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ORDER NO. 5407

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners: Robert G. Taub, Chairman;
Michael Kubayanda, Vice Chairman;
Mark Acton;
Ann C. Fisher; and
Ashley E. Poling

Amendments to Rules of Practice Docket No. RM2019-13

ORDER REORGANIZING COMMISSION REGULATIONS AND AMENDING RULES OF PRACTICE

(Issued January 16, 2020)

I. INTRODUCTION

On September 13, 2019, the Commission established this proceeding to consider amendments to its rules of practice and procedure and a reorganization of its regulations in title 39 of the Code of Federal Regulations (CFR).[1] Upon consideration of comments filed by the Postal Service, the Public Representative, and interested participants, the Commission is adopting its proposed amendments to the rules of practice with certain revisions and is reorganizing its title regulations.

[1] Notice of Proposed Rulemaking to Amend the Commission's Rules of Practice and Procedure and to Reorganize Its Regulations in the Code of Federal Regulations, September 13, 2019 (Order No. 5229 or NPR).

II. BACKGROUND

As summarized in the Commission's NPR, the original rules of practice were adopted in 1971 and were supplemented and modified several times over the following 35 years. NPR at 3-6. In 2006, the Postal Accountability and Enhancement Act (PAEA) made significant changes to the legal framework within which the Commission regulates the Postal Service.[2] Those changes required significant additions and modifications to the Commission's regulations. NPR at 6-9.

The changes made by the PAEA greatly reduced the need for Commission hearings on the record and simultaneously increased the use of notice and comment rulemaking proceedings. The changes proposed by the Commission in the NPR to the rules of practice are designed to reflect current Commission practice and to "foster the efficient disposition of matters that come before the Commission…and…enhance the ability of persons appearing before the Commission to participate efficiently and effectively in Commission proceedings." *Id.* at 9. The proposed reorganization of the Commission's regulations makes no changes to the substance of those regulations and was proposed only "to accommodate changes to the rules of practice and to facilitate the location of relevant regulations." *Id.*

III. COMMENTS

The following participants filed comments in response to the NPR: the Association for Postal Commerce and MPA – the Association of Magazine Media

[2] Postal Accountability and Enhancement Act of 2006, Pub. L. No. 109-435, 120 Stat. 3198 (2006). *See* NPR at 6.

(PostCom/MPA),[3] the United States Postal Service,[4] and the Public Representative.[5] The Public Representative also submitted reply comments.[6]

IV. COMMISSION ANALYSIS

A. Reorganization of the Commission's Regulations and Amendment of the Rules of Practice to Reflect Current Commission Practice

The commenters are generally in agreement that the Commission should reorganize its regulations and amend its rules of practice as proposed to better reflect current Commission practice. PostCom/MPA Comments at 1; Postal Service Comments at 1-2; PR Comments at 3, 5-6. However, each commenter suggests certain specific modifications to the Commission's proposals. Each of those suggestions is discussed below.

In addition to their suggested modifications, PostCom/MPA urge the Commission "to continue to refine its rules over time to remove administrative barriers to effective participation in Commission proceedings that can limit the Commission's ability to gather information and reach fully informed decisions." PostCom/MPA Comments at 1. As it indicated in the NPR, the Commission intends to consider further changes to its rules and regulations as time and circumstances permit. *See* NPR at 11.

The Public Representative suggests that the Commission provide "a complete table or tables cross-referencing the changes in each new or revised part, section, and subsection with the old rule numbers." PR Comments at 6. Such table or tables would assist the general public and participants in future cases. *Id.* The Commission agrees. Attached to this Order are two appendices. Appendix A contains a table showing the

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[3] Comments of the Association for Postal Commerce and MPA – The Association of Magazine Media, November 1, 2019 (PostCom/MPA Comments).

[4] Comments of the United States Postal Service in Response to the Proposed Rules in Order No. 5229, November 1, 2019 (Postal Service Comments).

[5] Public Representative Comments, November 1, 2019 (PR Comments).

[6] Public Representative Reply Comments, November 15, 2019 (PR Reply Comments).

disposition of all sections of the Commission's rules and regulations as they existed prior to the changes made by this Order. Appendix B contains a table showing the derivation of the Commission's rules and regulations as established by this Order. These tables cannot be published in the Code of Federal Regulations, but will be included on the Commission's website as soon as practicable.

