

**POSTAL SERVICE****39 CFR Part 230****Office of Inspector General; Contractor Requirements**

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This rule establishes standards of qualification and responsibility for contractors employed by the Office of Inspector General. The rule also emphasizes consistency in contractor selection, and clarifies the OIG's exclusive authority to set qualifications and standards for its own contractors, as well as ensure the use of contracting best practices as established by the Federal Acquisition Regulations and other applicable sources in making contract awards.

**DATES:** *Effective Date:* March 12, 2012.

**FOR FURTHER INFORMATION CONTACT:** Anil Murjani, Office of General Counsel, Office of Inspector General, United States Postal Service, (703) 248-2244.

**SUPPLEMENTARY INFORMATION:** The OIG possesses contracting authority pursuant to the Inspector General Act of 1978, as amended (section 6(a)(9) of 5 U.S.C. App. 3). Under 39 CFR 230.1(i), the Postal Service's Office of the Inspector General (OIG) may hire and retain the services of expert consultants and other personnel as necessary to fulfill the duties and responsibilities of the Office. This rule establishes general standards of qualification and responsibility for such contractors. The rule also emphasizes consistency in contractor selection, and clarifies the OIG's exclusive authority to set qualifications and standards for its own contractors, as well as ensure the use of contracting best practices as established by the Federal Acquisition Regulations and other applicable sources in making contract awards. Neither the United States Postal Service nor the OIG will be bound by the Federal Acquisition Regulations through the adoption of this rule.

**List of Subjects in 39 CFR Part 230**

Authority delegations (Government agencies), Freedom of information, Organization and functions (Government agencies), Privacy.

For the reasons stated, the Postal Service adopts the following amendment to 39 CFR Part 230:

**PART 230—OFFICE OF INSPECTOR GENERAL**

■ 1. The authority citation for Part 230 continues to read as follows:

**Authority:** 5 U.S.C. App. 3; 39 U.S.C. 401(2) and 1001.

■ 2. Subpart A of Part 230 is amended by adding new § 230.6 to read as follows:

**§ 230.6 Contractor requirements.**

(a) The Office of Inspector General shall be the exclusive judge of its contractors' qualifications.

(b) The Office of Inspector General shall award contracts to and make purchases from only responsible contractors. In order to award a contract, a contracting officer must make an affirmative determination of responsibility.

(c) A responsible prospective contractor is one who:

(1) Has the financial and logistical resources to perform the contract;

(2) Has the necessary organization, experience, and technical ability to perform the contract;

(3) Is able to comply with the delivery and performance schedules established by the Office of Inspector General;

(4) Has a satisfactory performance record (although a lack of relevant performance history shall not disqualify a prospective contractor from award);

(5) Has a satisfactory record of integrity and business ethics; and,

(6) Is otherwise qualified and eligible to receive an award under applicable federal laws and regulations.

**Stanley F. Mires,**

*Attorney, Legal Policy & Legislative Advice.*

[FR Doc. 2012-2941 Filed 2-8-12; 8:45 am]

**BILLING CODE 7710-12-P**

**POSTAL REGULATORY COMMISSION****39 CFR Parts 3001 and 3025**

[Order No. 1171; Docket No. RM2011-13]

**Appeals of Post Office Closings**

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission is adopting a new set of rules for appeals of post office closings. The new rules are intended to update existing rules; foster clarity and simplicity, especially in terms of requirements that apply to the public; and expedite the appeal process. The rules incorporate some, but not all, of the proposed rules, as well as some commenters' suggestions. Some proposals have been deferred to allow time for further consideration. Adoption of a new set of rules will improve the post office closing appeal process.

**DATES:** *Effective Date:* March 12, 2012.

**FOR FURTHER INFORMATION CONTACT:**

Stephen L. Sharfman, General Counsel, at 202-789-6820.

