

18, 2002. A period" is corrected to read "(8 copies) by July 22, 2002. A period".

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[FR Doc. 02-12721 Filed 5-20-02; 8:45 am]

BILLING CODE 4830-01-P

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2002-1; Order No. 1341]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes revising its rules of practice to require, in most instances, that participants file documents electronically over the Internet. This will allow the Commission and others to apply modern technology to certain routine procedures. This should reduce the burden and expense associated with traditional hard copy filing. Conforming and related changes to other rules, including those addressing service and submission of computer-generated studies and analyses, are also proposed. These changes also will contribute to more efficient participation in Commission proceedings and enhance administration.

DATES: Working session on June 12, 2002 (10:00 a.m.); comments due by June 21, 2002.

ADDRESSES: Send correspondence concerning this proposal to Steven W. Williams, Secretary, Postal Rate Commission, 1333 H Street, NW., Suite 300, Washington, DC 20268-0001. The working session will be held at the same address.

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

See 66 FR 33034 (June 20, 2001).

Procedural History

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

to as Filing Online. Nearly all participants in Commission proceedings rely on word processing software to generate the documents that they file, and nearly all have the capability to send those documents in electronic form to the Commission via the Internet using standard browser technology. The Commission has developed a user interface to support the electronic filing of documents by participants in Commission proceedings. Tests of this interface have shown it to be secure, reliable, and user-friendly. It is therefore appropriate to propose that online filing be made the standard procedure for filing documents in Commission proceedings.

The Commission laid the groundwork for the conversion from hard copy to online filing in its notice and order concerning electronic filing (order no. 1317), issued June 13, 2001. There the Commission notified the public of the specific online filing procedures that it was developing, and of its intention to incorporate them in a notice of proposed rulemaking. It invited both written comments on those procedures and oral comments at a technical conference that it conducted on July 11, 2001. The public's suggestions resulted in some adjustments to the procedures proposed.

On October 24, 2001, the Commission issued a notice to participants in all of the dockets that were active at that time. The notice announced that the Commission was setting up docket no. T2002-1 as a vehicle for conducting a live test of its proposed online filing procedures. Participants were encouraged to take hard copy documents that they were filing in other dockets and file them simultaneously in docket no. T2002-1 via the Internet. Additional minor revisions were made to the Commission's proposed electronic filing procedures as a result of this test. The notice indicated the Commission's desire to make online filing procedures available on an optional basis shortly after the conclusion of the test.

Proposal To Make Filing Over the Internet Standard Procedure

The results of the T2002-1 test docket have led the Commission to conclude preliminarily that the potential benefits to participants and the Commission promised by online filing are substantial, but that to fully realize them it will be necessary to make online filing the standard procedure for filing and serving documents in its proceedings. Therefore, the Commission is proposing to make the use of Filing Online mandatory. A participant may obtain a

waiver of the online filing requirement if it demonstrates to the Commission that it faces special circumstances that make online filing infeasible. The Commission proposes to revise its rules of practice and arrange for any training that may be necessary to ensure that the benefits of online filing will be available to all participants in the next major rate or classification proceeding that the Commission conducts.

The Benefits of Filing Online

As noted in order no. 1317, using Filing Online should substantially reduce the cost of participating in Commission proceedings. The process for filing documents will be greatly simplified. Transaction costs associated with the actual filing of hard copy, as well as the costs of paper, printing, and postage, will be largely eliminated. The need to serve participants will be eliminated for all but the most lengthy documents. The cumbersome attestation requirement for interrogatory answers will be eliminated as well. This streamlining should reduce the time and expense of filing documents with the Commission. It should also give participants earlier access to documents filed by others, making it possible to shorten the current cycle of pleading and response. It should also eliminate any confusion over service dates.

Because documents will be available in portable document format (pdf), they will be vastly more efficient to download. It will also be easier to cut and paste portions of filed documents into related pleadings and testimony. Conversion to Filing Online should also facilitate document management and electronic archiving for participants. It should bring about these improvements without a reduction in security, since web transmissions between participants and the Commission's server will be over encrypted channels. Processing documents on the Commission's Web site will be secure as well. Procedures are provided that allow a participant to temporarily store documents that it plans to file in a reserved area on the Commission's server without losing control over its documents. Filing Online also provides procedures that safeguard against inadvertent filing of documents that have not been finalized. Materials subject to a protective order, however, may not be filed through Filing Online, and will not be posted on the Commission's Web site.