B. Proposed Modification of Ex Parte Rules

In its NPR, the Commission proposed no changes to the substance of its ex parte rules. *See* NPR at 14. PostCom/MPA supports the "permit but disclose" approach recommended by the Administrative Conference of the United States and followed by other federal agencies as the preferred method for handling ex parte communications in rulemaking proceedings. PostCom/MPA Comments at 2-3. PostCom/MPA asserts that by leaving the substance of its ex parte rules unchanged, the Commission has missed an opportunity to clarify the applicability of the ex parte rules and thereby provide better opportunities to receive helpful information and to clarify issues in rulemaking proceedings before the Commission. *Id.* at 3-4.

The Commission declines to make any changes to its ex parte rules at this time. As PostCom/MPA acknowledges, the Commission, in effect, adopted the "permit but disclose" approach to ex parte communications in its rulemaking proceedings when it last revised those rules in 2016.[7] The current rules were adopted after considering essentially the same arguments presented in this proceeding by PostCom/MPA as were presented in the earlier proceeding in Docket No. RM2016-4. *See* PostCom/MPA Comments at 2. While it might be argued the Commission's ex parte rules, as well as other rules, would benefit from further revisions, the Commission is not persuaded that revisions to its ex parte rules are necessary at this time. Moreover, as the Commission

[7] PostCom/MPA Comments at 3; *see also* Docket No. RM2016-4, Order Adopting Final Rules for Ex Parte Communications, June 22, 2016, at 2, 17, 18 (Order No. 3379).

indicated in its NPR, it remains open to consideration of further possible changes to its rules and regulations in the future.

C. Proposed Modification of Negotiated Service Agreement Definition

Section 3001.5 of the Commission's existing rules of practice contains the definition of "Negotiated Service Agreement." 39 C.F.R. § 3001.5(r). The Commission's NPR leaves that definition largely unchanged, but redesignates the section in which the definition appears as § 3010.101(f) and includes the redesignated section in proposed part 3010, subpart A of the reorganized rules and regulations. The Postal Service proposes revisions to the definition of Negotiated Service Agreement (NSA) in order to align the definition with recent statements by the Commission in Order No. 5237.[8]

The Commission declines to amend the definition of NSA at this time. The existing definition is long standing and was adopted after careful consideration of various related factors.[9] The Commission's statements in Order No. 5237 relied upon by the Postal Service as a basis for amending the definition of NSA were predicated upon the potential withdrawal of the United States from the Universal Postal Union (UPU). *See* Order No. 5237 at 2-3, 4-5. However, subsequent developments led the United States to remain in the UPU.[10] As a result, the Postal Service has not pursued

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[8] Postal Service Comments at 2-3. Order No. 5237 was issued to address a Postal Service proposal to add the Inbound Competitive Non-Published Rate Agreements with Foreign Postal Operators (Inbound Competitive NPR-FPO) product to the competitive list. Docket Nos. MC2019-180 and CP2019-202, Order Regarding Postal Service Request to Add Inbound Competitive Non-Published Rate Agreements with Foreign Postal Operators to the Competitive Product List, September 19, 2019 (Order No. 5237).

[9] *See* Docket No. RM2003-5, Notice and Order Establishing Rulemaking Docket for Consideration of Proposed Rules Applicable to Baseline and Functionally Equivalent Negotiated Service Agreements, August 27, 2003, at 4 (form, duration, and scope of agreement) (Order No. 1383); Docket No. RM2003-5, Order Establishing Rules Applicable to Requests for Baseline and Functionally Equivalent Negotiated Service Agreements, February 11, 2004, at 4 (scope of agreement) (Order No. 1391).

[10] Docket No. CP2019-155, Notice of the United States Postal Service of Effective Date and Specific Rates Not of General Applicability for Inbound E-Format Letter Post, and Application for Non-Public Treatment, October 29, 2019, at 4.

the addition of the Inbound Competitive NPR-FPO product to the competitive product list, and the proposed changes to the Mail Classification Schedule conditionally approved by the Commission in Order No. 5237 have never gone into effect.

Given the importance of the definition of NSA and the absence of a present need for changes to that definition, the Commission is leaving the definition unchanged. If necessary, changes to the definition can be considered at a future date in the specific context in which the implications of a change to the definition can be comprehensively evaluated.

D. Proposed Use of Contract Employees as Presiding Officers

In its comments on proposed § 3010.106(a), which would permit "any person under contract with the Commission to serve as presiding officer," the Postal Service requests the inclusion of a provision that would require that "[a]ny presiding officer must be a federal employee subject to applicable federal rules of ethical conduct." Postal Service Comments at 3-4. This change is recommended to avoid situations in which, for example, the presiding officer would otherwise have a conflict of interest in cases over which he/she presides. *Id.* at 4.