**SUPPLEMENTARY INFORMATION:** *Regulatory history:* 76 FR 54179 (August 31, 2011) and 76 FR 59085 (September 23, 2011).

**Table of Contents**

|  |
|--|
| I. Introduction                                  |
| II. Unopposed Rules                              |
| III. Suggested Improvements                      |
| IV. Easily Resolved Opposition                   |
| V. Substantial Opposition—Consideration Deferred |

**I. Introduction**

On August 18, 2011, the Commission issued a notice of proposed rulemaking.<sup>1</sup> That notice was intended, in part, to simplify the rules applicable to appeals of post office closings and consolidations and to make the rules consistent with current practice. See Order No. 814 at 1-3. On August 25, 2011, the Commission issued a supplemental notice proposing to remove from the current rules the requirement that the Commission publish notice of appeals in the **Federal Register**.<sup>2</sup>

Some of the proposed rules generated opposition. Others were relatively uncontroversial. The Commission finds that it will be beneficial to promptly adopt rules that were, for the most part, unopposed. The Commission will address the other proposed rules in a later order. This order is organized as follows. First, proposed rules that generated no opposition are described and adopted. Next, proposed rules that generated suggestions for improvement are described, modified as appropriate, and adopted or deferred for further consideration. Third, proposed rules that generated controversy that is easily resolved are described, modified as appropriate, and adopted. Finally, proposed rules that generated significant opposition that requires additional research and analysis are described and deferred to a later date.

**II. Unopposed Rules**

*Rules of general applicability.* The Commission has proposed amendments to rules of practice 9, 10, 12, and 17 in 39 CFR part 3001, subpart A. These amendments are intended to ease requirements for persons who file appeals of post office closings or consolidations but who do not or cannot

<sup>1</sup> Notice of Proposed Rulemaking Regarding Appeals of Postal Service Determinations to Close or Consolidate Post Offices, August 18, 2011 (Order No. 814).

<sup>2</sup> Supplemental Notice Regarding Proposed Rules Governing Appeals, August 25, 2011 (Order No. 823).

use the Internet. They also correct cross-references and remove the requirement to publish in the **Federal Register** notice of an appeal of a post office closing or consolidation. The Commission confirms that it will continue to publish on its Web site a notice of each appeal containing the applicable procedural schedule.<sup>3</sup> The proposed amendments to rules 9, 10, 12, and 17 in 39 CFR part 3001, subpart A are unopposed and are adopted as proposed. The Commission also amends rule 3001.7(b) to replace the words "Subpart H" with "Part 3025". Rule 7(b) would be incorrect if not amended, which constitutes good cause under 5 U.S.C. 553(d)(3) for not publishing proposed notice of this amendment.<sup>4</sup>

*Consolidation of appeals.* Proposed rule 3025.12 explains that the Commission consolidates appeals relating to the same post office into a single docket. This rule is unopposed. Rule 3025.12 is adopted as proposed.

*Participant statement.* Proposed rule 3025.40, which describes participant statements (Form 61), is unopposed. It is adopted as proposed.

### III. Suggested Improvements

*Rules of general applicability.* The Public Representative suggests a change to rule 3001.5(m) as well as changes to the list of rules of general applicability contained in proposed rule 3025.2(b).<sup>5</sup> Rule 5(m) defines the word "Appellant." Proposed Part 3025 uses the word "Petitioner" instead of "Appellant." Rule 5(m) is hereby amended accordingly. Proposed rule 3025.2(b) makes rule 3001.11 applicable in appeal proceedings. Rule 11(b) refers to notices of intervention, which are no longer required under proposed part 3025. Interested persons may file comments without first intervening. Rule 11(g) concerns certificates of service for documents filed as hard copy. Amended rule 12 provides that the Secretary will serve hard-copy documents filed by participants in appeals cases. There is thus no need to refer to rules 11(b) and 11(g) in proposed rule 3025.2(b).