Conversion to Filing Online also offers significant benefits to the Commission. The time and expense of applying scanning and optical character recognition procedures to filed documents will be eliminated for most

filings. As a result, filings can be posted on the Commission's Web site more quickly, in drastically reduced file sizes, and in a form that will ensure consistency when they are reproduced on different printers by different users. This will enable the Commission to provide participants with faster and more efficient service.

Account Holders

The specific procedures that are proposed for filing documents online with the Secretary of the Commission are set forth in the Filing Online user guide, which may be accessed from the Filing Online Login page on the Commission's Web site (url: www.prc.gov). A hard copy of the Filing Online user guide will also be mailed to each person who was on a service list of any Commission docket that was active within the past year. It will also be mailed to anyone else that requests it.

Basic to the proposed Filing Online procedures is the requirement that each individual who wishes to represent a participant in a Commission proceeding become an account holder. An individual may become an account holder by filling out the account holder application that is attached to this notice as attachment 2 and mailing it to the Secretary.

When the Commission accepts an application to become an account holder, the account holder assumes a contractual duty to ensure that each document that he or she files online is authentic, accurate, and authorized by the participant that the account holder purports to represent. This duty is the same as that imposed by the Commission's current subscription rule [39 CFR 3001.11(e)]. Under proposed 39 CFR 3001.6(c), the account holder must notify the Commission if this authority to represent a particular participant ends.

The Secretary will assign the new account holder a user name and temporary password and deliver them by e-mail. The e-mail will instruct the new account holder to immediately access the Profile page through the Commission's Filing Online link and select a new password. The new password and all files subsequently submitted using the new password will be transmitted to the Commission's server over an encrypted channel. The account holder will be encouraged to take the added precaution of periodically changing his or her password, which can be done on the Profile page. These procedures will keep the password-protected material in each

account holder's dedicated user area on the Commission's server secure.

By submitting a document for filing under the account holder's user name and password, the account holder would vouch for the accuracy and authenticity of that document in the same way that a person would vouch for the accuracy and authenticity of the documents that he or she submits under the Commission's current subscription rule. This procedure will dispense with the need to sign individual documents that are filed online. For the same reason, submitting an interrogatory answer to the Commission for filing under an account holder's user name and password will dispense with the need for the witness to attest to the accuracy of his or her answer. Attestation will not be required until the interrogatory is offered as record evidence.

The Basic Mechanics of Filing Documents Online

In order to use Filing Online, an account holder will access the Commission's Web site. The account holder will click on the Filing Online link in the banner at the top of the Home page and log in by providing the appropriate user name and password. A Welcome page will appear. This page will offer several choices. A page can be selected that will explain how to file a document (the Create Filing Record page). Another page can be selected that will list and display all the documents the account holder is currently preparing for filing (the User Activity page). The account holder may also select a page that will list all of the documents that have been submitted on behalf of a participant that the account holder represents, indicate which account holder submitted them, and whether the filings are pending or accepted (the Participant Activity page). Finally, a page can be selected that will explain how the account holder's password or address information can be changed (the Profile page).

There are several ways for an account holder to file a document. All begin with the creation of a filing record. A filing record may be thought of as an empty receptacle that the account holder will fill. The account holder will begin this process by clicking on "create filing record." If the document to be filed consists of a single file, the account holder will fill in the basic record-identifying fields by selecting the appropriate docket number and filing party, and entering the title of the document to be filed exactly as it appears on the first page of that document. The document may be

uploaded either from the account holder's personal computer or from the user area reserved for the account holder on the Commission's server.

In order for the document to be filed, however, it must be in text-based pdf form. Requiring that all Filing Online documents be submitted in this form is essential to the Commission's ability to provide a seamless exchange among all participants of documents that are filed online. It will ensure that page and line citations to any document downloaded via Filing Online will be consistent; it will make it feasible to assemble Filing Online documents into a searchable database; and it will drastically reduce the size of downloaded files.