The Public Representative offers two alternatives to address the issue raised by the Postal Service. PR Reply Comments at 2-4. First, he suggests that contracts between the Commission and contractors who serve as presiding officers can include provisions prohibiting bribes, corrupt or fraudulent practices, and any other practices prohibited by federal rules governing the ethical conduct of federal employees. *Id.* at 2. Second, the Public Representative suggests that a contractor could be designated a Special Government Employee (SGE) and, as such, subject to the ethical requirements prescribed by the Office of Government Ethics. *Id.* at 2-3.

To date, the Commission has not attempted to use private contractors as presiding officers. Nevertheless, the Commission considers it desirable to provide in its regulations for the flexibility to use contractors as presiding officers in future cases in which their use would be appropriate. For example, cases could arise in which a

contractor with particular expertise would be of value in evaluating technical information in an intermediate decision that would be subject to review by the full Commission. The Commission agrees with the Postal Service that if contractors are employed as presiding officers, the integrity of the Commission's proceedings and public confidence in the fairness of those proceedings would be fostered by requiring that presiding officers be subject to the same ethical requirements and standards as Commission employees. The Commission also agrees with the Public Representative that federal ethical standards can be imposed through the provisions of the contract between the Commission and the contractor. While the use of an SGE would address the issue of ethical standards, there are, as pointed out by the Public Representative, practical limitations on the use of SGEs, such as time limitations on their use. PR Reply Comments at 3.

For the reasons discussed above, the Commission is including in § 3010.106(a) a requirement that contracts with persons to serve as presiding officers include provisions that incorporate the ethical requirements and standards that would apply to Commission employees who serve as presiding officers.

E. Limitations on the Authority of Presiding Officers

The Public Representative opposes the omission from proposed § 3010.106(c) of a limitation on the authority of presiding officers to dismiss proceedings before their issuance of an intermediate decision. PR Comments at 7. The Public Representative argues that a limitation on the presiding officer's authority would avoid premature termination without full development of the record. *Id.*

The Commission agrees that a proceeding could be terminated prematurely by a presiding officer's grant of a motion to dismiss. Although such a dismissal could be overturned by the Commission on appeal, the time needed to reestablish the proceeding before the presiding officer could itself be injurious to one or more participants. On the other hand, cases may arise in which the presiding officer, who is most familiar with the state of the record, reasonably concludes that further proceedings

would be pointless and a waste of participant and Commission resources. In such cases, it would be appropriate for dismissal to be considered.

To balance these competing considerations, the Commission is revising proposed § 3010.106(c) to reinsert the limitation in current § 3001.23(a)(7) which prohibits presiding officers from granting dispositive motions. However, that limitation will include an express acknowledgement of the authority of presiding officers to certify dispositive motions to the Commission. As revised, § 3010.106(c) will preserve the opportunity to resolve proceedings before the unnecessary expenditure of time or resources, minimize disruption to the proceeding if a dispositive motion is ultimately denied, and preserve the right of the Commission to control the proceeding.

F. Authority of the Secretary to Permit the Use of Alternative Filing Systems

Proposed § 3010.120 in subpart B of the proposed rules of practice and procedure in part 3010 addresses how material is to be filed with the Commission. *See* NPR at 27-28. The proposed § 3010.120 does not make any changes to current filing requirements. *Id.* at 27.

The Postal Service suggests a clarification to section 3010.120 that concerns the filing of confidential material by electronic means. Under section 3010.120(a)(2), the electronic transmission of confidential material for filing under seal using the Commission's Filing Online system or any other electronic filing system is prohibited unless authorized in advance by the Secretary. The Secretary's authority to approve the use of secure alternative electronic filing systems for confidential material is reflected in section 3010.120(b)(2): "The Secretary has authority to approve the use of secure alternative electronic filing systems for confidential material filed under seal." The Postal Service requests that section 3010.120(b)(2) be revised by adding the phrase "pursuant to § 3011.203(c)(2)." Section 3011.203(c)(2) sets forth the scope of the Secretary's authority regarding approval and administration of secure alternative systems for the filing of non-public material.

The proposed change requested by the Postal Service is acceptable and is approved. Section 3010.120(b) acknowledges the Secretary's authority to approve the use of secure alternative electronic filing systems. Section 3011.203(c)(2) acknowledges that authority and provides parameters for its exercise. The two sections are consistent and the proposed reference in section 3010.20(b) to section 3011.203(c)(2) provides a potentially useful cross reference to those who use the rules of practice. As revised, section 3010.120(b) would read as follows: "The Secretary has authority to approve the use of secure alternative electronic filing systems pursuant to § 3011.203(c)(2) for confidential material filed under seal."

