SMRC assesses charges, unless § 811.5 exempts the requesting activity.

§ 811.5 Customers exempt from fees.

(a) Title III of the 1968 Intergovernmental Cooperation Act exempts some customers from paying for products and loans. This applies if the supplier has sufficient funds and if the exemption does not impair its mission. The requesting agency must certify that the materials are not commercially available. When requests for VI material do not meet exemption criteria, the requesting agency pays the fees. Exempted customers include:

(1) DoD and other government agencies asking for materials for official activities (see DoD Instruction 4000.19, Interservice, and Intergovernmental Support, August 9, 1995, and DoD Directive 5040.2, Visual Information (VI), December 7, 1987.

(2) Members of Congress asking for VI materials for official activities.

(3) VI records center materials or services furnished according to law or Executive Order.

(4) Federal, state, territorial, county, municipal governments, or their agencies, for activities contributing to an Air Force or DoD objective.

(5) Nonprofit organizations for public health, education, or welfare purposes.

(6) Armed Forces members with a casualty status, their next of kin, or authorized representative, if VI material requested relates to the member and does not compromise classified information or an accident investigation board's work.

(7) The general public, to help the Armed Forces recruiting program or enhance public understanding of the Armed Forces, when SAF/PA determines that VI materials or services promote the Air Force's best interest.

(8) Incidental or occasional requests for VI records center materials or services, including requests from residents of foreign countries, when fees would be inappropriate. AFI 16–101, International Affairs and Security Assistance Management, tells how a foreign government may obtain Air Force VI materials.

(9) Legitimate news organizations working on news productions, documentaries, or print products that inform the public on Air Force activities.

(b) [Reserved]

§ 811.6 Visual information product/ material loans.

(a) You may request unclassified and classified copies of current Air Force productions and loans of DoD and other Federal productions from JVISDA, ATTN: ASQV–JVIA–T–AS, Bldg. 3, Bay 3, 11 Hap Arnold Blvd., Tobyhanna, PA 18466–5102.

(1) For unclassified products, use your organization's letterhead, identify subject title, PIN, format, and quantity.

(2) For classified products, use your organization's letterhead, identify subject title, personal identification number (PIN), format, and quantity. Also, indicate that either your organization commander or security officer, and MAJCOM VI manager approve the need.

(b) You may request other VI materials, such as, still images and motion media stock footage, from DVIC/ OM–PA, 1363 Z Street, Building 2730, March ARB, CA 92518–2703.

§ 811.7 Collecting and controlling fees.

(a) The DoD records centers usually collect fees in advance. Exceptions are sales where you cannot determine actual cost until work is completed (for example, television and motion picture services with per minute or per footage charges).

(b) Customers pay fees, per AFR 177–108, Paying and Collecting Transactions at Base Level, with cash, treasury check, certified check, cashier's check, bank draft, or postal money order.

§ 811.8. Forms prescribed.

Air Force (AF) Form 833, Visual Information Request, AF Form 1340, *Visual Information Support Center Workload Report,* Department of Defense (DD) Form 1995, Visual Information (VI) Production Request and Report, DD Form 2054–1, Visual Information (VI) Annual Report, and DD Form 2537, Visual Information Caption Sheet are prescribed by this publication.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–33604 Filed 12–27–99; 8:45 am]

BILLING CODE 5001–05–U

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM98–3; Order No. 1274]

Revisions to Rules of Practice; Further Proposed Changes

AGENCY: Postal Rate Commission.

ACTION: Supplementary notice of further proposed rule.

SUMMARY: This document addresses comments on a previous proposal to revise the general rules of practice. It proposes adopting the special rules of practice on a permanent basis and makes several other improvements. The Commission invites comments on this set of proposals.

DATES: Submit comments no later than January 21, 2000.

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

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, 202–789–6820.

SUPPLEMENTARY INFORMATION:

Regulatory History

In order no. 1218 the Commission solicited suggestions from interested parties on ways to improve the efficiency and effectiveness of proceedings conducted pursuant to 39 U.S.C. 3624. See 63 FR 46732 (September 2, 1998). The order encouraged comments on any topic covered in 39 CFR 3001.1–92, with the exception of library references and confidential information, which were to be addressed in separate rulemakings. While all the rules of practice and procedure were open for comment, several areas of particular interest were identified, based on the Commission's assessment of the rules in operation during the most recent omnibus rate case, docket no. R97–1.

Specifically, the Commission found that incorporation of all (or most) of the special rules into the rules of practice and procedure merited serious consideration. Traditionally, special rules of practice have been issued for application during omnibus rate cases, but more recently similar rules have been utilized in classification and complaint dockets as well. The Commission further indicated that an assessment of ways to reduce costs inherent in the service of documents be undertaken. Thus, consideration of the extent to which electronic filing requirements or options can be added is warranted. Finally, the Commission noted that the use of surveys and the Postal Service's filing of pro forma financial data, two recently adopted revisions, worked reasonably well during the last omnibus rate case.

