

Compliance date	Machine type	Date of manufacture
November 30, 2011	Continuous Mining Machines (except full-face continuous mining machines)	After August 31, 2011.
February 28, 2013	Continuous Mining Machines (except full-face continuous mining machines)	On or before August 31, 2011.

(b) *Requirements for proximity detection systems.* A proximity detection system must:

(1) Cause a machine to stop no closer than 3 feet from a miner except for a miner who is:

(i) In the on-board operator's compartment; or

(ii) Remotely operating a continuous mining machine while cutting coal or rock, in which case, the proximity detection system must cause the machine to stop before contacting the machine operator.

(2) Provide an audible or visual warning signal, distinguishable from other signals, when the machine is 5 feet and closer to a miner except for a miner who is:

(i) In the on-board operator's compartment; or

(ii) Remotely operating a continuous mining machine while cutting coal or rock.

(3) Provide a visual signal on the machine that indicates the system is functioning properly;

(4) Prevent movement of the machine if the system is not functioning properly. However, a system that is not functioning properly may allow machine movement if an audible or visual warning signal, distinguishable from other signals, is provided during movement. Such movement is permitted only for purposes of relocating the machine from an unsafe location for repair;

(5) Be installed to prevent interference with or from other electrical systems; and

(6) Be installed and maintained by a person trained in the installation and maintenance of the system.

(c) *Examination and checking.* Operators must:

(1) Designate a person who must perform a visual check of machine-mounted components of the proximity detection system to verify that components are intact, that the system is functioning properly, and take action to correct defects—

(i) At the beginning of each shift when the machine is to be used;

(ii) Immediately prior to the time the machine is to be operated if not in use at the beginning of a shift; or

(iii) Within 1 hour of a shift change if the shift change occurs without an interruption in production.

(2) Check for proper operation of miner-wearable components at the

beginning of each shift that the component is to be used. Defects must be corrected before the component is used.

(3) Designate a qualified person under § 75.153 to examine proximity detection systems for the requirements in paragraphs (b)(1) through (5) of this section at least every 7 days. Defects in the proximity detection system must be corrected before the machine is returned to service.

(d) Certification and records. The operator must make and retain certification and records as follows:

(1) At the completion of the check required under paragraph (c)(1) of this section, a certified person under § 75.100 must certify by initials, date, and time that the check was conducted. Defects found as a result of the check in (c)(1) of this section, including corrective actions and date of corrective action, must be recorded.

(2) Defects found as a result of the check in (c)(2) of this section, including corrective actions and date of corrective action, must be recorded.

(3) At the completion of the examination required under paragraph (c)(3) of this section, the qualified person must record and certify by signature and date that the examination was conducted. Defects, including corrective actions and date of corrective action, must be recorded.

(4) Make a record of the persons trained in the installation and maintenance of proximity detection systems required under paragraph (b)(6) of this section.

(5) Maintain records in a secure book or electronically in a secure computer system not susceptible to alteration.

(6) Retain records for at least one year and make them available for inspection by authorized representatives of the Secretary and representatives of miners.

(e) *New technology.* Mine operators or manufacturers may apply to MSHA for acceptance of a proximity detection system that incorporates new technology. MSHA may accept a proximity detection system if it is as safe as those which meet the requirements of this section.

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POSTAL REGULATORY COMMISSION

39 CFR Parts 3001 and 3025

[Docket No. RM2011-13; Order No. 814]

Appeals of Post Office Closings

AGENCY: Postal Regulatory Commission.
ACTION: Proposed rulemaking.

SUMMARY: This document proposes revisions to the Commission's rules for appeals of post office closings. The existing rules are unnecessarily complex and outmoded. The revisions update the rules and shorten the appeal process. They also provide a clearer explanation of the appeal process, of how to participate in that process, and of the nature of the Commission's review. The Commission invites comments on the proposed revisions.

DATES: *Comments are due:* October 3, 2011.

ADDRESSES: Submit comments electronically by accessing the "Filing Online" link in the banner at the top of the Commission's Web site (<http://www.prc.gov>) or by directly accessing the Commission's Filing Online system at <https://www.prc.gov/prc-pages/filing-online/login.aspx>. Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202-789-6820 (for proposal-related information) or DocketAdmins@prc.gov (for electronic filing assistance.)