G. Postmaster Appeals of Post Office Closings and Consolidations

The Postal Service proposes a modification to proposed section 3010.141(b) to remove the word "Postmaster" from the list of persons eligible to participate in Commission proceedings involving appeals of Postal Service determinations to close or consolidate post offices. Postal Service Comments at 5. The asserted purpose for this proposed modification is to align section 3010.141(b) more closely to the statutory text governing appeals of post office closings and consolidations. *Id.*

The Postal Service bases its proposal on 39 U.S.C. § 404(d)(5) which limits the right to appeal a post office closing or consolidation to persons "served by such office" and the fact that the Commission's current rule in 39 C.F.R. § 3025.14 "does not accord standing directly to Postmasters, as they may not necessarily be within the class of those persons who are served by the post office." *Id*.

The Commission rejects the Postal Service's proposed revision to section 3010.141(b). The Commission agrees with the Postal Service that under 39 U.S.C. § 404(d)(5) only a person served by a post office may appeal its closing or consolidation. Consistent with section 404(d)(5), the Commission's existing rule in 39 C.F.R. § 3025.10 expressly limits the filing of an appeal to "a person served by that office." The statutory limitation is continued by proposed section 3010.141(a) ("Only a person

served by the post office in which the Postal Service has issued a decision to close or consolidate a post office may file an appeal of the decision with the Commission.”).

Similarly, proposed section 3010.141(b), like current section 3025.14 relied upon by the Postal Service, gives postmasters the right to participate in appeal proceedings instituted by those who are served by the post office. The Postal Service incorrectly suggests that “§ 3025.14 does not accord standing directly to Postmasters” to participate in appeal proceedings instituted by a person served by the post office. On the contrary, section 3025.14 expressly acknowledges that “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, may participate in an appeal….” Proposed section 3010.141(b) is entirely consistent with current section 3025.14. Both recognize the right of Postmasters to participate in appeals instituted by others.

H. Limits on Participation of Investigators and Prosecuting Officers in Rulemaking Proceedings

Proposed § 3010.144 is based upon current § 3001.8 and extends to all Commission proceedings the limitations that § 3001.8 places on participation by investigative or prosecuting officers in hearings on the record. NPR at 36. PostCom//MPA states that it is unclear what role such officers would play in notice and comment proceedings and why their participation should be limited. PostCom/MPA at 4.

Current § 3001.8 was adopted in 1971 as part of the Commission’s original rules of practice. Rules of Practice and Procedure, 36 Fed. Reg. 396 (January 12, 1971) (codified at 39 CFR pt. 3001, subpt. A). As noted in the NPR, virtually all Commission proceedings were at that time on-the-record proceedings using trial-type procedures. NPR at 3-4.

Although the language of § 3001.8 has remained unchanged over the past 49 years, Commission practice has not. Over that period, rulemaking proceedings have

grown in both number and importance. *See id.* at 6-9. Since the enactment of the PAEA, rulemaking proceedings significantly outnumber on-the-record proceedings. *Id.* Following enactment of the PAEA, the Commission began routinely appointing public representatives as required by section 505 of title 39 of the United States Code. Those public representatives (and the Commission employees or others who assist them) have been prohibited from participating in, or providing advice regarding, intermediate or Commission decisions except as a witness or counsel in public proceedings.[11] This prohibition implements the concept of separation of functions, avoids any appearance of impropriety, and maintains the integrity of the Commission's decision making processes by extending the limitations of current rule 3001.8 on participation by investigative or prosecuting officers (including public representatives) in hearing on-the-record. The expansion of the scope of the limitations in current rule 3001.8 to both rulemaking proceedings and hearings on the record is a codification of long-standing Commission practice.

I. The Use of Motions to Strike in Rulemaking Proceedings

PostCom/MPA urges the Commission to limit the application of proposed § 3010.164 to hearings on the record. As proposed, § 3010.164 authorizes the filing of motions to strike material from consideration in any proceeding, not just proceedings conducted as hearings on the record. PostCom/MPA asserts that the Commission's practice has been to "evaluate…comments and decline to consider such statements if the Commission finds them non-relevant and/or outside the scope of the proceeding." PostCom/MPA Comments at 4 (citation omitted).

[11] Although often unstated, the prohibition proposed in § 3010.144 has on occasion been stated expressly in Commission orders instituting proceedings. *E.g.,* Docket No. PI2010-1, Notice and Order Providing an Opportunity for Comment, November 9, 2009, at 4 (Order No. 335) ("Pursuant to this designation, he [the public representative] will direct the activities of Commission personnel assigned to assist him and will, upon request, provide their names for the record. Neither he nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.").