The Public Representative also suggests that participants in appeals be given 14 days to respond to Postal Service motions and briefs rather than the 7 days allowed by rule 3001.20(b) and proposed rule 3025.43. This is

based on the expectation that many, if not most, participants will be corresponding with the Commission by mail rather than using the Internet. Seven days does appear to be inadequate. Most of the 7 days could easily be consumed in transit to and from a participant. However, the proposed rules are also intended to expedite Commission consideration of appeals. Order No. 814 at 5. A 14-day response time, especially for motions to dismiss, could necessitate revisions to the procedural schedule. Under the Public Representative's proposed change, responses to motions to dismiss would be due 14 days after their filing, while participant statements are due 20 days after the filing of such motions.

*Proposed rule 3025.41.* Ten days will be allowed for the response to Postal Service motions and briefs.

*Definitions.* The Public Representative suggests moving the definition of "Petition for Review" from proposed rule 3025.10(a) to the definitions section, proposed rule 3025.1. PR Comments at 6. That suggestion is adopted. The Public Representative also proposes additions to the definition of "Petition for Review," such as permissible and impermissible modes of submission. This topic is covered in proposed rule 3025.11.

*Applicability.* Rule 3025.2, as proposed, explains when the rules in part 3025 apply. It also sets out rules in part 3001 that apply to appeals. The Postal Service suggests changing the phrase "wants to appeal" in proposed rule 3025.2(a)(2) to "appeals." Postal Service Comments at 2–7, 13–19, 21. This change is adopted.

*Petitions for Review.* The Postal Service and the Public Representative suggest changes to proposed rule 3025.10. Postal Service Comments, Appendix at iv; PR Comments, Attachment A at 2–3. This rule explains what information must be included in a Petition for Review. The Public Representative suggests that a Petition for Review include a petitioner's phone number, the ZIP Code of the post office involved, and the final determination. The Postal Service suggests that a Petition for Review include the date on which the final determination was posted. One of the purposes of the proposed rules is to reduce the burden involved in filing an appeal. See Order No. 814 at 2. Consideration of these suggestions is deferred. Rule 3025.10 is adopted as proposed except for the addition of the word "only" between "appealed" and "by." This tracks the statutory requirement that a petitioner be served by the office to be closed or consolidated.

Proposed rule 3025.11 explains how to submit a Petition for Review to the Commission. The Public Representative proposes changes to rule 11. PR Comments, Attachment A at 3. The Public Representative proposes that the means of submission of appeals set out in rule 11 apply to all documents submitted by participants other than the Postal Service. Rule 3025.11 is adopted as modified by the Public Representative.

Rule 3025.13, as proposed, explains when a Petition for Review is considered timely. The statutory deadline for an appeal is 30 days from a final determination's being made available to patrons. The exact deadline depends on whether a petition is mailed, filed electronically, or delivered by someone other than the Postal Service. The Postal Service and the Public Representative suggest changing the event that triggers the running of the 30 days from the day the final determination is made available, to the date of posting of the final determination. Postal Service Comments, Appendix at v; PR Comments at 3–4. The phrase "made available" is the statutory description. Consideration of this proposed change is deferred. Rule 13 is adopted as proposed.

*Record on review.* Rule 3025.20, as proposed, describes the material that the Commission considers when reaching a decision on an appeal. Rules 20(a)(1) through (4) are adopted as proposed and designated as paragraph (a). The Postal Service objects to proposed rule 20(a)(5) and to the sentence that follows, both of which concern the Commission's treatment of factual matters. Postal Service Comments at 17–18, 21–22. Consideration of those proposals is deferred. The sentence in current rule 3001.112 that limits the record to all and only evidence considered by the Postal Service is retained as paragraph (b).

*Administrative record.* Proposed rule 3025.21 requires the Postal Service to notify participants who do not use Filing Online when the administrative record is filed with the Commission. The Postal Service points out that the administrative record is available at affected post offices while a proposal to close is under consideration and when a final determination to close is under appeal. *Id.* at 26–27. The Postal Service suggests that the Commission include information on the location of administrative records in the orders establishing procedural schedules or in the letters transmitting Form 61 to participants. *Id.* at 27, n.18. Proposed rule 3025.21 is amended to make the

<sup>3</sup> See Initial Comments of the United States Postal Service, October 3, 2011, at 25 (Postal Service Comments).