SUPPLEMENTARY INFORMATION:

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I. Introduction

Section 404(d)(5) of title 39, U.S. Code, provides that when the Postal Service makes a decision to close or consolidate a post office, customers of the post office may appeal the decision to the Postal Regulatory Commission. The Commission's rules governing such

appeals were adopted over 30 years ago in 1977 and are unnecessarily complex. The Commission's practices have evolved since then. Also, the Postal Service has recently revised its rules setting out procedures for the closing or consolidation of post offices. Accordingly, the Commission proposes revisions to its rules governing appeals of post office closings and consolidations to make them more accurately reflect current practices and more user friendly.

II. Advantages of the New Rules

The new rules streamline the procedures for appeals. Under current practice, the Commission posts petitions for review on its Web site and sends a notice (PRC Form 56) to the Postal Service. *See, e.g.*, Docket No. A2011-14, Notice of Filing Under 39 U.S.C. 404(d), May 5, 2011. Under the new rules this procedural step will be unnecessary. The posting of documents on the Commission's Web site has become the standard method of serving documents. 39 CFR 3001.12. The posting of a petition for review on the Commission's Web site will provide notice to the Postal Service of an appeal.

The new rules simplify the procedures for persons wishing to appeal a post office closing or consolidation. The new rules excuse petitioners and persons other than the Postal Service from electronic filing requirements. Since the Commission's electronic filing requirements were enacted, numerous requests for waiver of those requirements have accompanied appeals of post office closings or consolidations. The Commission has always granted waivers and allowed appeals filed by First-Class Mail. The requirement to obtain a waiver of those requirements places unnecessary burdens on persons appealing a post office closing or consolidation.

The new rules also excuse participants who choose to file by First-Class Mail from service on other participants. The new rules provide for service of documents by First-Class Mail to participants (but not the Postal Service) who do not use Filing Online. The Secretary of the Commission would be responsible for sending the documents by mail. This rule only would apply to appeals of post office closings and consolidations. The administrative record would not be served by mail. Rather, the Postal Service would have to notify by First-Class Mail participants who do not use electronic filing both when the administrative record is filed and where it is available for review. The Postal

Service must make the administrative record and all filings in the appeal available at the post office to be closed or consolidated and at post offices likely to serve a significant number of customers of the post office under study.

The new rules remove the requirement for participants to file a notice of intervention. Rather, interested persons may simply file comments or briefs by deadlines established in these rules. The new rules reflect Commission practice to accept comments or statements without requiring a notice of intervention.

The new rules specifically clarify that when a retail facility is relocated within a community so that the number of facilities within that community does not change, that relocation is not a closing that can be appealed to the Commission.

The current rules are unnecessarily difficult to understand. *See, e.g.*, Docket No. A2011-15, Initial Brief in Support of Petition, June 7, 2011, at 15 (suggesting a need for "[b]etter notification of the right to appeal and more detailed guidance for a layperson undertaking a highly legalistic venture * * *"). Most petitioners are not lawyers and do not employ counsel. Accordingly, the Commission has edited the rules by shortening sentences and removing legal jargon wherever possible.

The new rules are intended to eliminate delay in filing the administrative record. In appeals of the closings of stations and branches, the Postal Service has previously not filed an administrative record because "In the Postal Service's view, the discontinuance of [a] station does not require an official administrative record conforming to Post Office discontinuance regulations in 39 CFR Part 241.3 and Handbook PO-101.

* * *" Docket No. A2011-16, Notice of United States Postal Service, May 31, 2011, at 1-2. In some cases this has resulted in unnecessary expense and delay. *See, e.g.*, Docket No. A2011-16, City of Akron, Ohio's Motion to Compel Administrative Record and Extend the Deadline for Petitioner and City of Akron, Ohio to File Form 61 and/or an Initial Brief, June 10, 2011. In other cases, the Commission has had to obtain the administrative record by issuing an information request. *See, e.g.*, Docket No. A2011-13, Commission Information Request No. 1, June 9, 2011. This, in turn, has caused delay in the filing of briefs. *See, e.g.*, Docket No. A2011-16, Order Granting Extension and Modifying Procedural Schedule, June 23, 2011.

The Postal Service has now revised its regulations so that the rules for creating an administrative record apply when the Postal Service considers closing or consolidating any Postal Service operated retail facility. 39 CFR 241.3(a)(1)(i), 76 FR 41420 (July 14, 2011). However, the Postal Service's new rules do not apply to closings or consolidations that were already under study prior to July 14, 2011. 39 CFR 241.3(a)(1)(ii), 76 FR 41420 (July 14, 2011). Thus, the Commission may still receive appeals in which the supporting documentation was created "pursuant to specially crafted procedures for stations and branches" and is not considered by the Postal Service to be a proper "administrative record." Docket No. A2011-17, United States Postal Service Notice of Filing and Application for Non-Public Status, July 1, 2011, at 2. In order to forestall delays of the type described above, the Commission is defining "administrative record" to include all the documentation that supports the decision for which review is sought.