The Commission declines to limit the applicability of proposed § 3010.164 as requested by PostCom/MPA. Contrary to PostCom/MPA's suggestion, the Commission has not always denied motions to strike in favor of simply disregarding material that is irrelevant or outside the scope of a proceeding. In the order relied upon by PostCom/MPA, the Commission did not preclude future consideration of motions to strike in appropriate circumstances, notwithstanding the Commission's practice of evaluating and rejecting comments that are irrelevant or outside the scope of a proceeding.[12]

Moreover, as the Public Representative points out, proposed § 3010.164 permits motions to strike material from *consideration.* PR Reply Comments at 5. Striking material from consideration effectively precludes consideration of material in either a rulemaking proceeding or in a proceeding conducted as a hearing on the record. *Id.* In a rulemaking proceeding, the Commission typically refuses to consider stricken material because it is irrelevant or outside the scope of the proceeding. In a proceeding conducted as a hearing on the record, the Commission can refuse to consider stricken material for those reasons, but it may also be called upon to rule on claims of undue prejudice, duplication, or other reasons that it encounters more frequently in the context of litigation.

Finally, by providing participants an opportunity to file motions to strike in both rulemaking proceedings and hearings on the record, the Commission can retain control over the scope of both types of proceedings and, at the same time, protect participants from the burden of addressing issues unnecessarily.

J. Information Requests

Proposed section 3010.170 incorporates current §§ 3001.100 and 3001.101. The Postal Service notes that current section 3001.100(a)(1) authorizes information

[12] *See* Docket No. RM2018-1, Order Denying Motion to Strike, November 2, 2018, at 5 (Order No. 4871).

requests "that are likely to materially assist the Commission" in its conduct of proceedings. 39 C.F.R. § 3001.100(a)(1). By contrast, proposed section 3010.170 omits the words "likely to materially." The Postal Service asserts that this change constitutes a departure from existing Commission practice. Postal Service Comments at 6-7. The Commission agrees and is restoring the words "likely to materially" to proposed section 3010.170.

K. Commission Discretion to Reject or Defer Action on Requests for Rulemaking

PostCom/MPA seek clarification regarding proposed § 3010.201(b) which addresses requests for the initiation of notice and comment rulemaking proceedings. PostCom/MPA Comments at 4-6.

First, PostCom asserts that clarification is needed to eliminate alleged inconsistencies and ambiguities in the text of proposed § 3010.201(b)(2). PostCom/MPA notes that the first sentence of that section provides that "the Commission may in its discretion" initiate a rulemaking proceeding, whereas the second sentence of § 3010.201(b)(2) suggests that the Commission's discretion is limited by the provision that authorizes the Commission to reject only those petitions "that are frivolous or duplicative of other Commission efforts." PostCom/MPA Comments at 5. The proposed rule allegedly implies that if a petition is neither frivolous nor duplicative, the Commission would be required to institute a proceeding to consider it.

A second alleged problem identified by PostCom/MPA relates to the deferral of Commission consideration of a request for the initiation of a rulemaking proceeding. As proposed, § 3010.201(b)(2) permits the Commission "to defer consideration of 'an otherwise meritorious' petition that has 'not demonstrated the potential for an immediate impact on the affected person.'" PostCom/MPA questions whether an "otherwise meritorious" petition is one that is not frivolous or duplicative or a petition that the Commission would otherwise accept "in its discretion." *Id.* at 5-6.

The Public Representative agrees with the points raised by PostCom/MPA and offers a suggested revision to the second sentence of § 3010.201(b)(2):

> The Commission in its discretion may reject petitions that are either frivolous or duplicative of other Commission efforts or otherwise, or defer for future consideration meritorious petitions that have not demonstrated the potential for an immediate impact on the affected person.

PR Reply Comments at 5.

The Commission agrees with PostCom/MPA and the Public Representative that proposed § 3010.201(b)(2) requires clarification. To avoid further conflicts or ambiguities, the Commission is eliminating the second sentence of that section and revising the first sentence to provide for the rejection or deferral of action on a petition for rulemaking without reliance upon the terms "frivolous," "duplicative," or "meritorious." As revised, proposed §3010.201(b)(2) reads as follows:

> Upon consideration of the petition, the Commission in its discretion may initiate a proceeding under this subpart by issuing a notice and order initiating a proceeding pursuant to § 3010.151, reject the petition, or defer a decision whether to grant or reject the petition.

As revised, § 3010.201(b)(2) is consistent with the Commission's discussion in the NPR. *See* NPR at 43 ("The Commission can, at its discretion, either initiate a proceeding by issuing a notice under § 3010.151, reject the petition, or defer a decision on whether to grant or reject the petition.").