<sup>4</sup> Comments of the Public Representative, October 3, 2011, at 7–8 (PR Comments).

<sup>5</sup> American Postal Workers Union, AFL–CIO Comments on Proposed Rules, October 5, 2011, at 2–4 (APWU Comments).

Secretary responsible for informing participants that the administrative record is available at the post office(s) where the final determination was posted.

*Posting of filings during appeal.* Proposed rule 3025.22 requires the Postal Service to maintain for public inspection copies of all filings related to an appeal at the post office whose closure or consolidation is under review. If the post office is suspended, the filings are to be maintained at the nearest open post office. Also, the Postal Service is to notify participants by mail where the filings may be inspected. The Postal Service points out that its own regulations require posting the filings in the same locations where the administrative record is available—*i.e.*, where the final determination was posted. *Id.* at 27. Rule 22 is amended to make the Secretary responsible for informing participants that all filings related to an appeal are available at the post office(s) where the final determination was posted.

#### IV. Easily Resolved Opposition

*Participation by others.* For the most part, the Commission is deferring consideration of proposed rules that generated opposition. One exception is proposed rule 3025.14(a), which defines the class of persons who may participate in an appeal initiated by someone else. This proposed rule is the analog of current rule 3001.111(b).

The purposes of rule 14(a), as proposed, are: (1) To remove the requirement for filing notices of intervention, and (2) to simplify language. The Postal Service reads proposed rule 14(a) as expanding the class of persons who may participate in an appeal. Postal Service Comments at 20 (as revised October 7, 2011). American Postal Workers Union (APWU) reads proposed rule 14 as narrowing the class of persons who may participate in an appeal.<sup>6</sup> In addition to persons served by a post office to be closed or consolidated, current rule 111(b) allows “any other interested person, or any counsel, agent or other person authorized or recognized by the Postal Service as such interested person’s representative or the representative of such interested person’s recognized group, such as Postmasters” to intervene in an appeal (emphasis added). Proposed rule 14(a) intended no change in the class of persons currently allowed to intervene.

<sup>6</sup> See section 404(d)(5)—American Postal Workers Union, AFL–CIO Comments on Proposed Rules, October 5, 2011, at 2–4 (APWU Comments).

The language of current rule 3001.111(b) will be retained as rule 14(a).

*Filing deadlines.* Rules 3025.41 through 43, as proposed, set deadlines for participant statements, briefs, or comments. The Postal Service objects to categorizing participants as supporting either the Postal Service or the petitioner. It asks, “[a]re participants supposed to decide what due date to use based on their alignment with or against the Postal Service regarding a particular issue, the ultimate issue, or some combination?” Postal Service Comments at 23. The wording of these rules will be changed to categorize participants as either supporting or opposing a Commission order that the entire matter be returned to the Postal Service for further consideration.

Rule 3025.14(b), as proposed, is also changed to categorize comments as supporting or opposing an order returning the matter for further consideration.<sup>7</sup>

*Oral argument.* The proposed rules do not include a provision for oral argument. As was explained in the notice of proposed rulemaking, the Commission has never held oral argument in an appeal proceeding. Order No. 814 at 6. Oral argument would also extend the time needed to decide an appeal, which the new rules are intended to shorten. *See id.* at 5. APWU requests preservation of the right to appeal in unusual situations. APWU Comments at 4. Participants in appeal proceedings may request oral argument or any other relief pursuant to rule 3001.21(a) (Motions) when circumstances warrant.

#### V. Substantial Opposition— Consideration Deferred

*Definitions.* Rule 3025.1 (Definitions), as proposed, has been changed by removing definitions of the terms “administrative record,” “post office,” and “relocate” and by adding the definition of “Petition for Review.” Proposed rule 3025.1 defines “administrative record” as “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.” It defines “post office” as “a Postal Service operated retail facility.” It defines “relocate” to mean a situation in which “the location of a post office within a community changes, but the total number of post offices within the

<sup>7</sup> See section 404(d)(5) (“The Commission may affirm the determination of the Postal Service or order that the entire matter be returned for further consideration, but the Commission may not modify the determination of the Postal Service.”)

community remains the same or increases.”

