

Dated: January 20, 1995.

M.K. Cain,

Captain, U.S. Coast Guard Commander, Fifth Coast Guard District, Acting.

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POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM95-3]

Appeals of Postal Service Determinations to Close or Consolidate Post Offices

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules of practice governing the filing of postal patrons' appeals of determinations by the United States Postal Service to close or consolidate the post office which serves them. The Commission's current rule requires that petitions to initiate such appeals be received by the Commission within 30 days of the date on which the Postal Service made its determination publicly available. The proposed rule would allow affected postal patrons to initiate a timely appeal by filing a petition which either is received by the Commission within 30 days of the date on which the Postal Service made its determination publicly available, or bears a postmark or other indicia that it was mailed no later than 30 days after that date.

DATES: Comments responding to this notice of proposed rulemaking must be submitted no later than March 30, 1995.

ADDRESSES: Comments and correspondence should be sent to Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. 20268-0001 (telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Legal Advisor, Postal Rate Commission, 1333 H Street, N.W., Suite 300, Washington, D.C. 20268-0001 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION: The Postal Reorganization Act Amendments of 1976, Pub. L. No. 94-421, 90 Stat. 1303, provide postal patrons an opportunity to appeal determinations by the United States Postal Service to close or consolidate the post office which serves them. In pertinent part, the statute provides: "A determination of the Postal Service to close or consolidate any post office may be appealed by any person served by such office to the Postal Rate Commission within 30 days after such

determination is made available to such person * * *." 39 U.S.C. 404(b)(5).

In adopting rules to implement the provisions of Pub. L. 94-421, the Postal Rate Commission incorporated the 30-day provision in section 404(b)(5) as follows:

Petition for review. Review of a determination of the Postal Service to close or consolidate a post office shall be obtained by filing a petition for review with the Secretary of this Commission. Such petition must be received by the Commission within 30 days after the Service has made available to persons served by that post office the written determination to close or consolidate required by 39 U.S.C. 404(b)(3) through (4).

39 CFR 3001.111(a). Thus, under the Commission's current rule, the timeliness of affected postal patrons' appeals depends upon the Commission's actual receipt of their petition within the 30-day statutory period.

The Commission is concerned that the current rule may operate to the detriment of postal patrons served by post offices that are geographically remote from the Commission's offices in Washington, D.C. Because of uncertainties associated with postal processing, transportation, and delivery, a petition's transit time from mailing by the appellants to receipt at the Commission's offices cannot be known in advance, but may constitute a significant portion of the 30-day interval established in the current rule. An internal review of the Commission's records of section 404(b) appeals filed in Fiscal Years 1993 and 1994 discloses that the interval between the mailing of a petition and its receipt by the Commission has frequently approached, and has sometimes exceeded, one week.

In order to assure that members of the public affected by Postal Service determinations to close or consolidate post offices are afforded the full 30 days to pursue an appeal provided by 39 U.S.C. 404(b)(5), the Commission proposes to amend its current rule to incorporate two alternative measures of the timeliness of petitions. Under the proposed revision of 39 CFR 3001.111(a), a petition would be deemed timely if: (1) The Commission actually received it no later than 30 days following publication of the Postal Service's determination, or (2) the petition bears a postmark or other indicia demonstrating that it was mailed no later than 30 days after publication by the Postal Service.

List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal Service.

Accordingly, 39 CFR part 3001 is proposed to be amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662, 84 Stat. 759-762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Section 3001.111(a) would be revised to read as follows:

§ 3001.111 Initiation of review proceedings.

(a) *Petition for review.* (1) Review of a determination of the Postal Service to close or consolidate a post office shall be obtained by filing a petition for review with the Secretary of this Commission. Such petition must either:

(i) Be received by the Commission within 30 days after the Service has made available to persons served by that post office the written determination to close or consolidate required by 39 U.S.C. 404(b) (3) through (4), or

(ii) Bear a postmark or other indicia demonstrating that the petition was mailed no later than the 30th day following the date on which the Postal Service made its written determination available.

(2) The petition shall specify the parties seeking review, all of whom must be persons served by the post office proposed to be closed or consolidated and shall identify the Postal Service as respondent. The Commission encourages parties seeking review to attach a copy of the Postal Service written determination, as the appeal process is thereby expedited. If two or more persons are entitled to petition for review of the same determination and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

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Issued by the Commission on February 7, 1995.

Margaret P. Crenshaw,

Secretary.

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