Finally, PostCom/MPA questions whether the decision to defer action on a petition for rulemaking constitutes a final, appealable order and whether there is a period of time after which a deferred petition should be deemed denied. PostCom//MPA at 5-6. The Public Representative responds by stating that a deferral of action on petitions is not, in general, considered final action and that rule 3001.44 (proposed § 3010.109) governing the closure of inactive dockets is relevant to a determination of whether deferred action constitutes final action. PR Reply Comments at 6.

The Commission agrees with the Public Representative that the Commission's deferral of action does not, in general, constitute final Commission action subject to judicial review and that any determination of whether final, reviewable action has occurred will depend upon the circumstances surrounding the deferral. The Commission agrees further with the Public Representative that the rules providing for the closure of inactive dockets could contribute to the consideration of relevant circumstances. Also of potential relevance is current rule 3001.45 which provides for motions to stay automatic closure (proposed § 3010.109(c)) and for the reopening of automatically closed dockets (proposed § 3010.109(d)).

L. Scheduling Orders

Proposed § 3010.304(b) lists 17 scheduling steps to be considered in scheduling orders issued by the Commission or a presiding officer. The Public Representative points out that although step 5 provides a deadline for parties other than the proponent to file testimony in rebuttal to the proponent's direct case, step 5 does not provide for the possible filing by participants of testimony in support of the proponent's case. PR Comments at 8. The absence of such a scheduling step from proposed § 3010.304(b)(1) is inconsistent with current § 3001.30(e)(1) ("The case-in-chief of participants other than the proponent shall be in writing and shall include the participant's direct case and rebuttal, if any, to the initial proponent's case-in-chief.").

The Public Representative recommends that proposed § 3010.304(b) be revised to include provision for the filing of participant testimony in support of the proponent's case, as well as provision for an opportunity for others to rebut witnesses and evidence presented by those who support proponent's case.

The Commission agrees with the Public Representative that § 3010.304(b) should be revised to give participants an opportunity to file testimony in support of a proponent's case and to give participants an opportunity to rebut those who support a proponent's case to perform discovery, provide designations, file testimony, and cross-examine witnesses supporting a proponent's direct case.

M. Order of Witnesses

Proposed section 3010.321(e)(3) provides a procedure by which parties may present their preferences for the order in which witnesses will be presented at hearings. Under the provisions of that section, parties may present their preferences to the Commission or the presiding officer orally at hearing, by filing a notice, or by informally contacting the Commission's General Counsel prior to the scheduled hearing.

The Public Representative identifies two potential problems with the procedures contained in § 3010.321(e)(3). First, he points out that the notice of procedures does not provide a mechanism for a participant to respond in opposition to a proposed order of witnesses. This could create uncertainty over the order of presentations. PR Comments at 9. Second, the Public Representative states that although the General Counsel can serve as an advisor to the Commission during a hearing, he "would not normally have authority for *ex parte* input to influence the Commission or the presiding officer to modify an order of presentation without concurrence of all parties or with the opportunity for input from those parties who may be affected." *Id.* The Public Representative's proposed solution is to replace the notice option with a requirement that motions be required to propose an order of witnesses. *Id.* He also recommends deletion of the option of informally contacting the General Counsel to propose an order of witnesses "unless the other parties concur in the discussion." *Id.*

The establishment of an order of witnesses in Commission hearings has rarely been controversial. For that reason, the Commission does not believe it necessary to require, as a general matter, that parties propose their preferred order of witnesses by motion. On the other hand, the Commission is sensitive to the Public Representative's concern that parties who might object to a proposed order of witnesses be given the opportunity to express their opposition. Such an opportunity will, by definition, be available when an order of witnesses is proposed during a hearing before the Commission or a presiding officer.

If a proposed witness order is not made at a hearing, a written notice of a proposed order of witnesses can be made by means of a filing. All parties will be made

aware of the proposal when the notice is posted in the docket on the Commission website. Parties opposing the proposed witness order will then have the opportunity to discuss the proposed order informally. In cases with only a limited number of participants, parties can discuss the order of witnesses and can state in the written notice who, if anyone, opposes the witness order. Failing resolution of any disagreements over the witness order, opponents will be able to either file a written motion in opposition before the hearing at which the witnesses would appear or make an oral motion during the hearing.

To ensure that parties are aware of the opportunity to object by motion, the Commission is revising proposed § 3010.321(e)(3) to clarify the availability of that opportunity. Supplementing the notice option with an express opportunity to oppose a proposed order of witnesses by motion will retain the efficiency of the notice procedure in the majority of cases and will also ensure that opponents have an avenue to express opposition.