The Postal Service objects to the definitions of “administrative record” and “post office” as overbroad and to the definition of “relocate” as too narrow. Postal Service Comments at 2–7, 13–19, 21. Valpak objects to the definition of “post office” as overbroad.<sup>8</sup> APWU objects to the definition of “relocate” as overbroad. APWU Comments at 1–2. Consideration of these proposed definitions is deferred.

*Notice.* Proposed rule 3025.3 requires the Postal Service to post notice of proposals and final determinations to close or consolidate a post office. It also requires the Postal Service to mail such notices to patrons of suspended offices. The Postal Service and Valpak object to this rule. They claim that the Commission has no authority to regulate Postal Service actions that occur before an appeal has been filed. Postal Service Comments at 7–11; Valpak Comments at 5–7. Consideration of proposed rule 3025.3 is deferred. Two sentences from current rule 3001.110 setting out existing notice requirements, with minor editorial corrections to accurately state statutory language are retained as rules 3025.3(a) through (b).

*Automatic suspension.* Rule 3025.30, as proposed, would replace current rule 3001.114 and automatically suspend a final determination to close or consolidate a post office when a timely appeal is filed. The Postal Service and Valpak object to this proposed rule as ultra vires. Postal Service Comments at 11–13; Valpak Comments at 7–8. Consideration of this proposal is deferred. The language of current rule 3001.114 related to suspension pending review is retained as rule 3025.30, except that a sentence referring to notices of intervention and a sentence referring to the filing of the record are deleted.

#### *It is ordered:*

1. Changes to part 3001 of title 39, chapter III, Code of Federal Regulations, as set forth below, are hereby adopted, effective 30 days after publication in the **Federal Register**.

2. A new part 3025 of title 39, chapter III, Code of Federal Regulations, as set forth below, is hereby adopted, effective 30 days after publication in the **Federal Register**.

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

<sup>8</sup> Valpak Direct Marketing Systems, Inc. and Valpak Dealers’ Association, Inc. Comments Regarding Proposed Rules Applicable to Appeals of Post Office Closings, October 3, 2011, at 4–5 (Valpak Comments).

**List of Subjects****39 CFR Part 3001**

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

**39 CFR Part 3025**

Administrative practice and procedure, Postal Service.

By the Commission.

Issued: January 25, 2012.

**Ruth Ann Abrams,**  
*Secretary.*

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

**PART 3001—RULES OF PRACTICE AND PROCEDURE**

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

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

**Subpart A—Rules of General Applicability**

- 2. In § 3001.5, revise paragraph (m) to read as follows:

**Subpart A—Rules of General Applicability****§ 3001.5 Definitions.**

\* \* \* \* \*

(m) *Petitioner* means a person who as permitted by 39 U.S.C. 404(b) appeals to the Commission a determination of the Postal Service to close or consolidate a post office.

\* \* \* \* \*

- 3. In § 3001.7, revise paragraph (b) introductory text to read as follows:

**§ 3001.7 Ex parte communications.**

\* \* \* \* \*

(b) *Prohibition.* In any agency proceeding that is required to be conducted in accordance with section 556 of Title 5 or a proceeding conducted pursuant to part 3025 of this chapter except to the extent required for the disposition of ex parte matters as authorized by law:

\* \* \* \* \*

- 4. In § 3001.9, revise paragraph (a) 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 hard copy 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.

\* \* \* \* \*

- 5. In § 3001.10, revise paragraph (b) and add new paragraph (d) to read as follows:

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

\* \* \* \* \*

(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. Each person filing a hardcopy document with the Commission must provide an original and two 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.

\* \* \* \* \*

(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.

- 6. 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.

