

Postal Rate Commission

§ 3001.114

New York Avenue NW., Suite 200, Washington, DC 20268-0001, within 30 days after the issuance of a written determination by the Postal Service. The rules of general applicability in subpart A of this part, which do not relate solely to evidentiary proceedings on the record, are also applicable to proceedings subject to this subpart.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38977, July 21, 1993]

§ 3001.111 Initiation of review proceedings.

(a) *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). 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.

(b) *Intervention.* A person served by the post office to be closed or consolidated pursuant to the Postal Service written determination under review who desires to intervene in the proceeding, or any other interested person, or any counsel, agent or other person authorized or recognized by the Postal Service as such interested person's representative or the representative of such interested person's recognized group, such as Postmasters, shall file with the Secretary of the Commission and serve upon all parties a notice of intervention in a form prescribed by § 3001.20. The notice shall contain a concise statement of the interest of the

moving party and the grounds upon which intervention is sought. A notice of intervention shall be filed within 25 days of the date on which the notice for review is filed. The provisions of § 3001.20 (c) through (f) of Subpart A of this part shall apply to notices of intervention in review proceedings.

[48 FR 33707, July 25, 1983, as amended at 58 FR 38977, July 21, 1993]

§ 3001.112 The record on review.

The written determination sought to be reviewed or enforced, the conclusions and findings upon which it must be based under section 404(b)(3) of the Act, the notices to local patrons and the evidence contained in the entire administrative record before the Postal Service shall constitute the record on review. The record shall contain all evidence considered by the Postal Service in making its determination and shall contain no evidence not previously considered by the Postal Service.

§ 3001.113 Filing of the record.

(a) *Time for filing of the record by the Postal Service.* The Postal Service shall file the record with the Secretary of the Commission within 15 days after the date on which the petition for review is filed with the Commission. The Commission may shorten or extend the time prescribed above. The Secretary shall give notice to all parties of the date on which the record is filed.

(b) *Composition of the filing.* The Postal Service may file the entire record or such parts thereof as the parties may designate by stipulation filed with the Postal Service. The original papers in the Postal Service proceeding or certified copies thereof may be filed. All parts of the record retained by the Postal Service shall be a part of the record on review for all purposes.

§ 3001.114 Suspension pending review.

(a) *Application.* Application for suspension of a determination of the Postal Service to close or consolidate any post office pending the outcome of an appeal to the Postal Rate Commission shall be made at the time of the filing of a petition for review or of the filing of a notice of intervention in an extant appellate proceeding. The application

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shall show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by affidavits or other sworn statements or copies thereof. The applicant must be a person served by the affected post office. Immediate notice of the application shall be given to all parties to the proceeding. The application shall be filed with the Secretary of the Commission.

(b) *Answer and filing of the relevant record by the U.S. Postal Service.* Within 10 days after the application for suspension is filed, the Postal Service shall file with the Secretary of the Commission and serve on the petitioners an answer to the application supported by affidavits or other sworn statements or copies thereof. The Postal Service, within 10 days from the date of filing of the application, shall file with the Secretary such parts of the record as are relevant to the relief sought.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38977, July 21, 1993]

§ 3001.115 Participant statement or brief.

(a) *Participant statement.* Upon the filing of the petition for review of a decision to close or consolidate a post office, the Secretary shall furnish the petitioner with a copy of PRC Form 61, a form designed to permit the appellant to make a concise statement of his/her arguments in support of the petition and the instructions regarding its use. In addition to eliciting this information, the instructions for Form 61 shall provide: (1) Notification that, if the appellant prefers, he or she may file a brief as described in paragraph (b) of this section presenting the arguments, in lieu of completing PRC Form 61; (2) a concise explanation of the purpose of the form; and (3) notification that the completed form, or a brief as described in paragraph (b) of this section, in lieu thereof, must be filed with the Commission not more than 35 days following the date of filing of the petition (which date shall be set forth, as it appears in the Commission's records).

(b) *Appellant's initial brief.* The initial brief of the appellant shall be filed with the Secretary of the Commission

and served on all parties 35 days after the filing of the petition for review of a decision to close or consolidate a post office. The brief will be limited in length to 30 pages, typewritten and double spaced, and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears (which need not be included in the page count);

(2) A concise statement of the case from the viewpoint of the filing participant;

(3) A clear, concise and definitive statement of the position of the author as to the merits of the determination under review;

(4) A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and

(5) Proposed holding with appropriate references to the record or the prior discussion of the evidence and authorities relied upon, and to the appellate criteria of section 404(b)(5) of the Act.

Briefs before the Commission shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading or document. Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(c) *Answering brief of the Postal Service.* The answering brief of the Postal Service shall be filed 20 days after the date designated for filing of the appellant's brief and shall follow the format detailed in paragraph (b) of this section.

(d) *Reply by appellant.* The appellant may file a written response to the brief of the Postal Service 15 days after the date designated for filing of that brief, which shall be strictly limited in content to reply to arguments made by the Postal Service. If presented as a brief, such reply brief shall conform to the format detailed in paragraph (b) of this section.

(e) *Intervenor statements or briefs.* An intervenor shall file its brief within the time allowed for initial and reply, or answering, briefs, as appropriate. The