The new rules provide for a more rapid procedural schedule. The administrative record is due 10 days after the posting of a petition for review on the Commission's Web site. The current rules provide 15 days. The shortening of this time should not present difficulties for the Postal Service. The Postal Service has stated that documents regarding closings and consolidations are "typically transmitted electronically * * *." 76 FR 17794, 17796 (March 31, 2011). If the administrative record is in electronic form, it should be easy to file it electronically within 10 days.

Petitioner's statement or brief is due 20 days after the filing of the administrative record. This is the same amount of time provided under the current rules. The responsive brief or statement of the Postal Service is due 14 days from the filing of petitioner's statement or brief. This has been shortened from 20 days under the current rules. The reply to the Postal Service response is due 7 days from the filing of the response. This has been shortened from 15 days under the current rules. The new deadlines will allow for speedier decisions. Although by law the Commission has up to 120 days to issue its decision in these cases, Commission decisions would now be expected to issue within 75 days.

Section 404(d)(5) grants the Commission authority to suspend the effectiveness of a final determination until an appeal has been decided. The existing rules require an appellant or intervenor to file an application for

suspension and allow 10 days for a Postal Service answer. The new rules simply suspend the effectiveness of a final determination until an appeal is decided. The Commission believes that, absent extraordinary circumstances, no post office should be closed or consolidated if an appeal is pending, and requiring a petitioner to apply for a suspension causes unnecessary paperwork for both the petitioner and for the Postal Service. However, the Commission recognizes that this proposed rule could lead to some additional expense for the Postal Service. Therefore, the Postal Service is requested to address this potential with reference to the Commission's expectation that the revisions in these rules should allow more rapid decisions on appeals.

III. Obsolete Practices

Several features of the existing rules do not reflect current practice. The existing rules prescribe the content of briefs in great detail. In recent years briefs have seldom been filed. Petitioners, for the most part, file PRC Form 61, which provides a template for petitioners to use for submitting their arguments, in lieu of an initial brief, and the Postal Service has taken to filing comments in lieu of an answering brief. Petitioners rarely file reply briefs, although they sometimes send a letter disputing the Postal Service's comments. The new rules establish that petitioners and other interested persons may file comments in addition to or in place of a brief. The new rules also delete the detailed format and content requirements for briefs.

An oral argument has never been held in an appeal of a post office closing or consolidation. The current rules allow for oral argument only under unusual circumstances. The Commission has decided to remove the rule providing for oral argument. The Commission's experience with appeals of post office closings and consolidations reveals that written pleadings provide sufficient bases for decisions.

IV. New Postal Service Regulations

The Postal Service recently adopted new regulations governing the closing or consolidation of post offices. 76 FR 41413 (July 14, 2011). According to the Postal Service, the Commission's advisory opinion on the closing of stations and branches in Docket No. N2009-1 "had a major influence on the Postal Service's larger effort to revise its discontinuance procedures * * *." ¹ *Id.*

at 41418. The Commission appreciates the Postal Service's responsiveness to the recommendations in that opinion.

The Postal Service's new regulations set out a three-stage procedure for closing or consolidating Postal Service operated retail facilities. The Postal Service has taken a major step by applying the same rules to the closing of stations and branches as apply to the closing or consolidation of post offices. This was one of the principle recommendations in the Commission's advisory opinion.

The first stage of the closing process is an "initial feasibility study." 39 CFR 241.3(a)(5); 76 FR 41421. Such a feasibility study may be initiated by a district manager or the responsible headquarters vice president. The feasibility study is preliminary to the statutorily mandated stages of proposal and written determination. *See* 39 U.S.C. 404(d)(1), (3). During the feasibility study, customers must be sent a questionnaire and notice that the facility is under study for closing or consolidation. The Postal Service has also expanded the types of customers who must receive notice by mail. These steps are a response to Commission recommendations that all potential customers of a facility receive actual notice of possible closing. 76 FR 41418.