Five sets of comments suggesting improvements were received. The comments are available for public inspection in the Commission's docket section, and can be accessed electronically at www.prc.gov. Generally, the comments do not oppose the integration of the special rules of practice into the current rules of practice and procedure, suggest a mixed

response to the possibility of electronic filing requirements, and raise the issue of whether certain technical and procedural rules have outlived their usefulness. To this end, some commenters, particularly the Postal Service, offer detailed suggestions regarding streamlining the Commission rules.

Introduction

This proposed rulemaking focuses on the aforementioned areas of interest, while also addressing minor updates to reflect internal Commission changes since the rules were first promulgated. As noted earlier, recent dockets (docket Nos. RM99–2 and RM98–2) modify Commission rules concerning confidential information (rules 42 and 42a) and library references (rule 31(b)), respectively. See order No. 1267 (issued October 8, 1999) and order No. 1273 (issued November 24, 1999). Accordingly, those rulemakings take precedence over revisions otherwise merited by integration of the special rules. The changes now proposed, in sum, have been tested in numerous Commission proceedings and have proven to be effective and efficient.

The Commission has narrowed the scope of order No. 1218 by limiting its consideration in this proposed rulemaking to Subpart A-Rules of General Applicability (rules 1–43). Commission rules of practice and procedure found in Subparts B through F (rules 51–92), which include regulations pertaining to the initiation of dockets, such as requests for changes in rates, fees or the mail classification schedule, will be addressed in a later rulemaking. Consideration of revisions to rules 51–92 therefore is deferred until that time.

Note: As such, commenters' remarks on the following issues will be deferred: (1) The elimination of the required production of ''functionalized accrued costs,'' (rule 54); (2) the elimination of documentation requirements leading to the production of ''unnecessary, little-used library references,'' (rule 54(h)(5)); (3) the elimination of anachronistic technical references and requirements (as in rule 54(h)(5)(v)(b)); (4) the adjustment of rules pertaining to limited, expedited proceedings (rules 54 and 64) to minimize the need for the filing of routine waiver requests; (5) the amendment of pre-filing requirements in omnibus rate cases to allow for earlier and improved access to information; and (6) the amendment of rules 52 and 54 regarding Commission acceptance of Postal Service formal requests for changes in rates or fees.

In the interest of simplicity, this order first addresses integration of the special rules, with discussion of electronic filing and minor updates presented thereafter. In the last section of the rulemaking, the Commission evaluates miscellaneous commenter suggestions.

Special Rules

The special rules, originally designed for use in omnibus rate proceedings (such as docket no. R97–1), recently have been employed in several classification and complaint dockets. As the special rules are now more universally applied in Commission proceedings, the Commission proposes that these rules be incorporated in its rules of practice and procedure.

The special rules of practice encompass five discrete areas: evidence, discovery, service, cross-examination and ''general,'' which in part addresses the use of library references (the subject of a separate rulemaking). The rules generally provide both detailed procedures designed for complex omnibus rate cases with numerous participants, and pleading deadlines, which are more accelerated than those in the existing rules of practice. The Commission believes that incorporation of the shortened time periods into the current rules of practice and procedure is a reasonable action, given that parties repeatedly have demonstrated an ability to meet the deadlines set in omnibus rate cases, the Commission's largest and most complex proceedings. The text of the proposed revisions is presented in the attachment to this notice and order, and the Commission now describes the changes it proposes.

Evidence

The special rules related to evidence address the evidentiary case of participants, exhibits, motions to strike, and designation of evidence from other Commission dockets. The Commission proposes to incorporate these rules primarily in current rules 21 (motions), 30 (hearings) and 31 (evidence). To the extent that the special rules apply to library references, order No. 1273 takes precedence.

Discovery

The special rules related to discovery provide for more abbreviated pleading periods than the existing rules. Thus, the response time for interrogatories has been shortened from 20 days to 14 days, answers to other discovery requests likewise are due in 14 days (rather than 20 days), and compelled responses to discovery requests are due within 7 (rather than 10) days of the date of the order compelling an answer. Further, the rules of practice will now contain provisions for follow-up interrogatories and motions to compel discovery. Finally, the Commission proposes changing the time period for service of objections to discovery requests from 10 to 7 days, which, while not currently a special rule, appropriately reflects the shortened time frame for discovery.

The Commission has revised and renumbered the current rules pertaining to discovery (rules 25 through 28) to include introduction of the Commission's general policy on discovery in rule 25. This rule includes the provisions of special rule 2–E, which addresses discovery to obtain information available only from the Postal Service. Special rule 2–E states that while discovery against a participant is generally scheduled to end prior to the receipt into evidence of that participant's direct case, an exception is made when participants require information available only from the Postal Service. In this instance, discovery requests are allowed up to 20 days prior to the filing date for final rebuttal testimony. One commenter suggests that the Commission clarify this rule to reflect more recent rulings allegedly limiting its scope. The Commission finds such a revision unnecessary at this time, and will continue to apply the special rule as essentially written (and now incorporated in rule 25) on a case-by-case basis.

