shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

*Further procedures.* By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

*It is ordered*:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated officer of the Commission (Public Representative) to represent the interests of the general public.

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

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

PROCEDURAL SCHEDULE

| | |
|---|---|
| November 29, 2011 | Filing of Appeal. |
| December 14, 2011 | Deadline for the Postal Service to file the applicable administrative record in this appeal. |
| December 14, 2011 | Deadline for the Postal Service to file any responsive pleading. |
| January 9, 2012 | Deadline for notices to intervene (*see* 39 CFR 3001.111(b)). |
| January 3, 2012 | Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)). |
| January 23, 2012 | Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)). |
| February 7, 2012 | Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)). |
| February 14, 2012 | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116). |
| March 16, 2012 | Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)). |

[FR Doc. 2011–32416 Filed 12–19–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## POSTAL REGULATORY COMMISSION

**[Docket No. MC2008–1 (Phase IIR); Order No. 1043]**

## Review of Nonpostal Services

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is establishing a docket to consider procedures on remand in a case involving licensing of Postal Service intellectual property for use on Mailing and Shipping products for sale by licensees at non-postal retail outlets. This notice provides background information and invites comments. It also addresses intervention by persons who did not participate earlier.

**DATES:** *Comments are due:* January 13, 2012. *Reply comments are due:* January 23, 2012.

**ADDRESSES:** Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *http://www.prc.gov/prc-pages/filing-online/login.aspx.* Persons who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

**SUPPLEMENTARY INFORMATION:** *Regulatory History,* 72 FR 73909 (December 28, 2007); 74 FR 2636 (January 15, 2009).

### Table of Contents

I. Introduction
II. Consideration of Issues on Remand
III. Procedures on Remand
IV. Ordering Paragraphs

### I. Introduction

On June 7, 2011, the United States Court of Appeals for the District of Columbia Circuit issued an opinion in *LePage's 2000, Inc. and LePage's Products, Inc.* v. *Postal Regulatory Commission,* No. 10–1031.[1] The court granted petitions for review and vacated the Commission's Order No. 392 in Phase II of Docket No. MC2008–1.[2] The court, which issued its remand July 26, 2011, found that the Commission had not adequately justified its findings regarding the licensing of Postal Service intellectual property for use on Mailing and Shipping products for sale by licensees at non-postal retail outlets.[3] It instructed the Commission to explain its departure from its findings in Phase I of this proceeding in three respects: (1) The classification of the licensing of intellectual property for use on Mailing and Shipping products as nonpostal; (2) the public need for licensing the Postal Service's intellectual property for use on Mailing and Shipping products; and (3) the private sector's ability to meet that need. In this order, the Commission establishes procedures to address the issues on remand.

### II. Consideration of Issues on Remand

*A. Classification of Licensing of Mailing and Shipping Products as a Nonpostal Service*

In its brief to the court, LePage's argued that the Commission's failure to consider whether the licensed products it produced for sale at non-Postal Service retail outlets were a ''postal service'' was arbitrary and capricious.[4] The Commission responded that LePage's comparison of its products to postal products, such as ReadyPost, was misplaced because it wrongly focused on the sale of its products rather than the service offered by the Postal Service, *i.e.,* licensing. *See LePage's* v. *PRC, supra,* 642 F.3d 231.

The court found that ''[t]he Commission may well be correct that

[1] *LePage's 2000, Inc. v Postal Regulatory Commission,* 642 F.3d 225 (DC Cir. 2011) (*LePage's* v. *PRC*). Consolidated with Nos. 10–1033, 10–1279, and 10–1294.

[2] Phase II Review of Nonpostal Services Under the Postal Accountability and Enhancement Act, January 14, 2010, Order No. 392.

[3] The court referred to the licensing of third-party mailing and shipping supplies, which includes LePage's licensing agreement, as the Bubblewrap program. *LePage's* v. *PRC* at 226. This order uses the term ''Mailing and Shipping products''.

[4] Brief for Petitioners LePage's 2000, Inc. and LePage's Products, Inc., Nos. 10–1031, 10–1033, 10–1279, 10–1294 (consolidated), January 29, 2011, at 28.

the crucial distinction is the seller's identity. But whatever the merits of this position, we cannot consider it because the Commission did not set it forth below.'' *Id.* The court held that in Phase II, the Commission analysis of the Mailing and Shipping program focused on the products themselves, whereas in Phase I, the focus was on the service being sold by the Postal Service. *Id.* Accordingly, the court remanded the matter to the Commission ''to explain its departure from the Phase I order and adopt a reasoned rationale for classifying the [mailing and shipping] program as a 'nonpostal service.' '' *Id.* at 232.