The second stage of the closing process is publication of a formal proposal to close. Section 404(d)(1) of title 39, United States Code, requires the Postal Service to give "adequate" notice of its intent to close or consolidate a post office to persons served by that post office. Prior to adopting new rules, the Postal Service's practice of giving notice varied. The Postal Service has been known to send notice of intent to close (in the form of questionnaires) to thousands of customers of a station or branch. *See* Docket No. A2011-8, Comments of the United States Postal Service, April 11, 2011, at 2-3. On the other hand, the Postal Service has sent letters just to "community leaders." Docket No. A2011-12, Notice of United States Postal Service, April 12, 2011, at 3. In the case of suspended post offices, the Postal Service posted a notice in some other post office. Docket No. A2011-3, Order Dismissing Appeal, February 11, 2011, at 3. Adequate notice is essential so that patrons can communicate their concerns prior to a final determination and have an opportunity to correct Postal Service errors by appealing a final determination. The Postal Service's new rules now require that better notice be

given to all patrons of post offices, stations, and branches even if a facility is suspended.

The Postal Service's new regulations provide that notice of a proposed closing or consolidation must be posted at the facility being studied and at nearby facilities. An invitation to comment must also be posted at those facilities. 39 CFR 241.3(d)(1); 76 FR 41423. Customers must be given 60 days to submit comments, 39 CFR 241.3(d)(2), and a public meeting with customers must be held. *Id.* at 241.3(d)(3). The new Postal Service regulations represent an expansion of notice and comment opportunities. Previously, notice of a proposal to close might only be posted in the facility being studied. Customers of stations and branches had only 10 days to comment. Holding a public meeting was optional. The Commission recommended these expansions in its Docket No. N2009-1 Advisory Opinion on station and branch closings. These new procedures will significantly reduce concerns about the adequacy of notice and may well reduce the number of appeals.

The third stage of the closing process is publication of a written determination to close. By statute, the written determination must "be made available to persons served by" the post office to be closed or consolidated. 39 U.S.C. 404(d)(3). Patrons of the post office to be closed are entitled to appeal to the Postal Regulatory Commission. The Commission's rules have always required the Postal Service to give notice to patrons of their right to appeal. *See* 39 CFR 3001.110. The Postal Service's former rules had a similar provision. *See* former 39 CFR 241.3(f)(2)(ii) (2009). The Postal Service's new rules retain this provision, but do not require notice of appeal rights to cover stations and branches. 39 CFR 241.3(f)(2)(ii); 76 FR 41424. Proposed rule 3025.3(b) applies the Commission determination that patrons of any Postal Service operated retail facility may appeal a Postal Service determination to close or consolidate that facility.

In summary, the Postal Service has responded to many of the concerns expressed in the Commission's Advisory Opinion on closing of stations and branches. During its initial feasibility study, the Postal Service will mail notices and questionnaires to all delivery addresses in the Zip Code of the post office under study and to delivery addresses for which the post office under study provides allied delivery services. During the proposal and final determination stages, the Postal Service will post notice at the

¹ Docket No. N2009-1, Advisory Opinion Concerning the Process for Evaluating Closing

Stations and Branches, March 10, 2010 (Docket No. N2009-1 Advisory Opinion).

post office under study, at the post office that will serve as a supervising facility, and at any retail facility likely to serve a significant number of customers of the facility under study. These steps will help ensure that customers receive adequate notice of possible closings and consolidations of post offices.

V. Appeals From Closings of Stations and Branches

There has been disagreement and resulting confusion about the scope of the Commission's authority under section 404(d)(5) to hear appeals of a "determination by the Postal Service to close or consolidate any post office * * *." The Commission seeks to clarify the scope of its authority and eliminate any public confusion on when persons served by a particular office may appeal a determination to close or consolidate that office. Thus, the Commission includes a proposed definition of the term "post office" as it is used in these rules governing appeals of closings and consolidations.²

The Commission believes that its proposed definition, that "post office" means "a Postal Service operated retail facility" reflects the plain meaning of the term "post office" as it is used in section 404(d)(5). The Commission has always considered retail outlets classified as stations and branches by the Postal Service for internal administrative purposes to be included within the terms "post offices" and "offices" appearing in section 404(d)(5). See Docket No. N2009-1, Advisory Opinion at 65. In interpreting the scope of its authority under that section, the Commission has consistently held that persons served by stations and branches have the right to appeal determinations to close their offices.