\* \* \* \* \*

- 7. Revise § 3001.17 to read as follows:

**§ 3001.17 Notice of proceeding.**

(a) *When issued.* The Commission shall issue a notice of a proceeding to be determined on the record with an opportunity for any interested person to request a hearing whenever:

(1) The Postal Service files a request with the Commission to issue an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis;

(2) The Commission in the exercise of its discretion determines that an opportunity for hearing should be provided with regard to a complaint filed pursuant to part 3030 of this chapter; or

(3) The Commission in the exercise of its discretion determines it is appropriate.

(b) *Publication and service of notice.* Each notice of proceeding shall be published in the **Federal Register** and served on the Postal Service, and the complainant in a complaint proceeding.

(c) *Contents of notice.* The notice of a proceeding shall include the following:

(1) The general nature of the proceeding involved in terms of categories listed in paragraph (a) of this section;

(2) A reference to the legal authority under which the proceeding is to be conducted;

(3) A concise description of proposals for changes in rates or fees, proposals for the establishment of or changes in the mail classification schedule, proposals for changes in the nature of postal services and, in the case of a complaint, an identification of the complainant and a concise description of the subject matter of the complaint;

(4) The date by which notices of intervention and requests for hearing must be filed; and

(5) Such other information as the Commission may desire to include

**Subpart H—[Removed and Reserved]**

- 8. Remove and reserve Subpart H, consisting of §§ 3001.110 through 3001.117.

- 9. 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 Submitting an appeal and other documents.
- 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) *Petitioner* means a person who files a Petition for Review.

(c) *Petition for Review* means a written document that the Commission accepts as an appeal of a post office closing or consolidation.

**§ 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 appeals 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(a) of this chapter, § 3001.11(c) through (f) of this chapter; §§ 3001.12 through 3001.17 of this chapter; and §§ 3001.21 and 3001.22 of this chapter.

(c) Answers to motions filed by the Postal Service are due within 10 days.

**§ 3025.3 Notice by the Postal Service.**

(a) Pursuant to section 404(d) of title 39, United States Code, any decision to close or consolidate a post office must be preceded by 60 days' notice to persons served by such post office, the opportunity for such persons to present their views, and a written determination based upon consideration of each of the factors listed in section 404(d)(2) of title 39, United States Code.

(b) This notice must include a provision stating that, pursuant to

section 404(d)(5) of title 39, United States Code, a final Postal Service determination to close or consolidate a post office may be appealed by any person served by such office to the Postal Regulatory Commission at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, within 30 days after such determination is made available to such person by the Postal Service.

**§ 3025.10 Starting an appeal.**

(a) A Postal Service decision to close or consolidate a post office may be appealed only by a person served by that office. An appeal is commenced by submitting a Petition for Review to the Postal Regulatory Commission.

(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 or consolidated. A petitioner may include other information deemed pertinent.

**§ 3025.11 Submitting an appeal and other documents.**

Petitions for Review, comments, motions, answers, and other documents may be submitted by persons other than the Postal Service by mail, electronically through the Commission's Web site, <http://www.prc.gov>, or by delivery 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 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., eastern time, 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., eastern time, on the 30th day after the final determination has been made available.

**§ 3025.14 Participation by others.**

(a) A person served by the post office to be closed or consolidated pursuant to the Postal Service written determination under review who desires to intervene in the proceeding, or any other interested person, or any counsel, agent, or other person authorized or recognized by the Postal Service as such interested person's representative or the representative of such interested person's recognized group, such as Postmasters, 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 supporting or opposing a Commission order returning the entire matter to the Postal Service for further consideration. Comments must be filed in accordance with the deadlines established in §§ 3025.41 through 3025.43. 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; and
- (4) All documents submitted in the appeal proceeding.

(b) The record shall contain all evidence considered by the Postal Service in making its determination and shall contain no evidence not previously considered by the Postal Service.

**§ 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 Secretary will notify participants that they may view the administrative record at post offices where the final determination was posted.

**§ 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 offices where the

final determination was posted. The Secretary will notify participants that they may view copies of filings at post offices where the final determination was posted.