The account holder can produce a document in text-based pdf form on a personal computer using standard Adobe Acrobat software. Alternatively, the account holder can convert a document to text-based pdf form when submitting it to the Commission by simply clicking on either the "create pdf" button on the Edit Filing page, the Add Files to Computer page, or the User Activity page.

If the material that the user wishes to file consists of a set of files, the user must select a text file from the set to treat as the "host document." A host document is one that references all other files in the set and describes them (as attachments, exhibits, workpapers, et cetera). The user will be required to enter the title of the host document exactly as it appears on the first page of that document. The host document and any collateral files that belong in the set should then be uploaded, either from the user's work station or from the user's area on the Commission's web server. The host document must be submitted in text-based pdf form. Any collateral files that can be produced in text-based pdf must also be submitted in that form. The "create pdf" button on the Commission's Edit Filing page, Add Files from Computer page, and the User Activity page can convert Postscript, Word, Rich Text Format or Wordperfect files into text-based pdf files. While data files may be submitted in their native format, they must accompany a host document that is in the required pdf format. This is necessary to enable the Commission to track and archive the filed material.

After the record-identifying information has been supplied, the host document and attachments have been assembled, and the host document and any other documents capable of being converted to text-based pdf format have been converted, the user will then click the "proceed with filing" button. This will bring up the Confirmation page.

The confirmation page gives the user a final chance to view a filing before submitting it. Clicking the "Save on Activity page" button saves the record on the User Activity page without filing it. If the account holder submits the record to the Commission, a Receipt page will appear that reflects the time that the Commission received the submission. The account holder should print a copy of this record. The receipt acknowledges only the fact that the Commission's server has received the submission. It does not constitute acceptance of the submission as an officially filed document. The receipt will contain a unique document identifier that may be used if problems subsequently arise.

The Secretary or designee will check the document-identifying information for the host document and review any collateral files. If they are found to be in compliance with the Commission's rules, the filing will be posted on the Daily Listing page. This will indicate that the filing has been accepted. If a problem is found the account holder will be contacted.

A dedicated User Activity page will be provided for the account holder's convenience. It will be password-protected and will have three parts. The "holding area" screen provides a space on the Commission's server where the account holder can temporarily upload individual files in order to assemble them into a set, or test their conversion to pdf format, without creating an official filing record. Documents in the holding area can be added directly to a prospective filing using the "add files from holding area" button. Files will remain in the holding area for 7 days.

Filings not yet submitted will be listed in the "filings in progress" table on the User Activity page. An account holder will be able to save a filing record and return to it later from this screen. Unsubmitted filings will remain on this screen for seven days. Filings that the account holder has submitted to the Commission in the last seven days appear in the "submitted filings" table on the same page. All submitted filings will be listed on this screen as "pending" until they have been reviewed and accepted or rejected. Once a document is accepted, its status will change from "pending" to "filed."

A Participant Activity page will be available where multiple account holders who represent the same participant can view a list of all of the filings that they submitted on behalf of that participant, on that day and the previous business day, whether the filings are pending or accepted. Both

hard copy and electronic files will be listed.

A Profile page will be made available where account holders can change their password and update their address information. To maintain security, account holders are encouraged to periodically change their password. Updating the address information on the Profile page will simultaneously update the account holder's address on the service list and participant representative pages on the Commission's Web site.

A Help page will be available where the public may obtain information in a question and answer format about how to use the Filing Online system. Commission information specialists will also be available to answer questions by telephone at (202) 789-6847 during regular Commission office hours.

Compatibility With Users' Systems

Filing Online is designed to be compatible with most commonly-used web browsers, computer operating systems, and word processing software. The basic uploading and downloading functions provided by Filing Online are available to account holders that use any recent edition of the Internet Explorer, Netscape, or AOL web browsers, the Windows or Mac operating systems, and Word or WordPerfect word processing software. The Commission recommends that all account holders download and use the most recent version of Adobe Acrobat Reader to view documents downloaded through Filing Online. Adobe Acrobat Reader may be downloaded free of charge at www.Adobe.com.