Service. The special rules regulating service, as distinct from the issue of electronic filing, raised only one concern from commenters. One commenter notes that special rule 3–C, which provides exceptions to general service requirements for certain documents, was established as a convenience in response to large service lists in omnibus rate cases. This commenter suggests that the rule therefore be reserved as a special rule and employed only in proceedings with a significant number of participants. The Commission does not view this rule as requiring such special treatment, and therefore proposes to incorporate it in the standard rules largely as written. The Commission proposes to add this and other special rules on service to current rules 10 (form and number of copies of documents) and 12 (service of documents), with slight modification made to the text to accommodate current Commission computer technology.

Cross-examination

The Commission proposes that special rules 4–A and 4–B, respectively governing written and oral cross-examination, be added to rule 30(e), presentation by parties.

General

The remaining general special rules address the rules on argument by parties in a proceeding, new affirmative matter, legal memoranda and library references, as well as the scope of cross-examination. As discussed earlier, library references are the subject of a separate rulemaking. The Commission proposes that the other general special rules be incorporated in rule 30(e) of the present Commission rules of practice and procedure.

Electronic Filing

The Commission is very cognizant of current communications and information technology and has made several efforts to incorporate that technology into its internal operations. A Postal Rate Commission website which provides timely notice of docket filings in ongoing cases, among other functions, has been operational since 1997 and is marked by continual improvements. In docket No. R97–1, the Commission permitted participants to file computer diskettes for some filings in conjunction with a significantly reduced number of required hard copies of the particular filing. In docket No. MC98–1, the Mailing Online Service classification case, the Commission proposed an electronic service experiment for all filed documents. The optional electronic service experiment was presented as a cost savings option for participants, with simplified, reduced mailing requirements for hard copies of documents. Interested intervenors were given the option to participate either fully or in a more restricted capacity. A number of intervenors successfully participated in the electronic service experiment.

Commenters in this docket commend the Commission's efforts to take advantage of today's technology, particularly citing the convenience of the PRC website. However, while finding merit in the reduced filing costs and timely availability of filings associated with electronic service in a limited Commission proceeding, all commenters note that hardcopy service retains significant advantages, particularly in larger omnibus proceedings. In a larger proceeding, the process of downloading and printing lengthy filed documents from numerous parties may prove to be an onerous and costly task, with significant, expensive professional time devoted to review of the internet filings in order to determine which documents merit printing. One commenter warns of the potential computer ''traffic jams'' on those days when briefs or testimony are filed in future cases, as numerous intervenors attempt to access and download filed documents at the same time. Further, it is implied that a participant's case may be compromised if he is unable to expend the required time and resources. More than one commenter highlighted that not all proceeding participants have joined the ''information superhighway,'' thus automatically disadvantaging those parties.

In general, commenters advise a cautious approach toward electronic filing. In fact, one commenter maintains that the Commission should not move beyond the stage of experimental voluntary electronic filing without first conducting a cost/benefit analysis of the process. Thus, while there is some support for experimental voluntary electronic filing, commenters generally advocate that the Commission retains the requirement of hard-copy service by participants, at least upon other parties, while continuing to provide PRC website information on filings.

An alternate proposal for electronic service, which allegedly overcomes some of the aforementioned considerations, is offered by one commenter. Under the alternate proposal, participants in a particular case could choose to receive all Office of the Consumer Advocate (OCA) and Commission documents electronically via the Commission's website, with the Commission also serving all non-participating intervenors a hard copy of each participating intervenor's filing. Participants would be required to file an original and three copies of a filing, plus an electronic version of the filing. Participants further would be responsible for serving the opposing party with one hard copy (or, in the case of the Postal Service, six hard copies). The Commission otherwise would photocopy and mail the documents.

While trying to keep pace with technology and realize its obvious benefits to Commission proceedings, the Commission still appreciates the disadvantages currently associated with exclusive electronic service, as highlighted by the commenters. In particular, the Commission is cognizant of the potential difficulties associated with the review and printing of numerous, lengthy filings that are typical of an omnibus rate proceeding, and understands that some proceedings of a limited nature may be more appropriate for application of electronic service at this stage. Accordingly, the Commission proposes reserving the option to implement electronic service on a case-by-case basis, by amending part (e) of rule 12 (service of documents) to read ''[s]ervice via electronic filing may be available under circumstances prescribed by the Commission or the presiding officer.''

Miscellaneous Updates of Commission Rules

The Commission proposes that several current rules be updated primarily to reflect certain institutional changes. Section 4 (or rule 4) amends the manner in which the rules of practice may be cited. Rule 5 revises the definition of ''presiding officer'' and also now includes a definition of the OCA. Rule 7, which discusses ex parte communications, has eliminated the reference to an administrative law judge, as the Commission no longer utilizes administrative law judges, and has been clarified as applicable to all participants. Rule 9, filing of documents, is revised to include notification of the presiding officer by the Commission's Secretary in the event of an unacceptable filing, and to eliminate such notification to the parties, except for the sender of the unacceptable document. Rule 12 on the service of documents has been altered to provide for electronic filing under certain circumstances. Rule 18, which describes the nature of proceedings, now indicates that the Commission may, rather than shall, hold a public hearing if one is requested by a party. Rule 19, regarding notice of a prehearing conference or hearing, eliminates a reference to Commission designation of a presiding officer by **Federal Register** notice, as designation is a function of the Chairman. That rule also now reflects Commission practice of providing notice of the reconvening of a hearing to all participants in a proceeding by issuing a ruling served on all participants (if necessary), rather than through publication of such notice in the **Federal Register**. Rule 43, which addresses public attendance at Commission meetings, has substituted the office of the Secretary for all references to the Office of Public Information, which no longer exists.