#### § 3025.30 Suspension pending review.

(a) *Application.* Application for suspension of a determination of the Postal Service to close or consolidate any post office pending the outcome of an appeal to the Postal Regulatory Commission shall be made at the time of the filing of a Petition for Review. The application shall show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by affidavits or other sworn statements or copies thereof. The applicant must be a person served by the affected post office. Immediate notice of the application shall be given to all parties to the proceeding. The application shall be filed with the Secretary of the Commission.

(b) *Answer and filing of the relevant record by the Postal Service.* Within 10 days after the application for suspension is filed, the Postal Service shall file with the Secretary of the Commission and serve on the petitioners an answer to the application supported by affidavits or other sworn statements or copies thereof.

#### § 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 PRC 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, United States 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 seeking to have the Commission return the entire matter to the Postal Service for further consideration, 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

opposing return of the matter for further consideration, 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 seeking to have the Commission return the matter for further consideration, may file a reply to the Postal Service response not more than 10 days after the date of the Postal Service response. Replies are limited to issues discussed in the responses of the Postal Service and other participants seeking affirmation of the Postal Service determination.

[FR Doc. 2012-2931 Filed 2-8-12; 8:45 am]

BILLING CODE 7710-FW-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 62

[EPA-R04-OAR-2010-0392(a); FRL-9628-6]

#### Approval and Promulgation of State Plans for Designated Facilities and Pollutants; State of Florida; Control of Large Municipal Waste Combustor (LMWC) Emissions From Existing Facilities; Correction

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

**ACTION:** Final rule; correcting amendment.

**SUMMARY:** On December 30, 2010, EPA published a final rule approving the Clean Air Act (CAA) section 111(d)/129 State Plan (the Plan) submitted by the Florida Department of Environmental Protection for the State of Florida on July 12, 2007, for implementing and enforcing the Emissions Guidelines (EGs) applicable to existing Large Municipal Waste Combustors (LMWCs). These EGs apply to municipal waste combustors with a capacity to combust more than 250 tons per day of municipal solid waste (MSW). This action corrects an error in the regulatory language in paragraph (a) of EPA's December 30, 2010, final rule.

**DATES:** This action is effective February 9, 2012.

**ADDRESSES:** Copies of the documentation used in the action being corrected are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. The Regional Office's official

hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Daniel Garver, Air Toxics Assessment and Implementation Section, Air Toxics and Monitoring Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9839. Mr. Garver can also be reached via electronic mail at [garver.daniel@epa.gov](mailto:garver.daniel@epa.gov).

**SUPPLEMENTARY INFORMATION:** This action corrects an error in the regulatory language for an entry that appears in paragraph (a) of Florida's Identification of Sources at 40 CFR 62.2355. The final action determined that EPA approved the CAA section 111(d)/129 Plan applicable to LMWCs in the State of Florida on December 30, 2010 (75 FR 82269). However, EPA inadvertently indicated in 40 CFR 62.2355(a) that "the plan applies to existing facilities with a municipal waste combustor (MWC) unit capacity greater than 250 tons per day of MSW, and for which construction, reconstruction, or modification was commenced on or before July 12, 2007." The correct date is September 20, 1994. Therefore, EPA is correcting this error by deleting the date "July 12, 2007" and inserting the correct date "September 20, 1994."

EPA has determined that today's action falls under the "good cause" exemption in section 553(b)(3)(B) of the Administrative Procedure Act (APA) which, upon finding "good cause," authorizes agencies to dispense with public participation where public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest. Public notice and comment for this action are unnecessary because today's action to correct an inadvertent error contained in paragraph (a) of 40 CFR 62.2355 of the rulemaking and has no substantive impact on EPA's December 30, 2010, approval. In addition, EPA can identify no particular reason why the public would be interested in being notified of the correction, or in having the opportunity to comment on the correction prior to this action being finalized, since this correction action does not change the meaning of EPA's analysis or action to approve the amendment in paragraph (a) to 40 CFR 62.2355.

EPA also finds that there is good cause under APA section 553(d)(3) for this correction to become effective on the date of publication of this action.