At its inception, Filing Online will offer some enhanced functions as well, such as batch downloading and batch printing. These will be available to account holders that use any recent version of the Windows operating system together with either Internet Explorer, Netscape 4.7 or Netscape 6.2. Batch downloading and batch printing, however, will not initially be available to account holders who use other versions of Netscape, or who use a Mac operating system. The availability of these enhanced functions will gradually be expanded.

Comparison With Hard Copy Filing System

Filing Online filing procedures should prove to be easier to comply with than the hard copy-based filing procedures that are currently followed. Most documents filed with the Commission will be generated in the same manner as they are currently, using standard word processing,

spreadsheet, and statistical software. The principal restriction that Filing Online will impose on users is the requirement that each filing have at least a host document that is submitted in text-based pdf form. This conversion is straightforward for users who have Adobe Acrobat software. Users who do not have Adobe Acrobat software can make the conversion on the Commission's Web site at the touch of a button. This will ensure that all copies subsequently made of host documents filed through Filing Online will be true to the original, wherever and however they are generated.

The requirement that host documents be filed in text-based pdf format should not add to the complexity of producing such documents for filing with the Commission. Currently, hard copy text documents are typically composed in Word or Wordperfect format and then printed before they are filed with the Commission. If a filer uses different printers with different printer drivers to print the same document, it may affect the formatting, and therefore, the appearance of the document, particularly if the document incorporates a graph or table generated by non-text based software. For this reason, the prudent participant currently will review a document one final time after it has been printed but before it has been submitted to the Commission, in order to catch such discrepancies. The same precaution should be followed when submitting a document under Filing Online. A document should be reviewed one final time in pdf form before it is submitted to the Commission in order to catch similar discrepancies that might arise between the word-processed version and the pdf version.

Once produced in pdf form, it should be much easier and cheaper to file documents with the Commission under Filing Online than under the current hard copy system, for the reasons discussed above. As was also noted above, the need to serve documents filed through Filing Online on other participants will largely be eliminated.

Training and Implementation

After comments on this notice of proposed rulemaking have been received and evaluated, the Commission hopes to adopt Filing Online as the standard procedure for filing documents in Commission proceedings. The Commission expects to have Filing Online rules in place and to implement the system in the summer of 2002.

As noted, the Commission established docket no. T2002-1 on October 24, 2001, as a vehicle for testing online

filing procedures. Participants in docket no. T2002-1 became account holders by submitting the application that was attached to the notice to participants in that docket. Those who became account holders in that docket should continue to test the Filing Online system until they are familiar with its procedures. Those who expect to represent participants in future Commission proceedings who are not account holders should apply to become account holders and become familiar with Filing Online procedures by filing test documents in docket no. T2002-1. An account holder may file documents in any active docket. An account holder application is provided with this notice of proposed rulemaking as attachment 2. A workshop for current and prospective account holders will be conducted by the Commission where instruction on Filing Online procedures will be provided. That workshop is scheduled for June 12, 2002, at 10:00 a.m. Those interested in participating are asked to notify the secretary by June 5, 2002.

Proposed Changes to the Commission's Rules of Practice

The changes to the Commission's rules of practice that implement Filing Online are set forth in attachment 1. Included in these changes are some that relate only indirectly to Filing Online.

The basic change that the Commission proposes is to revise rule 9 to make it mandatory that all documents that are filed with the Commission be filed via the internet through Filing Online, unless a waiver is obtained. To obtain a waiver, a participant must demonstrate that there are special circumstances that make it infeasible for it to use Filing Online to file a document.

The Commission proposes to revise rule 10 to include a list of documents that must be filed both through Filing Online and in hard copy form. The list consists of testimony and briefs that exceed 20 pages in length, and formal rate or classifications change requests. Such documents are likely to be cumbersome for participants to download and print because they are likely to be long, to include images or spreadsheets, or are likely to be submitted in large batches. Where supplementary hard copy filing is required, the form, content, and service requirements for hard copy documents that are set forth in proposed rules 9 through 12 must be followed. Among them is a requirement that hard copy documents filed with the Commission be printed from a text-based pdf version of the document, where possible. See proposed rule 10(b). The proposal that

lengthy documents still be served in hard copy form reflects requests made by the attendees at the technical conference that was held at the Commission on July 11, 2001.