Finally, upon further consideration, the Commission is eliminating from § 3010.321(e)(3) the option of presenting an order of witnesses to the General Counsel. The Commission concludes that this option could unduly complicate the process of proposing an order of witnesses and could deny opponents of a proposed order of witnesses timely notification of the proposed order of witnesses and thereby preclude opponents from presenting a timely opposition.

N. Library References

The Public Representative points out that proposed § 3010.322(b)(2), which addresses the evidentiary status of library references, omits references to the six categories of library references currently appearing in § 3001.31(b)(2).[13] The Public

[13] PR Comments at 4-5. Those six categories set forth in current § 3001.31(b)(2) are: 1. Reporting Systems Material, 2. Witness Foundational Material, 3. Reference Material, 4. Material Provided in Response to Discovery, 5. Disassociated Material, and 6. All Other Material.

Representative states that in large, on-the-record-proceedings, the system of labeling library references by category has been useful to the parties. PR Comments at 5.

The Commission agrees that the current library reference labeling system has been useful to participants and has the potential for continued usefulness. Although the reference to the library reference categories has been removed from proposed § 3010.322, it has been retained in proposed § 3010.125 as requirements appearing in proposed subpart B—Filing Requirements.

O. MISCELLANEOUS CHANGES

1. Headings

As part of the reorganization of its rules and regulations, the Commission has proposed the establishment of six subchapters within chapter III of CFR title 39. *See* NPR at 10. Each subchapter is given a heading. For example, subchapter A is entitled "The Commission." The titles are intended to be "indicative of the material included in those subchapters." *Id.* The objective is to facilitate access to relevant rules and regulations. *See id.* For the same reason, the Commission has proposed changes to the headings of several existing parts within chapter III of CFR title 39. For example, existing part 3002 entitled "Organization" is renumbered part 3000, and its title is changed to "The Commission and its offices." *See id.* at 13.

The Public Representative has proposed changes to several additional headings in the interest of further facilitating access to relevant rules and regulations. The proposed changes, the asserted bases for those changes, and the Commission's responses are as follows:

a. Change the heading of proposed subchapter B from "Seeking Information from the Commission" to "Gathering Information at the Commission" in order to "emphasize a more positive user-friendly outcome." PR Comments at 6-7. The Commission rejects this change as potentially confusing. On its face, "gathering information at the Commission" is so broad that it could be interpreted as going beyond the information collection mechanisms provided in the parts that make up subchapter B (*e.g.,* new part 3005, Privacy Act Rules). Indeed, the proposed title could

be interpreted to encompass formal discovery tools available for hearings on the record, such as proposed § 3010.311—Interrogatories for purpose of discovery.

b. Change the heading of proposed § 3007.100 (in part 3007 of subchapter B) from "Public Attendance at Commission Meetings" to "Public Access to Commission Meetings" to reflect the fact that part 3007.100 addresses not only attendance at Commission meetings, but the opportunity to obtain certain documents considered at non-public meetings at which attendance has been denied. *Id.* at 10. The Commission accepts this proposed change.

c. Change the heading of proposed part 3020 (in subchapter D) from "Rules Applicable to Requests for Change in the Nature of Postal Services" to "Rules Applicable to Postal Service Requests for Change in the Nature of Postal Services." The purpose of this change is to inform readers that the rules in this part do not provide persons other than the Postal Service with opportunities to propose changes in postal services. *Id.* at 10-11. The Commission accepts this proposed change.

d. Change the heading of proposed part 3022 (in subchapter D) from "Rules for Complaints" to "Rules for Complaints by Interested Persons" to indicate the availability of the complaint process to a broader range of persons than the heading might otherwise suggest. *Id.* at 11. The Commission is not persuaded that the change is needed in order to achieve the stated purpose.

e. Change the heading of proposed part 3023 (in subchapter D) from "Rules for Rate or Service Inquiries" to "Rules for Rate or Service Inquiries by the Public about Postal Service Activity." The purpose of the proposed change is to make clear to members of the public that they are eligible to make rate and service inquiries under this part. *Id.* The Commission accepts the proposed change.

f. Change the heading of proposed part 3025 (in subchapter D) from "Procedures Related to Commission Views" to "Procedures Related to Commission Views to the Secretary of State." The purpose of the proposed change is to make clear that part 3025 is limited in scope to cases in which the Commission presents views to the Secretary of State. *Id*. The Commission accepts the proposed change.

g. Change the heading of proposed part 3040 (in subchapter E) from "Product Lists" to "Product Lists and the Mail Classification Schedule" to make clear that the scope of part 3040 is not limited to product lists, but applies to the broader Mail Classification Schedule of which product lists form a part. *Id.* at 11-12. The Commission accepts the proposed change.

h. Change the heading of proposed part 3050 (in subchapter F) from "Periodic Reports" to "Periodic Reports by the Postal Service" to clarify that this part applies only to Postal Service reports and does not extend to Commission reports to Congress, the public, mailers, or others. *Id.* at 12. The Commission accepts the proposed change.