The Postal Service has argued that the Commission has been inconsistent in its decisions allowing appeals relating to various types of retail facilities. See Docket No. A2010-3, Comments of United States Postal Service Regarding Jurisdiction Under (Current) Section 404(d), April 19, 2010, at 10-19 (Docket No. A2010-3 Comments). These alleged inconsistencies evaporate, however, when one distinguishes cases finding *sufficient* conditions for appealability from cases establishing *necessary* conditions. The Postal Service has interpreted cases establishing a basis for Commission jurisdiction as if they established *the* basis for jurisdiction.

² The definition of this term in the context of appeals of determinations to close or consolidate offices does not prevent the Postal Service from attaching a different meaning to that term for internal administrative or other purposes.

For example, the Postal Service cites Docket No. A83-30, Knob Creek, WV, as establishing a standard that section 404(d) only applies when a closed retail facility is the only retail facility in a community. Docket No. A2010-3 Comments at 10-11. However, the Commission was careful to state

An important intent, *but not the only one*, of Congress was to apply § 404(b) to the closing of the sole postal retail facility serving a community.

Docket No. A83-30, Commission Opinion Remanding Determination for Further Consideration, January 18, 1984, at 8 (emphasis added) (Docket No. A83-30 Opinion). That opinion also relied on the definition of "post office"—a retail facility where patrons may purchase postal services, and dispatch and possibly receive mail—that is consistent, albeit less precise, than the one proposed herein. *Id.* at 3. There was certainly no declaration that section 404(d) (then 404(b)) applied only to the closing or consolidation of the sole retail facility in a community.

The Commission will carefully review alternative definitions offered by the Postal Service and any other interested commenters. A thorough review of the issue and the establishment of a clear and understandable definition through rulemaking will eliminate confusion to the benefit of the Commission, the Postal Service, and all postal patrons.

VI. Suspended Offices

The Commission welcomes the Postal Service's establishment of uniform notice requirements. These new requirements represent the clear intent of the Postal Service to take reasonable steps to ensure that patrons receive actual notice of proposals to close and of final determinations to close. The Commission's concern that patrons receive actual notice was expressed in its advisory opinion on station and branch closings and in its comments on the Postal Service's proposed rules for closings and consolidations. However, that concern persists with respect to post offices where service was suspended prior to the initiation of the three-step process. Patrons of suspended post offices have complained that the posting of a proposal to close or a final determination at a distant post office fails to provide adequate notice. See, e.g., Docket No. A2011-3, Request to File an Appeal Regarding the Final Determination to Close the Suspended Graves Mill, VA Post Office and Continue to Provide Rural Route Service, November 22, 2010, at 3 (suggesting that the Postal Service should have notified customers by letter

that a final determination to close a suspended office had been posted at distant post offices).

The Postal Service's new rules do not specifically change the practice of posting at potentially distant post offices proposals to close and final determinations to close suspended post offices. 39 CFR 241.3(d)(1)(iv), 241.3(g)(1)(i); 76 FR 41423-24. The Commission proposes rule 3025.3(c) requiring that customers of suspended post offices receive notice of proposals to close and final determinations by First-Class Mail. If providing such notice is likely to unduly burden the Postal Service, it should discuss the issue in its comments on these rules.

VII. Section-by-Section Analysis

Paragraph 3001.9(a) is amended by revising it to allow participants (other than the Postal Service) in appeals of post office closings and consolidations to file hard-copy documents.

Section 3001.10, concerning the form and number of copies of documents, is amended by revising it so as not to apply to participants (other than the Postal Service) in appeals of post office closings and consolidations.

Paragraph 3001.12(a) is amended by revising it to provide for service of documents (other than an administrative record) by the Secretary on participants (other than the Postal Service) in appeals of post office closings and consolidations who do not use Filing Online.

Paragraph 3001.17(b) is amended by revising it to change a reference from subpart H, which is being repealed, to part 3025.

Subpart H of part 3001 of chapter III of title 39 which deals with appeals of post office closings and consolidations, is removed in its entirety.

A new section 3025.1 provides definitions of the terms "final determination," "administrative record," "petitioner," "post office," and "relocate." The definition of "post office" makes clear that stations and branches are post offices for purposes of appealing a closing or consolidation.

Section 3025.2 replaces § 3001.110. New § 3025.2 sets out when the rules of part 3025 apply. A new paragraph has been added clarifying that the relocation of a post office within a community is not a closing or consolidation.