Interested persons are requested to comment on this issue, including specifically whether licensing of Mailing and Shipping products should be classified as a postal service or nonpostal service.

*B. The Public Need for Licensing of Mailing and Shipping Products*

The court found the Commission's finding that there was no public need for the licensing of Mailing and Shipping products for sale by licensees at nonpostal retail outlets to be flawed. The court held that the Commission had not adequately explained why the benefits ascribed to the Officially Licensed Retail Products (OLRP) [5] in Phase I did not also accrue to the Mailing and Shipping program in Phase II. *Id.* at 232.

In Phase I, the Postal Service sought to continue to license its intellectual property and to offer OLRP products as a nonpostal service.[6] In authorizing that nonpostal service to continue, the Commission found, *inter alia,* that the OLRP program leverages the Postal Service brand, enhances its image, and generates revenues to support its core mission.[7] The court stated: ''We do not understand why these same benefits would not accrue to the [Mailing and Shipping products], which aside from the seller's identity, is substantially similar to the [OLRP] program. At the least, the Commission must explain this differential treatment of seemingly like cases.'' *LePage's* v. *PRC,* 642 F.3d 232.[8]

In addition, the court addresses but does not resolve whether, in analyzing public need under 39 U.S.C. 404(e)(3), the Commission may consider the products manufactured pursuant to the licensing agreement and their potential effect on the market. Before the court, LePage's argued that the Commission cannot ''analyze 'public need' based on the predicted economic effects of a product.'' *Id.* Finding ''some merit'' in LePage's position, the court stated:

> The Act requires the Commission to assess the 'public need' for the service 'offered by' the Postal Service. Yet the service offered by the Postal Service in the [Mailing and Shipping] program is, of course, the licensing of intellectual property. The Commission's focus on the economic effect of the *products* that result from licensing, then, would seem to depart from the Act's plain language.

*Id.* (citation omitted; emphasis in original).[9]

The court concluded its discussion of public need by noting that in Phase II the Commission, without explanation, changed its approach from focusing on the service (licensing) to ''assessing the disadvantages of the [Mailing and Shipping] program based only on the program's *products.''* *Id.* (emphasis in original).

Interested persons are requested to address, under section 403(e)(3), the issue of public need for licensing of Mailing and Shipping products, including specifically what factors should be included in the Commission's assessment of public need.

*C. The Private Sector Ability To Meet the Public Need for Licensing Postal Service Intellectual Property for Mailing and Shipping Products*

In Phase I, the Commission authorized the continuation of promotional licensing by the Postal Service. It found that such licensing serves a ''public need which, given the uniqueness of the activity, cannot be met by the private sector.'' Order No. 154 at 73. The court found the Commission's Phase II conclusion that the private sector could meet the need for the licensing of intellectual property for use on Mailing and Shipping products departed, without explanation, from its Phase I conclusion ''that commercial licensing could not be met by the private sector because no entity other than the Service could license its intellectual property.'' *Id.* The court further observed:

> [T]he Commission must assess the activity the Service offers. In the case of commercial licensing—whether for mailing and shipping supplies or for other products—that activity is licensing. Therefore, for the Commission to review the private sector factor by assessing ability of the private sector to provide similar products would bring the Commission into conflict not only with the Act, but also [with its Phase I conclusion].

*Id.* at 233–34.

Interested persons are requested to address this issue, including specifically whether, in assessing under section 404(e)(3) the private sector's ability to meet the public need, the Commission may take into account the purpose of the product manufactured pursuant to the licensing agreement. Stated differently, in considering the private sector's ability to meet the need for Postal Service licensing of its intellectual property for use on third-party consumer goods, is it appropriate to take into account the purpose of licensed consumer good, *e.g.,* items, such as hats, toys, or key chains, that primarily serve a promotional (or novelty) purpose versus items related to Postal Service areas of expertise, such as postage meter ink cartridges or mail preparation supplies, that primarily serve a commercial purpose?

**III. Procedures on Remand**

The Commission establishes Docket No. MC2008–1 (Phase IIR) to consider issues on remand. Docket Nos. MC2008–1 (Phase II) and MC2008–1 (Phase IIR) are part of the same proceeding. Comments are due January 13, 2012.[10] Reply comments, if any, are due January 23, 2012. Comments may refer to and rely on evidence received and arguments made in Docket No. MC2008–1 (Phase I) and Docket No. MC2008–1 (Phase II).