Service on the OCA

Several rules relating to discovery have been revised to include mandatory service of documents on the OCA. Affected rules include rules 26(a), 26(c), 27(a), 27(c), 28(a) and 28(c). The aforementioned rules also reflect renumbering to accommodate actions taken in this rulemaking. Additionally, the distinction between parties and participants has been applied in rules 7, 12, 25, 26, 27, 28, and 30.

Minor Changes

Some rule changes simply reflect altered numbering within the rule, or a change in wording to effect a more specific reference. Thus, rule 17—addressing notice of proceeding—includes new renumbering of some sections. Rules 18 (nature of proceedings), 19 (notice of prehearing conference or hearing), 20 (formal intervention) and 20a (limited participation by persons not parties) now specifically cite to proceeding notice pursuant to section (a) of rule 17, rather than generally referring to rule 17. Likewise, rules 27(b) and (e) (answers and orders regarding requests for production of documents or things for purpose of discovery) and rules 28(b) and (e) (answers and orders regarding requests for admissions for purpose of discovery) provide for service of such documents and answers pursuant to § 3001.12(b).

Finally, the Commission proposes substantive changes to rule 31(k)(3)(i), which was the subject of one commenter's remarks and therefore will be discussed in detail below.

Other Suggestions by Commenters

Several commenters have offered detailed suggestions regarding substantive revisions of the rules of practice and procedure, which have been carefully considered by the Commission. These suggestions, accompanied by Commission responses, include:

I. Elimination of Required Production of Hardcopy Listings of Data Files, Other Computer Information

One commenter suggests that the Commission amend rule 31(k)(3)(i), which currently appears to require that a hardcopy ''listing of the input and output data and source codes'' be provided as a foundation for each computer analysis being offered as evidence. The commenter asks that the Commission change the foundational requirements of the rule to require production only of electronic versions of data or source code, and also to eliminate the provisions which provide for production of the items upon request. Alternatively, it is suggested that the Commission not specify the medium of presentation for such information, allowing the provision only of electronic media. In support of these suggested amendments, the commenter argues that: (1) Any party who wishes to ''investigate, replicate or validate'' a computer analysis will likely prefer to load the source code and input the data on its own computers, a task better-suited for an electronic version of this information, particularly if the data bases involved are extensive; and (2) a requirement that data and source code be provided in hardcopy form is redundant, as almost any party can readily produce a hardcopy product from an electronic version of the document in question.

The Commission agrees that the nature of the documents filed under rule 31(k)(3)(i), in conjunction with current technology and established practice of recent years, indicate that electronic filing is the appropriate format for the mandatory submission of the specified information. However, paper copies of the data files still serve a useful purpose, particularly to those parties who may not have access to the ''information superhighway,'' and therefore could be disadvantaged in a Commission proceeding were the request for provision of hardcopy documents unavailable. With this in mind, the Commission proposes that rule 31(k)(3)(i) be modified to require a machine readable copy of the input and output data, source codes and program files submitted as the foundation for computer studies or analyses which are being offered in evidence or relied upon as support for other evidence. Hard copies of all data bases and source codes will be deemed presumptively necessary and furnished upon request, unless the presumption is overcome by an affirmative showing. The Commission believes that this revision will facilitate the process of data production and analysis, as well as fully protect the due process rights of participants by providing alternative means of access to such information, without necessarily imposing onerous burdens of production upon the provider.

II. Streamlining of Rules Pertaining to Intervention and Participation

One commenter proposes that the Commission streamline the rules concerning party intervention and participation in Commission proceedings by eliminating rules 20, 20a and 20b. These rules identify three classes of party intervention and participation, with varying rights and obligations. Elimination of the rules would allow all interested parties who intervene to participate on an equal footing. It is also suggested that the Commission could further streamline its general rate and classification proceedings by maintaining a list of parties interested in automatic intervention, with implementation of the list upon the filing of such a case. In that manner, a more efficient service of documents upon ''the core of parties who intervene in Commission proceedings as a matter of course'' could be effectuated.

According to rules 20, 20a and 20b, intervention and participation by an interested party in a Commission proceeding may range from full intervention in all aspects of a case to a limited filing on the party's behalf. The rules recognize that intervenors have varying degrees of interest in issues presented in a particular proceeding, as well as different amounts of resources to expend. While simplifying the rules to provide that all interested parties participate ''on a equal footing'' may appear to promote fairness, in fact, the opposite may result. Full participation imposes certain obligations on the part of an intervenor, which may prove to be burdensome and prohibitive, particularly to those intervenors with limited time and resources. For these reasons, the Commission declines to revise rules 20, 20a and 20b, as suggested.