Documents that are filed through Filing Online will be posted on the Commission's Web site and will be available to participants and the public for downloading, normally on the same business day that they are submitted. When Filing Online becomes the standard form of filing documents with the Commission, documents filed online will be considered served when the document is posted by the Commission on the Daily Listing page of its Web site. Participants will not be required to serve those documents on other participants. This change in procedure is reflected in proposed rule 12(a). However, participants would still be required to serve documents in hard copy form on individuals found to be unable to receive service through the Commission's Web site.

Proposed rule 9 requires that each individual, whether representing himself or herself or a participant in Commission proceedings, become an account holder in order to file documents in Commission dockets. This requirement is set forth in proposed rule 9(b). As discussed above, account holders would assume a contractual obligation to warrant the authenticity and accuracy of the documents that they file through Filing Online. They would receive a user name and a password, and a dedicated user area on the Commission web server. Relying on account holders to warrant the authenticity and accuracy of the documents that they file through Filing Online would dispense with the need for the participant's representatives to sign specific documents that they file. This change in procedure is reflected in proposed rule 11(e).

With respect to interrogatory answers, the reliance on account holders to warrant the authenticity and accuracy of documents filed through Filing Online dispenses with the need for witnesses to specifically attest to the accuracy of their answers. It is contemplated that attestation will be not required until interrogatory answers are offered as evidence. This change in procedure is reflected in proposed rule 26(b).

As noted, there will be restrictions on the formats and computer technologies that account holders may use to submit documents via Filing Online in order to make them compatible with the Commission's data processing system. These will be prescribed by the secretary of the Commission in a set of instructions that will be maintained on

the Commission's Web site. Chief among them, as discussed above, is the requirement that documents submitted via Filing Online be accompanied by a host document that is in text-based pdf format. Proposed rule 10(a)(2) would authorize the secretary to compile and maintain these instructions. These instructions are expected to be adapted over time to reflect new technology and to facilitate the use of Filing Online by all interested persons. A set of instructions in the form of a Filing Online user guide is available on the Commission's web site, and in hard copy form upon request.

While reviewing its proposal to require that documents filed with the Commission be in a standardized electronic form, the Commission also re-evaluated the form requirements that are set forth in its rules of practice with respect to library references and computer analyses. Current rule 31(b)(2)(vii) requires that material filed as a library reference be provided in an "electronic version" unless it is shown that an electronic version cannot be provided. The current rule is broad enough to permit material to be filed as a library reference even if it can only be read and executed on a mainframe or on a Macintosh computer. Neither of these is commonly available hardware. If material can only be accessed through such hardware, it imposes on participants and the Commission the undue burden of acquiring such hardware, or converting the files to a PC compatible form, in order to read and execute the files. To avoid this, the Commission proposes to revise this rule to require that material filed as a library reference be provided on "PC media," unless it is shown that it cannot be provided in that form.

The Commission's evidence rule governing the submission of computer analyses requires that a listing of input data, output data, and source codes be provided, unless it is shown that they cannot be provided. See current rule 31(k)(3)(i). As with the current library reference rule, this is broad enough to allow such material to be submitted in a form that can only be read and executed by a mainframe or a Macintosh computer. To make such material reasonably accessible to participants and the Commission, the Commission proposes to revise this rule to require that a copy of input data, output data, and source codes be provided in a form that allows them to be replicated using a publicly available PC application.

Postal Rate Commission Filing Online Account Holder Application¹

To file documents electronically, each account holder must have a login name and password. Upon submitting a completed application to the Commission, the account holder will receive a login name and password. The login name/password procedure is designed to ensure that material filed using the Filing Online system conforms to the Commission's rules of practice, is authorized by the account holder, that it is filed on behalf of the participant that it purports to represent, that the account holder has read the material filed and is familiar with its contents, and that the account holder warrants that it is authentic, accurate and otherwise in compliance with rule 11(e). If the account holder authorizes support staff to use his/her login name and password for purposes of filing documents with the Commission, the account holder remains ultimately responsible for ensuring that each filing submitted under his/her login name and password is in full compliance with rule 11(e). The Commission, therefore, cautions each account holder to employ suitable monitoring procedures to ensure that any material filed under his/her account fully conforms to that rule.

