shall be filed in conformance with §§ 3001.9 through 3001.12. The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

8. Amend § 3001.28 by revising paragraphs (a) through (c) and paragraph (e) to read as follows:

**§ 3001.28 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 its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer, the participant to whom the request is directed files a written answer or objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file its answer with the Commission in conformance with §§ 3001.9 through 3001.12.

(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 that would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12, within 10 days of the request for admissions.

\* \* \* \* \*

(e) *Compelled answers.* Upon motion of any participant to the proceeding the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be filed.

9. Amend § 3001.30 by revising paragraphs (e)(2) and (e)(3) to read as follows:

**§ 3001.30 Hearings.**

\* \* \* \* \*

(e) \* \* \*

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served in accordance with §§ 3001.9 through 3001.12 no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "OCA-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997).") When a participant designates written cross-examination, two hard copies of the documents to be included shall simultaneously be submitted to the

Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be filed three or more working days before the announced appearance of the witness and should include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. A participant intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be filed at least two calendar days (including one working day) before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the participant. If a participant has obtained permission to receive service of documents in hardcopy form, hardcopy notices of intent to conduct oral cross-examination of witnesses for that participant should be delivered to counsel for that participant and served three or more working days before the announced appearance of the witness, and cross-examination exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

\* \* \* \* \*

10. Amend § 3001.31 by revising the first sentence of paragraph (b)(2)(iv) to read as follows:

**§ 3001.31 Evidence.**

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(iv) *Filing procedure.* Participants filing material as a library reference shall file contemporaneous written

notice of this action in conformance with §§ 3001.9 through 3001.12. \* \* \*

\* \* \* \* \*

11. Amend § 3001.42 by revising paragraph (a) to read as follows:

**§ 3001.42 Public information and requests.**

\* \* \* \* \*

(a) *Notice and publication.* Service of intermediate and recommended decisions, advisory opinions and public reports upon parties to the proceedings is provided for in §§ 3001.12(c) and 3001.39(d). Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the **Federal Register**, and are available on the Commission's Web site, <http://www.prc.gov>. Commission recommended decisions, advisory opinions and public reports, orders, and intermediate decisions will be released to the press and made available to the public promptly by posting on the Commission's Web site.

\* \* \* \* \*

[FR Doc. 02-27784 Filed 11-5-02; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[IA 159-1159a; FRL-7403-7]

**Approval and Promulgation of Implementation Plans; State of Iowa**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving the State Implementation Plan (SIP) revision submitted by the state of Iowa. This revision pertains to orders and permits issued by the state to control particulate matter (PM<sub>10</sub> missions from Holnam, Inc., and Lehigh Portland Cement Company at Mason City (Cerro Gordo County), Iowa. This approval will make the orders and permits Federally enforceable.

**DATES:** This direct final rule will be effective January 6, 2003, unless EPA receives adverse comments by December 6, 2002. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Royan Teter, Environmental Protection Agency, Air Planning and Development