Current Commission practice regarding party intervention requires only that a notice of intervention in a proceeding be submitted by an interested party. Late intervenors must file a motion to be allowed participation in a particular proceeding. This process allows the Commission to control its docket and, in the case of late intervention, appropriately assess the merits of intervention at that point of time. The process also provides notice of parties active in a proceeding (and their respective degree of activity) to other participants. The Commission finds no compelling reason to alter these rules to allow for the automatic intervention of interested parties in Commission proceedings (particularly omnibus rate cases) beyond the provisions to this effect, which currently apply to a small number of expedited proceedings (including market tests and provisional service changes).

III. Limiting of Certain Aspects of Discovery

One commenter proposes that the Commission consider imposing numerical limitations on discovery requests in rate and classification proceedings in order to more effectively focus discovery efforts, reduce the parties' burden of participation, encourage the use of informal avenues of discovery (such as informal technical conferences) and ultimately improve the efficiency of Commission proceedings. According to the commenter, the due process rights of parties will not be compromised by such an imposition. In

support of this proposition, the commenter cites rules 26, 29–37 of the federal rules of civil procedure, which place a number of limitations on the discovery process in federal civil proceedings, including the number of interrogatories (25) a party may serve on any other party.

The Commission must reject the commenter's efforts to limit the written discovery process, particularly in omnibus rate proceedings. The Postal Service functions as a national monopoly, with the private express statute applicable to the vast majority of mail. Mailers thus are required by law to pay whatever rates are set, and clearly possess a vested interest in the process of determining these rates. Written discovery expedites the process of determining and setting fair rates and fees, allows for a more complete record, and also reduces (but does not eliminate) the need for oral cross-examination.

Further, the potential for ''prolific'' discovery efforts complained of by the commenter must be weighed against the protection of parties' due process rights and the increasingly complex, technical nature of Commission proceedings (which may be distinguished from typical federal court cases). Thus, while the Commission does understand the rationale for the commenter's suggestion, it is persuaded that the aforementioned considerations advise against instituting any additional limitations on the discovery process.

IV. Elimination of the Assumption That Witnesses Will Be Subjected to Oral Cross-examination.

One commenter suggests that the Commission alter the rules of Practice and Procedure to hold that each party requesting oral cross-examination be required to demonstrate why written submission is not sufficient to achieve that party's objective. The commenter notes that current practice relies heavily on written submissions, and that limitations on oral cross-examination is consistent with section 556 of the Administrative Procedure Act, which provides solely for ''such cross-examination as may be required for a full and true disclosure of the facts.'' 5 U.S.C. 556(d). It is argued that parties' due process rights will still be preserved, while imposing a more streamlined, disciplined approach to discovery. It is conceded that such a change in the Commission rules may lead to increased motion practice.

The Commission views the opportunity for participants to conduct oral cross-examination of witnesses, particularly in such complex litigation as is routinely before it, as the hallmark of due process. The written submission of testimony and subsequent interrogatory practice, while certainly serving a function, in no way supercede the purpose of a live hearing on the issues. One need only consider the problems which arose in docket no. R97–1 regarding certain Postal Service library references, and the parties' expressed interest in cross-examination of the sponsoring (but unnamed) witnesses. It is acknowledged that there have been occasions when a witness has been summoned for cross-examination, only to do no more than authenticate his or her pre-filed testimony and interrogatory responses. However, such occurrences are infrequent, as in practice, counsel normally ascertain through informal contact with other parties that appearance of a particular witness is unnecessary. In any event, this inconvenience is a small price to pay to ensure that each participating party is accorded a full opportunity to investigate the issues in a given case, which may be most effectively achieved through the interplay of cross-examination. Moreover, while the Commission does grant a certain latitude during cross-examination, it also is mindful of the purpose of the exercise and applies constraint accordingly, as provided for in Commission rule 30(f). For these reasons, as well as the desire to avoid a possible floodgate of motion practice, the Commission declines to amend the rules to create a presumption against oral cross-examination.

V. Elimination of Oral Argument

According to one commenter, Commission rules could be further streamlined by the elimination or modification of those rules governing oral argument (rules 36 and 37), such that oral argument is no longer an available option or is scheduled only in truly extraordinary circumstances. In docket no. R97–1, there were no requests by parties for oral argument before the Commission. The commenter suggests that this circumstance appears to indicate an increased acceptance by the parties that oral argument is not the most productive use of either the participants' or the Commission's time. The Commission traditionally has provided the opportunity for oral argument during its proceedings. The commenter provides no compelling rationale for the Commission to depart from this practice. It is true that no party asked for oral argument in docket no. R97–1. However, such requests routinely have been made in previous omnibus rate cases. Unlike the commenter, the Commission does not view the absence of a request for oral argument in the last omnibus rate case as participant acknowledgement that oral argument serves a limited purpose. A number of factors, including the compressed time schedule subsequently imposed in that docket, may have contributed to participants' foregoing of the opportunity. In the absence of adequate cause to eliminate or limit the option of oral argument, the Commission remains firm in its belief that such requests should be decided on a case-by-case basis, with no presumption for or against the conduct of oral argument codified in the Commission's rules.