Account Holder Name
Affiliation
Address
Phone
Fax
Email Address

I, _____ recognize that as the account holder I remain responsible for the authenticity and accuracy of all documents filed under my login name and password and undertake to monitor filings with the Commission to safeguard that no unauthorized filing is made under my login name and password.

Signature of account holder.

Privacy Act Notice: The collection of this information is authorized by 39 U.S.C. 3603. This information will be used for administering the filing of documents in electronic form by participants in Postal Rate Commission proceedings. It may be publicly disclosed under the routine uses given in the Privacy Act system notice published at 64 FR 56819 (1999).

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

It is ordered:

1. Interested persons are invited to submit comments on the Commission's proposed Filing Online proposal and this notice of proposed rulemaking no later than June 21, 2002.

2. The Secretary shall cause this notice of proposed rulemaking to be published in the **Federal Register**.

3. A workshop for current and prospective account holders will be held on June 12, 2002, at 10:00 a.m., in the hearing room of the Commission, 1333 H Street NW., Washington, DC.

Steven W. Williams,
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

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

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

Subpart A—Rules of General Applicability

2. Revise §3001.6(c) to read as follows:

§ 3001.6 Appearances.

* * * * *

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

* * * * *

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

§ 3001.9 Filing of documents.

(a) *Filing with the Commission.* The filing of each written document required or authorized by these rules or any applicable statute, rule, regulation, or order of the Commission, or by direction of the presiding officer shall be made using the Internet (Filing Online) pursuant to § 3001.10(a) at the following url: 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 Rate Commission, 1333 H Street, NW., suite 300, Washington, DC 20268–0001 during regular business hours on a date no later than that specified for such filing.

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

(c) *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. In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a Filing Online account holder.

(1) Subject to rule 9(d):

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

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

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

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

¹ This application appears as attachment 2 in the notice distributed to the service list and in the notice as posted on the Commission's web site. The changes proposed in the Code of Federal Regulations appear as attachment 1. The order of appearance has been reversed for purposes of publication in the **Federal Register**.

subsequently striking all or any part of any document.

§ 3001.10 Form and number of copies of documents.

(a) *Documents.* Each document filed with the Commission must be submitted through Filing Online by an account holder, unless a waiver is obtained. The text of documents filed with the Commission shall be formatted in not less than one and one-half spaced lines except that footnotes and quotations may be single spaced. Documents must be submitted in Arial 12 point font, or such program, format, or font as the presiding officer may designate.

(b) Attachments to documents filed online will be accepted in their native format (i.e., Excel, Lotus, et cetera). The form of documents filed as library references is governed by § 3001.31(b)(2)(iv).

(1) The following shall be filed both online and in hard copy form pursuant to paragraph (b):

(i) Requests for changes in rates or classifications, including supporting documentation.

(ii) Written testimony, including appendices and exhibits, that exceeds 20 pages in length.

(iii) Briefs that exceed 20 pages in length.

(2) Documents filed online must satisfy computer system compatibility requirements specified by the Secretary. They may be accessed from the Filing Online page on the Commission's Web site, www.prc.gov.

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

(b) *Hard copies.* Each document filed in paper form must be produced on letter-size paper, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than .75 inches, except that tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service must be printed from a text-based pdf version of the document, where possible. Otherwise, they may be reproduced by any duplicating process that produces clear and legible copies. Participants in proceedings conducted under subpart H who are unable to comply with these requirements may seek to have them waived. Each person filing a hard copy document with the Commission must provide an original and 24 fully conformed copies of the document

required or permitted to be filed under this part, except for a document filed under seal, for which only the original and two (2) copies need be filed. The copies need not be signed but shall show the full name of the individual signing the original document and the certificate of service attached thereto.

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

§ 3001.11 General contents of documents.

