

*Past Practices and Bankruptcy.* Issues relating to whether the parties had sufficient notice to be deemed to have acquiesced in matters now being challenged are beyond the question referred and are for the CRB's determination. The same is true with regard to the impact that bankruptcy proceedings may have on the outcome of its proceedings.

*Conclusion.* The Copyright Royalty Board referred a novel question of law to the Register which asked: "Is the universe of preexisting subscription services, [as defined by § 114(j)(11)], limited by law to only Muzak (provided over the DiSH Network), Music Choice, and DMX?" Before answering this question, the Office contemplated what Congress meant by the term "preexisting subscription service," because there was a controversy over whether the term applied to the use of the sound recording, or the business entity that operated under the § 114 statutory license. Ultimately, the Office discerned that the term is used in the statute in both manners. A preexisting subscription service is used in § 114 sometimes to refer to the aggregate of the subscription transmissions that were made by the entities identified in the legislative history, and sometimes to identify the business entities operating under the statutory license on or before July 31, 1998, and that have the authority to negotiate rates and terms for use of the license. Whether Congress intended this outcome is unclear, but the Office's interpretation offers a workable reading of the statute and the legislative intent.

Nevertheless, for purposes of the question posed by the Board, the determination that the term refers to the business entities in existence and making subscription transmissions on or before July 31, 1998, appears to be the more appropriate reading of the term "preexisting subscription service" for purposes of determining whether an entity can operate under the statutory license as a preexisting subscription service and participate in the rate setting process. Moreover, in light of Congress's decision to identify specific entities as being preexisting subscription services, it appears Congress meant to limit preexisting subscription service status to the three entities identified by the Board.

October 20, 2006.

**Marybeth Peters,**

*Register of Copyrights*

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## POSTAL SERVICE

### 39 CFR Part 3

#### Amendment to Bylaws of the Board of Governors

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** On September 11, 2006, the Board of Governors of the United States Postal Service adopted a revision to its bylaws. The purpose of this revision was to enable Postal Service management to submit relatively minor Negotiated Service Agreements (NSAs) to the Postal Rate Commission for consideration without first submitting those minor NSAs to the Postal Service Board of Governors. Consequently, the Postal Service hereby publishes this final rule.

**DATES:** *Effective Date:* September 11, 2006.

**FOR FURTHER INFORMATION CONTACT:** Wendy A. Hocking, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260-1000, (202) 268-4800.

**SUPPLEMENTARY INFORMATION:** This document publishes a revision to 39 CFR 3.3 of the Bylaws of the Board of Governors of the United States Postal Service. The Board's bylaws in paragraphs (f) and (g) of § 3.3 had reserved to the full Board the authorization for filing any request to the Postal Rate Commission for a recommended decision on changes in rates or mail classification. The Board revised paragraphs (f) and (g) of § 3.3 to provide that the Postmaster General may authorize the filing of a request to the Postal Rate Commission for minor NSAs without first submitting the request to the Postal Service Board of Governors. The changes were adopted by the Board on September 11, 2006. The purpose of the changes was to enable Postal Service management to submit relatively minor NSAs to the Postal Rate Commission without first coming to the Board for approval. This exception would apply only for submissions under the Commission's rules for streamlined consideration of requests to renew an existing NSA or to add one that is "functionally equivalent" to an existing NSA. Proposals for new baseline NSAs would still require Board approval in advance. At the end of the process, when the Commission completes its proceedings and submits a recommended decision, final consideration by the Governors is required in all cases by statute.

## List of Subjects in 39 CFR Part 3

Administrative practice and procedure, Organization and functions (Government agencies), Postal Service.  
 ■ Accordingly, part 3 of title 39 CFR is amended as follows:

### PART 3—BOARD OF GOVERNORS (ARTICLE 111)

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

**Authority:** 39 U.S.C. 202, 203, 205, 401(2), (10), 402, 414, 416, 1003, 2802-2804, 3013; 5 U.S.C. 552b (g), (j); Inspector General Act, 5 U.S.C. app.; Pub.L. 107-67, 115 Stat.514 (2001).

■ 2. Section 3.3 is amended by revising paragraphs (f) and (g) to read as follows:

#### § 3.3 Matters reserved for decision by the Board.

\* \* \* \* \*

(f) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in postal rates, except that the Postmaster General may authorize such requests with respect to Negotiated Service Agreements filed for consideration under 39 CFR 3001.196 or 3001.197.

(g) Authorization of the Postal Service to request the Postal Rate Commission to submit a recommended decision on changes in the mail classification schedule, except that the Postmaster General may authorize such requests with respect to Negotiated Service Agreements filed for consideration under 39 CFR 3001.196 or 3001.197.

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**Neva Watson,**

*Attorney, Legislative, Legal Policy and Ratemaking.*

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2006-0629; FRL-8238-9]

#### Approval and Promulgation of Air Quality Implementation Plans; Maryland; Nitrogen Oxides Allowance Allocations for 2008

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

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve a revision to the Maryland State Implementation Plan (SIP). The revision consists of the