VI. Amendment of Rules to Provide for Early Summary Disposition of Issues in a Proceeding and for Settlement

One commenter has suggested that procedures be established to bring forth settlements (rather than merely encourage them), and that a process for summary disposition of issues early in a case be created. The commenter does not specify particular procedures, but does note that these recommendations were made to the Commission in an earlier rulemaking docket (Docket No. RM95–2) which was created to streamline Commission rules.

As the commenter has noted, the Commission's rules of practice and procedure do encourage settlement of issues among the parties. The Commission is unclear as to what procedures would more affirmatively promote settlement, and the commenter is silent on the matter. Were a specific process for settlement proposed, the Commission still would be inclined to direct that the process first be applied in a particular case to determine its feasibility prior to any promulgation of a rule. The same may be said of the commenter's suggestion for early summary disposition of particular issues in a proceeding. In this instance, the Commission is compelled to exercise extreme caution, as litigation practice has demonstrated that issues which have appeared at first blush to be ''non-controversial'' often have proved to be otherwise.

II. Amendment of the Filing Requirements Associated with Motions to Accept Late-filed Affidavits

One commenter addresses the late filing of a declaration or affidavit of a witness in support of an interrogatory response which could not be attached to the response when it was originally filed. According to the commenter, these late filings, which consist of a motion for leave explaining why the

declaration/affidavit is untimely, the declaration/affidavit and the certificate of service, may be unwarranted in toto, as each witness eventually adopts his interrogatory responses under oath as written cross-examination. In an effort to reduce costs and paperwork, the commenter suggests that the Commission: (a) Encourage parties to file all such ''make-up'' motions at one particular time; (b) encourage or require the parties to put the certificate of service and the motion on the same sheet of paper; or (c) entirely eliminate the affidavit requirement through adoption of a general rule to the effect that all interrogatory responses are deemed to be under oath.

Current rule 25 (b) adequately addresses the commenter's concern. Note: Under the instant proposal, current rule 25, as revised, would become rule 26. First, rule 25(b) permits the use of a declaration of accuracy as well as an affidavit. Second, although answers must be signed by the person making them, if that person is unavailable at the time the answers are filed, a signature page must be filed within ten days with the Commission, but need not be served on participants. The Commission, therefore, finds it unnecessary to revise its rules as suggested by the commenter.

For the reasons discussed above, the Commission proposes to amend Subpart A of its rules of practice and procedure as set forth below.

Ordering paragraphs. The first ordering paragraph invites interested persons to submit comments on the proposed revisions no later than January 21, 2000. The second ordering paragraph directs the Secretary to cause this order to be published in the **Federal Register**, in accordance with all applicable regulations of the Office of the Federal Register.

Dated: December 21, 1999.

Cyril J. Pittack,

Acting Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons discussed in the preamble, the Commission proposes to amend 39 CFR part 3001—Rules of Practice and Procedure Subpart A—Rules of General Applicability as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart A—Rules of General Applicability

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

Authority: 39 U.S.C. 404(b); 3603, 3622–24, 3661, 3662, 3663.

2. Revise § 3001.4 to read as follows:

§ 3001.4 Method of citing rules.

This part shall be referred to as the ''rules of practice.'' Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, ''3001.24 *Prehearing conferences*'' shall be referred to as ''section 24'' or ''rule 24.''

3. Amend § 3001.5 by revising paragraph (e) and adding paragraph (q) to read as follows:

§ 3001.5 Definitions.

* * * * *

(e) *Presiding officer* means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

* * * * *

(q) *Office of the Consumer Advocate* or *OCA* means the officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

4. Amend § 3001.7 by revising paragraph (d)(1) to read as follows:

§ 3001.7 Ex parte communications.

* * * * *

(d) *Violations of ex parte rules.* (1) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of paragraph (b) of this section, the Commission or presiding officer at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

* * * * *

5. Amend § 3001.9 by revising paragraph (b) to read as follows:

§ 3001.9 Filing of documents.

* * * * *

(b) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule, regulation or order of the Commission shall be accepted for filing. Unacceptable filings will be rejected by the Secretary and will not be included in the file in the proceeding involved. The Secretary shall notify the sender of any unacceptable document and the presiding officer in the proceeding in which such document was tendered that such document was rejected. Acceptance for filing shall not waive any failure to comply with the rules, and such failure may be cause for subsequently striking all or any part of any document.

6. Amend § 3001.10 as follows:

a. Redesignate paragraph (c) as (d),

b. Revise redesignated paragraph (d); and

c. Add new paragraph (c) to read as follows:

§ 3001.10 Form and number of copies of documents.

* * * * *

(c) *Computer diskette.* Participants capable of submitting documents stored on computer diskettes may use an alternative procedure for filing documents with the Commission. Provided that the stored document is a file generated in either Acrobat (pdf), Word, or WordPerfect, in lieu of the other requirements of section 10 of the rules, a participant may submit a diskette containing the text of each filing simultaneously with the filing of one printed original and three hard copies. Attachments will be accepted in their native format (i.e., Excel, Lotus, etc.). Documents must be submitted in Arial 12 point Font, or such program, format, or font as the presiding officer may designate to assist with optical character recognition (OCR).