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

(b) *Designation of individuals to receive service.* Each notice of intervention filed pursuant to §§ 3001.20 or 20a must state the name, full mailing address, telephone number, and e-mail address of up to two individuals designated to receive service of hard copy documents relating to the proceeding.

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

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

(e) *Subscription.* Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that he/she has read the document being subscribed and filed; that he/she knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified in the document with full power and authority so to do; that to the best of his/her knowledge, information and belief every statement contained in

the document is true and no such statements are misleading; and that such document is not filed for purposes of delay.

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

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

(f) *Table of contents.* Each document filed with the Commission consisting of 20 or more pages shall include a table of contents with page references. For briefs see § 3001.34.

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

§ 3001.12 Service of documents.

(a) *Service by account holders.* Each document filed in a proceeding via the Internet by an Account Holder shall be deemed served on all participants upon its acceptance for filing by the Commission, except for:

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

(2) A document that must be served on a participant that the Commission or presiding officer has determined is unable to receive service through the Commission's Web site.

(b) *Service by others.* If the Commission or presiding officer has determined that a participant is unable to file documents online, documents filed by that participant must meet the service requirements that apply to hard copy documents.

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

through the Commission Web site shall be by mail.

(d) *Hard copy documents.* Each participant filing a hard copy document in a proceeding shall serve such document upon each person on the proceeding's service list, unless the Commission or presiding officer otherwise directs.

(e) *Limitation on extent of hard copy service.* To avoid the imposition of an unreasonable burden upon participants, the Commission or the presiding officer may, by appropriate order, limit service of hard copy documents to service upon participants intending to actively participate in the hearing, or upon a person or persons designated for properly representative groups, or by requiring the making of documents available for convenient public inspection, or by any combination of such methods.

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

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

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

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

§ 3001.13 Docket and hearing calendar.

The Secretary shall maintain a docket of all proceedings, and each proceeding

as initiated shall be assigned an appropriate designation. The Secretary shall maintain a hearing calendar of all proceedings that have been set for hearing. Proceedings shall be heard on the date set in the hearing order, except that the Commission may for cause, with or without motion, at any time with due notice to the parties advance or postpone the date of hearing. All documents filed in a docket, other than matter filed under seal, and the hearing calendar may be accessed remotely via the Commission's Web site, or viewed at the Commission's docket section during regular business hours.

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

§ 3001.20 Formal Intervention.

* * * * *

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

* * * * *

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

§ 3001.20a Limited participation by persons not parties.

* * * * *

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

* * * * *

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

§ 3001.26 Interrogatories for purpose of discovery.

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

whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant propounding the interrogatories shall file them with the Commission in conformance with §§ 3001.9 through 3001.12. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be filed within 7 days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the participant who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The participant responding to the interrogatories shall file the answers in conformance with §§ 3001.9 through 3001.12 within 14 days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within 10 days of the filing of the interrogatories.

* * * * *

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be filed in conformance with §§ 3001.9 through 3001.12 within 7 days of the date of the order compelling an answer or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

* * * * *

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

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

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things that constitute or contain matters, not privileged, that are relevant to the subject matter involved in the proceeding and that are in the custody or control of the participant to whom the request is addressed. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place, and manner of making inspection. The participant requesting the production of documents or things shall file its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* The participant responding to the request shall file an answer with the Commission in conformance with §§ 3001.9 through 3001.12 within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category,

the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state with particularity the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within ten days of the request for production.

* * * * *

(e) *Compelled answers.* Upon motion of any participant to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection is found not to be valid. Such compelled documents or things shall be made available to the participant making the motion within 7 days of the date of the order compelling production or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing. When complying with orders to produce documents or things, notice shall be filed in conformance with §§ 3001.9 through 3001.12. The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

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

§ 3001.28 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer, the participant to whom the request is directed files a written answer or objection pursuant to

paragraph (c) of this section. A participant who answers a request for admission shall file its answer with the Commission in conformance with §§ 3001.9 through 3001.12.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort that would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12, within 10 days of the request for admissions.

* * * * *

(e) *Compelled answers.* Upon motion of any participant to the proceeding the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid. Such compelled answers shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within 7 days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be filed.