**IV. Ordering Paragraphs**

*It is ordered:*

1. The Commission establishes Docket No. MC2008–1 (Phase IIR) to consider issues on remand.
2. Robert N. Sidman will continue to serve as officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Comments are due, as set forth in the body of this order, no later than January 13, 2012.
4. Reply comments, if any, are due no later than January 23, 2012.
5. All comments and other documents related to issues on remand shall be

[5] The court referred to the OLRP program as the ''Bears and Scales program''. *Id.* at 228.

[6] OLRP products are sold by the Postal Service at its retail facilities or via its Web site.

[7] Docket No. MC2008–1, Review of Nonpostal Service Under the Postal Accountability and Enhancement Act, December 19, 2008, at 49 (Order No. 154); affirmed *USPS* v. *Postal Regulatory Commission,* 599 F.3d 705 (DC Cir. 2010).

[8] The court also faulted the Commission's reliance on certain testimony to reach different results in Phase I and Phase II. ''The Commission does not explain how it can read the same evidence differently when applied to different aspects of the same program.'' *Id.*

[9] Regarding ''economic impact,'' the court ''perceive[d] no explanation of how this concern migrated, in Phase II, to the Commission's 'public need' inquiry.'' *Id.* at 233.

[10] Interested persons who were not parties to the proceedings in Phase II may seek to intervene by filing a notice of intervention or of limited participation. *See* 39 CFR 3001.20 and 3001.20a.

filed under Docket No. MC2008–1 (Phase IIR).

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

By the Commission.

**Shoshana M. Grove,**

*Secretary.*

[FR Doc. 2011–32428 Filed 12–19–11; 8:45 am]

**BILLING CODE 7710–FW–P**

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** 76 FR 78054, December 15, 2011.

**STATUS:** Closed Meeting.

**PLACE:** 100 F Street NE., Washington, DC

**DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING:** Monday, December 19, 2011 at 2 p.m.

**CHANGE IN THE MEETING:** Date Change.

The Closed Meeting scheduled for Monday, December 19, 2011 at 2 p.m., has been changed to Tuesday, December 20, 2011 at 10 a.m.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 551–5400.

Dated: December 16, 2011.

**Kevin M. O'Neill,**

*Deputy Secretary.*

[FR Doc. 2011–32601 Filed 12–16–11; 11:15 am]

**BILLING CODE 8011–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12951 and #12952]**

### New Jersey Disaster Number NJ–00030

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of New Jersey (FEMA–4048–DR), dated 11/30/2011.

*Incident:* Severe Storm.

*Incident Period:* 10/29/2011.

*Effective Date:* 12/12/2011.

*Physical Loan Application Deadline Date:* 01/30/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/30/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of New Jersey, dated 11/30/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Bergen, Middlesex, Passaic.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–32479 Filed 12–19–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12742 and #12743]**

### Nebraska Disaster Number NE–00043

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 1.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Nebraska (FEMA–4013–DR), dated 08/12/2011.

*Incident:* Flooding.

*Incident Period:* 05/24/2011 through 08/01/2011.

*Effective Date:* 12/12/2011.

*Physical Loan Application Deadline Date:* 10/11/2011.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/14/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Nebraska, dated 08/12/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Richardson, Nemaha.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–32480 Filed 12–19–11; 8:45 am]

**BILLING CODE 8025–01–P**

## SMALL BUSINESS ADMINISTRATION

**[Disaster Declaration #12921 and #12922]**

### Virginia Disaster Number VA–00040

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Amendment 2.

**SUMMARY:** This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the Commonwealth of Virginia (FEMA—4042—DR), dated 11/10/2011.

*Incident:* Earthquake.

*Incident Period:* 08/23/2011 through 10/25/2011.

*Effective Date:* 12/06/2011.

*Physical Loan Application Deadline Date:* 01/09/2012.

*Economic Injury (EIDL) Loan Application Deadline Date:* 08/10/2012.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

**SUPPLEMENTARY INFORMATION:** The notice of the President's major disaster declaration for Private Non-Profit organizations in the Commonwealth of Virginia, dated 11/10/2011, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Area: Fredericksburg City.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

**James E. Rivera,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 2011–32481 Filed 12–19–11; 8:45 am]

**BILLING CODE 8025–01–P**