Section 3025.3 contains new notice requirements. If the Postal Service decides to propose to close or consolidate a post office, it must give to all persons served by that post office notice of its intent to close or consolidate. The notice must inform patrons that they may submit

comments, state the deadline for filing comments, and identify the address to which comments should be sent. If the Postal Service makes a final determination to close or consolidate a post office, it must notify patrons of the post office and make the final determination prominently available at the post office. Patrons must be informed that a person served by the post office may appeal to the Postal Regulatory Commission within 30 days of the availability of the final determination. For customers of suspended post offices, notice must be given by First-Class Mail.

Sections 3025.10 through 3025.14 replace § 3001.111. Section 3025.10 states that an appeal can be initiated simply by notifying the Commission in writing. Any such notification that includes the name and address of petitioner, the name or location of the post office, and that petitioner is served by the post office will be treated as a Petition for Review. The latter is a statutory requirement.

Section 3025.11 explains how to send an appeal to the Commission—either by mail or by filing electronically.

Section 3025.12 states that multiple appeals of the same closing or consolidation will be merged into a single docket.

Section 3025.13 sets out deadlines for filing appeals.

Section 3025.14 allows for comments from other interested parties. Persons submitting comments must either be served by the office to be closed or consolidated or have a demonstrable interest in the closing or consolidation.

Section 3025.20 describes the record created by the Postal Service that the Commission reviews. It also provides that participants in an appeal may dispute factual matters or conclusions drawn in the record, and that the Commission may take official notice of facts (e.g., census data) that might be judicially noticed by the courts of the United States, or of any other matter within the general knowledge of the Commission as an expert agency.

Section 3025.21 requires the Postal Service to file the administrative record within 10 days of the posting of a petition for review on the Commission's Web site. This section also requires the Postal Service to notify participants who do not use filing online when the administrative record is filed.

Notification is by First-Class Mail.

Section 3025.22 provides that all filings, including the administrative record, related to an appeal are to be available for public inspection at the post office whose closing or consolidation is under review. If the

post office has been suspended or closed, the filings are to be available at the nearest open post office.

Section 3025.30 suspends the closure or consolidation of a post office until the appeal is resolved.

Section 3025.40 describes how PRC Form 61 serves as a means for petitioners and other participants to submit their views to the Commission. This section also describes the instructions to be included with the form.

Section 3025.41 provides that petitioner's statement or brief (and the statements or briefs of participants supporting petitioner) are due 20 days after the filing of the administrative record.

Section 3025.42 provides that the Postal Service's statement or brief (and the statements or briefs of participants supporting the Postal Service) are due 14 days after the date the filing of petitioner's statement or brief.

Section 3025.43 provides that petitioner, and participants supporting petitioner, may file a reply to the Postal Service's response within 7 days of the date the response is filed. This section limits replies to issues discussed in the Postal Service response.

VIII. Conclusion

The Commission seeks comments on its proposed rules applicable to appeals of Postal Service determinations to close or consolidate post offices.

It Is Ordered:

1. Comments on proposed part 3025 of chapter III of title 39, Code of Federal Regulations, are due October 3, 2011.

2. The Commission designates Richard A. Oliver to represent the interests of the general public in this proceeding.

3. The Secretary shall arrange for publication of this notice in the **Federal Register**.

By the Commission.

Shoshana M. Grove,
Secretary.

List of Subjects

Part 3001

Administrative practice and procedure; Freedom of information; Postal Service; Sunshine Act.

Part 3025

Administrative practice and procedure; Postal Service.

For the reasons discussed in the preamble, the Postal Regulatory Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows.

PART 3001—[Amended]

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

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

Subpart A—Rules of General Applicability

2. In § 3001.9, revise paragraph (a) to read as follows:

Subpart A—Rules of General Applicability

* * * * *

§ 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 Regulatory Commission, 901 New York Ave., NW., Suite 200, Washington, DC 20268–0001 during regular business hours on a date no later than that specified for such filing. The requirements of this section do not apply to participants other than the Postal Service in proceedings conducted pursuant to part 3025 of this chapter.

* * * * *

3. In § 3001.10, add paragraph (d) to read as follows:

§ 3001.10 Form and number of copies of documents.

* * * * *

(d) *Exception for appeals of post office closings and consolidations.*

The requirements of this section do not apply to participants other than the Postal Service in proceedings conducted pursuant to part 3025 of this chapter.

4. In § 3001.12, add new paragraph (a)(3) to read as follows:

§ 3001.12 Service of documents.

(a) * * *

(3). In proceedings conducted pursuant to part 3025 of this chapter, the Secretary will serve documents (except an administrative record) on participants who do not use Filing Online. Service will be by First-Class Mail.