(d) *Number of copies.* Except for correspondence, computer diskette filing as provided for in paragraph (c) of this section, or as otherwise permitted by the Commission, the Secretary or the presiding officer in any proceeding, all persons shall file with the Secretary an original and 24 fully conformed copies of each document required or permitted to be filed under this part.

7. Amend § 3001.12 as follows:

a. Revise paragraph (b),

b. Revise paragraph (d), and

c. Revise paragraph (e) to read as follows:

§ 3001.12 Service of documents.

* * * * *

(b) *Service by the participants.* Every document filed by any person with the Commission in a proceeding shall be served by the person filing such document upon the participants in the proceeding individually or by such

groups as may be directed by the Commission or presiding officer except for discovery requests governed by §§ 3001.26 (a) and (c), 3001.27 (a) and (c), and 3001.28 (a) and (c), and except for designations for written cross-examination, notices of intent to conduct oral cross-examination and notices of intent to participate in oral argument, which need be served only on the Commission, the OCA, the Postal Service, and the complementary party (as applicable), as well as on participants filing a special request for service. Also, discovery requests and pleadings related thereto, such as objections, motions for extensions of time, motions to compel or for more complete answers, and answers to such pleadings, must be served only on the Commission, the OCA, the Postal Service, the complementary party, and on any other participant so requesting, as provided in sections 26–28 of the rules of practice. Special requests relating to discovery must be served individually upon the party conducting discovery and state the witness who is the subject of the special request.

* * * * *

(d) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participating with the address and, if possible, a telephone number and facsimile number designated in the participant's initial pleading in such proceeding or a notice of appearance as provided in § 3001.6(c). The service list shall show the participants actively participating in the hearing and representative groups established pursuant to paragraph (c) of this section. Service on the Secretary's service list in any proceeding, as directed by the Commission or the presiding officer, shall be deemed service in compliance with the requirements of this section.

(e) *Method of service.* Service may be made by First-Class Mail or personal delivery to the address shown for the persons designated on the Secretary's service list. Service of any document upon the Postal Service shall be made by delivering or mailing six copies thereof to the Chief Counsel, Rates and Classification, U.S. Postal Service, Washington, DC 20260–1170. Service via electronic filing may be available under circumstances prescribed by the Commission or the presiding officer.

* * * * *

§ 3001.17 [Amended]

8. Amend § 3001.17 by redesignating paragraphs (a–1), (b) and (c) as paragraphs (b), (c) and (d).

9. Amend § 3001.18 by revising paragraph (a) to read as follows:

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* In any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

* * * * *

10. Revise § 3001.19 to read as follows:

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a) the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the **Federal Register** and served on all participants in the proceeding involved. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

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

§ 3001.20 Formal intervention.

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17(a) from any person claiming an interest of such nature that intervention is allowed by the Act, or appropriate to its administration.

* * * * *

12. Amend § 3001.20a by revising the introductory text to read as follows:

§ 3001.20a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a), in accordance with the following provisions;

* * * * *

13. Amend § 3001.21 as follows:

a. Revise paragraph (b), and

b. Add new paragraph (c) to read as follows:

§ 3001.21 Motions

* * * * *

(b) *Answers.* Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(c) *Motions to strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.

§ 3001.28 [Removed]

14. Remove § 3001.28.

§§ 3001.25, 3001.26 and 3001.27 [Redesignate as §§ 3001.26, 3001.27 and 3001.28, respectively]

15. Redesignate §§ 3001.25, 3001.26 and 3001.27 as §§ 3001.26, 3001.27, 3001.28.

16. Revise redesignated § 3001.26 to read as follows:

§ 3001.26 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish

such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall also serve the Postal Service and the OCA. Special requests for service by other participants shall be honored. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be served within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall serve the answers on the participant who served the interrogatories within 14 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Participants may submit responses with a declaration of accuracy from the respondent in lieu of a sworn affidavit. Answers are to be signed by the person making them. If the person responding to the interrogatory is unavailable to sign the answer when filed, a signature page must be filed within 10 days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory, the Postal Service, and the OCA within seven days of the request for production. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to discovery.* Motions to compel a more responsive answer, or an answer to an interrogatory to which an objection was interposed, should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to interrogatories which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the participant who moved to compel the answer within seven days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

(f) *Supplemental answers.* The individual or participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. Participants shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. Participants filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

(g) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

17. Revise redesignated § 3001.27 to read as follows:

§ 3001.27 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 14 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The participant answering the request shall sign and file a copy of the

answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests shall serve the objections on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA within 7 days of the request for production. Special requests for service by other participants shall be honored.