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

§ 3001.30 Hearings.

* * * * *

(e) * * *

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination should be filed three or more working days before the announced appearance of the witness and should include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. 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 filed at least two calendar days (including

one working day) before the scheduled appearance of the witness. If a participant has obtained permission to receive service of documents in hard copy form, hard copy notices of intent to conduct oral cross-examination of witnesses for that participant should be delivered to counsel for that participant and served three or more working days before the announced appearance of the witness, and cross-examination exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

* * * * *

10. Amend § 3001.31 by:

- a. Revising the first sentence of paragraph (b)(2)(iv);
- b. Revising paragraph (b)(2)(vii);
- c. Removing and reserving paragraph (f);
- d. Removing and reserving paragraph (g);
- e. Revising paragraph (k)(3)(i); and
- f. Revising paragraph (k)(3)(i)(i).

§ 3001.31 Evidence.

* * * * *

(b) * * *

(2) * * *

(iv) *Filing procedure.* Participants filing material as a library reference shall file contemporaneous written notice of this action in conformance with §§ 3001.9 through 3001.12. * * *

* * * * *

(vii) *Electronic version.* Material filed as a library reference shall also be made available on standard PC media, absent a showing of why a version on PC media cannot be supplied or should not be required to be supplied. The material provided on PC media must be submitted in a form that allows it to be replicated using a publicly available PC application. The library reference documentation shall include file names and corresponding descriptions of file contents, and shall identify the applications necessary to execute the files. This documentation should be included in both the hard copy and the electronic version of the library reference.

* * * * *

The revisions are to read as follows:

(k) * * *

(3) *Computer analyses.* (i) In the case of computer analyses that are being offered in evidence, or relied upon as support for other evidence, a foundation for the reception of such materials must be laid by furnishing a general description of the program that includes the objectives of the program, the processing tasks performed, the methods and procedures employed, and

a copy of the input and output data and source codes (or a showing pursuant to paragraph (k)(3)(iii) of this section as to why such codes cannot be so furnished). The copy provided must be submitted in a form that allows it to be replicated using a publicly available PC application. For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon request of a participant, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing.

* * * * *

(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 a form that allows them to be replicated using a publicly available PC application. Any machine-readable data file or program file so provided must be identified and described in accompanying hard copy 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 hard copy instructions for executing them.

* * * * *

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

§ 3001.42 Public information and requests.

* * * * *

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

* * * * *

[FR Doc. 02-12644 Filed 5-20-02; 8:45 am]

BILLING CODE 7710-FW-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 438

[FRL-7213-7]

RIN 2040-AB79

Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Metal Products and Machinery Point Source Category; Announcement of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; announcement of meeting.

SUMMARY: EPA will conduct a public meeting on the upcoming Metal Products and Machinery (MP&M) Notice of Data Availability.

The Office of Science and Technology within EPA's Office of Water is holding the public meeting to inform all interested parties of the status of the MP&M effluent guidelines. EPA intends to finalize effluent limitations guidelines and standards for the Metal Products and Machinery Point Source Category in December 2002. At the meeting, EPA will report on the status of the rulemaking; new data and information available for public comment; revised economic and engineering models and methodologies used for estimating costs, pollutant loads, benefits, and economic impacts; revised limitations and standards; compliance alternatives we developed based on new information; and specific areas where EPA is seeking further comment.

EPA will also use this meeting to ask for informal public comment on any of the issues or information presented in the upcoming NODA and in the Administrative Record supporting that notice. The meeting does not include a pretreatment hearing nor will EPA record the meeting for the Administrative Record. The meeting is open to the public, and limited seating is available on a first-come, first-served basis. For information on the location, see the **ADDRESSES** section below.

DATES: EPA will conduct the MP&M public meeting on Friday, June 7, 2002, from 1 p.m. to 4 p.m. Central Standard Time.

ADDRESSES: The MP&M public meeting will be held at the EPA Region 5 Offices, 77 West Jackson Boulevard, Room 331, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: For additional information, call Mr. Carey A. Johnston at (202) 566-1014 or send