* * * * *

5. In § 3001.17, revise paragraph (b) to read as follows:

§ 3001.17 Notice of proceeding.

* * * * *

(b) *Appellate proceedings under 39 U.S.C. 404(d)*.

The Commission shall issue a notice of proceeding to be determined on a record compiled by the Postal Service whenever:

(1) An appeal of a determination to close or consolidate a post office is taken to the Postal Regulatory Commission pursuant to part 3025 of this chapter; or

(2) An application to suspend the effective date of a determination of the Postal Service to close or consolidate a post office pending appeal to the Postal Regulatory Commission is made pursuant to part 3025 of this chapter.

* * * * *

Subpart H—[Removed]

5. Subpart H consisting of §§ 3001.10 through 3001.117, is removed.

6. Add Part 3025, to read as follows:

PART 3025—RULES FOR APPEALS OF POSTAL SERVICE DETERMINATIONS TO CLOSE OR CONSOLIDATE POST OFFICES

Sec.

3025.1	Definitions.
3025.2	Applicability.
3025.3	Notice by the Postal Service.
3025.10	Starting an appeal.
3025.11	Transmitting an appeal.
3025.12	Duplicate appeals.
3025.13	Deadlines for appeals.
3025.14	Participation by others.
3025.20	The record on review.
3025.21	Filing of the administrative record.
3025.22	Making documents available for inspection by the public.
3025.30	Suspension pending review.
3025.40	Participant statement.
3025.41	Due date for participant statement.
3025.42	Due date for Postal Service response.
3025.43	Due date for replies to the Postal Service.

Authority: 39 U.S.C. 404(d).

§ 3025.1 Definitions.

The following definitions apply in this part:

(a) *Final determination* means the written determination and findings required by 39 U.S.C. 404(d)(3).

(b) *Administrative record* means all documents and materials created by the Postal Service or made available by the public to the Postal Service for its review in anticipation of the action for which review is sought.

(c) *Petitioner* means a person who files a document that the Commission accepts as an appeal of a post office closing or consolidation.

(d) *Post office* means a Postal Service-operated retail facility.

(e) *Relocate* means that the location of a post office within a community changes, but the total number of post offices within the community remains the same or increases.

§ 3025.2 Applicability.

(a) The rules in this part apply when:

(1) The Postal Service decides to close or consolidate a post office, and

(2) A patron of that post office wants to appeal the closing or consolidation.

(b) The following sections in part 3001, subpart A of this chapter apply to appeals of post office closings or consolidations: §§ 3001.1 through 3001.9 of this chapter, §§ 3001.11 through 3001.17 of this chapter, and §§ 3001.20 through 3001.22 of this chapter.

(c) This part does not apply when the Postal Service relocates a post office within a community.

§ 3025.3 Notice by the Postal Service.

(a) *Notice of proposal to close or consolidate a post office.* If the Postal Service proposes to close or consolidate a post office, it must give persons served by that post office notice of its intent to close or consolidate. This notice must be adequate to reasonably inform patrons that they may comment on the proposed closing or consolidation, how and where the comments may be submitted, and when the comments are due.

(b) *Notice of final determination to close or consolidate a post office.* When the Postal Service makes a final determination to close or consolidate a post office, it must give notice to persons served by that post office. The notice must be adequate to reasonably inform them that they may file an appeal with the Postal Regulatory Commission (<http://www.prc.gov>) within 30 days of the final determination's being made. Notice must be prominently displayed at the post office to be closed or consolidated and at the facility(ies) expected to provide replacement service.

(c) *Notice of suspension.* If a post office to be closed or consolidated is suspended, the Postal Service must notify patrons (both delivery and retail) by First-Class Mail of both the proposal to close or consolidate and the final determination.

§ 3025.10 Starting an appeal.

(a) A Postal Service decision to close or consolidate a post office may be appealed by a person served by that office. An appeal is begun by notifying the Postal Regulatory Commission in writing. Such a notification is known as a Petition for Review.

(b) The Petition for Review must state that the person(s) submitting it is/are served by the post office that the Postal Service has decided to close or consolidate. The petition should include the name(s) and address(es) of the person(s) filing it and the name or location of the post office to be closed. A petitioner may include other information deemed pertinent.

§ 3025.11 Transmitting an appeal.

A Petition for Review may be sent by mail or electronically through the Commission's Web site, <http://www.prc.gov>. Petitions for review may also be brought to the Commission's offices at 901 New York Avenue, NW., Suite 200, Washington, DC 20268-0001.