(d) *Motions to compel requests for production of documents or things for purposes of discovery.* Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Orders.* Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection has been raised if the objection is found not to be valid. Such compelled documents or things shall be made available to the participants making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Documents or things ordered to be produced also shall be filed pursuant to § 3001.9 and served pursuant to § 3001.12(b). The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

18. Revise redesignated § 3001.28 to read as follows:

§ 3001.28 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service and the OCA. Special requests for service by other participants shall be honored.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or files an objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The participant objecting to requests for admissions shall serve the objections on the participant requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service and the OCA, within seven days of the request. Special requests for service by other participants shall be honored.

(d) *Motions to compel responses to requests for admissions.* Motions to compel a more responsive answer, or an answer to a request to which an objection was interposed, shall be filed within 14 days of the answer or objection to the request for admissions. The text of the request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for admissions which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

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

19. Add § 3001.25 to read as follows:

§ 3001.25 Discovery—general policy.

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature are permissible for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

(b) The discovery procedures set forth in rules 26 through 28 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal

means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3001.26 to 3001.28, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

20. Amend § 3001.30 by revising paragraph (e) to read as follows:

§ 3001.30 Hearings.

* * * * *

(e)(1) *Presentations by participants.* Any participant, including the Postal Service, shall have the right in public hearings of presentation of evidence, cross-examination (limited to testimony adverse to the participant conducting the cross-examination), objection, motion, and argument. The case-in-chief of participants other than the proponent shall be in writing and shall include the participant's direct case and rebuttal, if any, to the initial proponent's case-in-chief. It may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another participant's direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, ''OCA–T1–17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)).'' When a participant designates written cross-examination, two copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be delivered to counsel for the witness and served three or more working days before the announced appearance of the witness and should include (a) specific references to the subject matter to be examined and (b) page references to the relevant direct testimony and exhibits. Participants intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

* * * * *

21. Amend § 3001.31 as follows:

a. Revise paragraph (c),

b. Revise paragraph (d),

c. Revise paragraph (e),

d. Revise paragraphs (k)(3)(i)(*d*) through (*f*), and

e. Revise paragraph (k)(3)(i)(*i*) and paragraph (k)(4) to read as follows:

§ 3001.31 Evidence.

* * * * *

(c) *Commission's files.* Except as otherwise provided in § 3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

* * * * *

(e) *Designation of evidence from other Commission dockets.* Participants may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3001.10(a) and (b).

* * * * *

(k) * * *

(3) * * *

(i) * * *

(*d*) A hard copy of all data bases;

(*e*) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;

(*f*) The source code in hardcopy form;

* * * * *

(*i*) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions concerning information that is reasonably necessary to enable independent replication of the program output. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Administrative Office of the Postal Rate Commission. Any machine-readable data file or program file so provided

must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hard-copy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

* * * * *

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12, no later than 14 days after a request is made.

22. Amend § 3001.43 as follows:

a. Revise paragraphs (e)(4) introductory text and (e)(4)(i),

b. Revise paragraph (g)(1)(iii), and

c. Revise paragraph (g)(2)(iii) to read as follows:

§ 3001.43 Public attendance at Commission meetings.

* * * * *

(e) * * *

(4) The public announcement required by this section may consist of the Secretary:

(i) Publicly posting a copy of the document in the office of the Secretary of the Commission at 1333 H Street, NW., Suite 300, Washington, DC 20268–0001;

* * * * *

(g) * * *

(1)(i) * * *

(iii) Ten copies of such requests must be received by the office of the Secretary no later than three working days after the issuance of the Notice of Meeting to which the request pertains. Requests received after that time will be returned to the requester with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the office of the Secretary ten working days after the meeting.

* * * * *

(2)(i) * * *

(iii) Ten copies of such requests should be filed with the office of the Secretary as soon as possible after the issuance of the Notice of Meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the office of the Secretary no later than the time scheduled for the meeting to which such a request pertains.

* * * * *

[FR Doc. 99–33556 Filed 12–27–99; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN110–1b; FRL–6483–3]

Approval and Promulgation of State Implementation Plan; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revised source specific lead emissions limits for the Hammond Group—Halstab Division (Halstab) facility located in Hammond, Indiana which is located in Lake County. This requested revision to the Indiana State Implementation Plan (SIP) was submitted by the State of Indiana on May 18, 1999.

DATES: Written comments must be received on or before January 27, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used we mean EPA.

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I. What Action is EPA Taking Today?

We have examined the State's SIP revision request and the supporting documentation provided by the State. Based on the merits of the information supplied, EPA is proposing to approve the incorporation of 326 IAC 15–1–2(a)(7) (A) through (G) into the Indiana SIP.

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: November 19, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–33026 Filed 12–27–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE 047–1024b, MD 089–3042b, PA 140–4092b, VA 104–5043b ; FRL–6484–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware, Maryland, Pennsylvania, and Virginia; Approval of National Low Emission Vehicle Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Delaware and Maryland, and by the Commonwealths of Pennsylvania and Virginia for the purpose of adopting a National Low Emission Vehicle Program. In the Final Rules section of this **Federal Register**, EPA is approving these states' SIP submittal as a direct final rule without prior proposal because the Agency views these as noncontroversial submittals and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule for the affected states will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by January 27, 2000.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public