§ 3025.12 Duplicate appeals.

If the Commission receives more than one Petition for Review of the same post office closing or consolidation, the petitions will be considered in a single docket.

§ 3025.13 Deadlines for appeals.

(a) *In general.* If the Postal Service has issued a final determination to close or consolidate a post office, an appeal is due within 30 days of the final determination's being made available in conformance with § 3025.3(b).

(b) *Appeals sent by mail.* If sent by mail, a Petition for Review must be postmarked no later than 30 days after the final determination has been made available.

(c) *Appeals sent by other physical delivery.* If sent by some other form of physical delivery, a Petition for Review must be received in the Commission's Docket Section no later than 4:30 p.m. on the 30th day after the final determination has been made available.

(d) *Appeals sent electronically.* If submitted electronically, a Petition for Review must be received in the Commission's Docket Section no later than 4:30 p.m. on the 30th day after the final determination has been made available.

§ 3025.14 Participation by others.

(a) Any person:

(1) Served by a post office to be closed or consolidated, or

(2) With a demonstrable interest in the closing or consolidation may participate in an appeal. A person may participate in an appeal by sending written comments to the Postal Regulatory Commission in the manner described in § 3025.11.

(b) Persons may submit comments in support of a petitioner or in support of the Postal Service in accordance with the deadlines established in this part.

Commenters may use PRC Form 61, which is available on the Commission's Web site, <http://www.prc.gov>.

§ 3025.20 The record on review.

- (a) The record on review includes:
- (1) The final determination;
 - (2) The notices to persons served by the post office to be closed or consolidated;
 - (3) The administrative record;
 - (4) All documents submitted in the appeal proceeding; and
 - (5) Facts of which the Commission can properly take official notice.
- (b) However, a petitioner or commenter may dispute factual matters or conclusions drawn in the administrative record.

§ 3025.21 Filing of the administrative record.

The Postal Service shall file the administrative record within 10 days of the date of posting of a Petition for Review on the Commission's Web site. The Commission may alter this time for good cause. The Postal Service shall notify participants who do not file electronically of the filing of the administrative record. Such notification shall be made by First-Class Mail.

§ 3025.22 Making documents available for inspection by the public.

Copies of all filings (including the administrative record) related to an appeal shall be available for public inspection at the post office whose closure or consolidation is under review. If that post office has been suspended or closed, the filings shall be available at the nearest open post office. The Postal Service must notify all petitioners and commenters of the location(s) (other than the Commission offices) where the filings may be inspected. Such notification shall be made by First-Class Mail.

§ 3025.30 Suspension pending review.

A final determination to close or consolidate a post office is suspended until final disposition by the Commission when a person files a timely Petition for Review.

§ 3025.40 Participant statement.

(a) When a timely Petition for Review of a decision to close or consolidate a post office is filed, the Secretary shall furnish petitioner with a copy of PRC Form 61. This form is designed to inform petitioners on how to make a statement of his/her arguments in support of the petition.

(b) The instructions for Form 61 shall provide:

- (1) A concise explanation of the purpose of the form;

(2) A copy of section 404(d)(2)(A) of title 39, U.S. Code; and

(3) Notification that, if petitioner prefers, he or she may file a brief in lieu of or in addition to completing PRC Form 61.

§ 3025.41 Due date for participant statement.

The statement or brief of petitioner and of any other participant supporting petitioner shall be filed not more than 20 days after the filing of the administrative record.

§ 3025.42 Due date for Postal Service response.

The statement or brief of the Postal Service and of any other participant supporting the Postal Service shall be filed not more than 14 days after the date for filing of petitioner's statement.

§ 3025.43 Due date for replies to the Postal Service.

Petitioner and any other participant supporting petitioner may file a reply to the Postal Service response not more than 7 days after the date of the Postal Service response. Replies are limited to issues discussed in the Postal Service's response.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA-HQ-OPP-2011-0702; FRL-8886-2]

Fenamiphos; Proposed Data Call-In Order for Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed order.

SUMMARY: This document proposes to require the submission of various data required to support the continuation of the tolerances for the pesticide fenamiphos. Pesticide tolerances are established under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: Comments must be received on or before October 31, 2011.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPP-2011-0702, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Delivery:* OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket Facility's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305-5805.

Instructions: Direct your comments to docket ID number EPA-HQ-OPP-2011-0702. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at <http://www.regulations.gov>, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Bldg.),