2. Corrections

The Postal Service has proposed corrections to several erroneous section numbers in the text of the proposed rules:

a. In proposed § 3030.511(b)(2), "§ 3030.29" should be replaced by "§ 3030.529";

b. In proposed § 3030.565(b), "§ 3010.61(a)" should be replaced ty "§ 3010.561(a)";

c. In proposed § 3045.18(d)(1)(i)(B), "§§ 3035.15 and 3035.16" should be replaced by "§§ 3045.15 and 3045.16"; and

d. In proposed § 3045.18(d)(2)(i)(B), "§§ 3035.15 and 3035.16" should be replaced by "§§ 3045.15 and 3045.16".

The Commission agrees that each of these proposed corrections should be made.

3. Product List Updates

In the NPR, the Commission stated its intent to include the most up-to-date version of the product lists in this Order. NPR at 17. Since the changes adopted by this Order will not become effective until April 20, 2020, *see infra,* there is no reason to update the product lists as part of this Order. Instead, the update of the product lists will continue according to the regular schedule for updates independent of the date the

changes adopted by this Order are implemented. As presently anticipated, the annual update of the Mail Classification Schedule, including the product lists, will occur on or about March 31, 2020, followed by weekly updates of the product lists with the changes adopted by this Order becoming effective on April 20, 2020.

P. Implementation

Upon their effective date, the changes made by this Order will apply to all proceedings before the Commission except as otherwise specifically ordered by the Commission. To facilitate the transition from the existing rules and regulations to the new and reorganized rules and regulations, the Commission is establishing an effective date of April 20, 2020, for all changes made herein. This will allow persons interested in two major proceedings currently before the Commission to participate under the existing rules of practice. Those two proceedings are: the Annual Compliance Review proceeding in Docket No. ACR2019 and the 10-Year Review proceeding in Docket No. RM2017-3. Comments in both proceedings are currently due before April 20, 2020.[14]

The April 20, 2020, effective date will also permit proceedings of a more limited scope, such as proceedings involving negotiated service agreements noticed by April 10, 2020, to be concluded in most cases by April 20 under the Commission's existing rules and regulations.[15]

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[14] Comments and reply comments are due in the Annual Compliance Review proceeding by January 30 and February 10, 2020, respectively. Docket No. ACR2019, Notice of Postal Service's Filing of Annual Compliance Report and Request for Public Comments, December 30, 2019, at 6 (Order No. 5381). In related proceedings, comments and reply comments are due by February 28, 2020, and March 13, 2020, respectively, that address the Postal Service's FY2019 annual performance report and annual performance plan. Docket No. ACR2019, Notice Regarding the Postal Service FY 2019 Annual Performance Report and FY 2020 Annual Performance Plan, January 9, 2020, at 4 (Order No. 5400). Comments and reply comments are due in the 10 Year Review proceeding on February 3 and March 4, 2020. Docket No. RM2017-3, Revised Notice of Proposed Rulemaking, December 5, 2019, at 278 (Order No. 5337).

[15] In general, comments in NSA proceedings must be filed within 7 days of the issuance of a Commission notice. Notices issued by April 1, 2020, will require most comments to be filed by April 8, 2020.

In cases that commence prior to April 20, 2020, and remain pending as of that date, the Commission will provide guidance as necessary regarding compliance with the rules and regulations revised by this Order.

V. ORDERING PARAGRAPHS

It is ordered:

1. The Commission hereby adopts final changes to the rules and regulations in 39 CFR, chapter III that follow the Secretary's signature.

2. The Secretary shall arrange for publication of this Order in the *Federal Register.*

3. The changes adopted by this Order shall take effect on April 20, 2020.

By the Commission.

Ruth Ann Abrams
Acting Secretary

List of Subjects

39 CFR Part 3000

Conflict of interests.

39 CFR Part 3001

Administrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3002

Organization and functions (Government agencies), Seals and insignia.

39 CFR Part 3003

Privacy.

39 CFR Part 3004

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements.

39 CFR Part 3005

Administrative practice and procedure, Confidential business information, Postal Service, Reporting and recordkeeping requirements.

39 CFR Part 3007

Administrative practice and procedure, Confidential business information.

39 CFR Part 3008

Administrative practice and procedure, Courts.

39 CFR Parts 3010, 3020, and 3035

Administrative practice and procedure, Postal Service.

39 CFR Parts 3015, 3025, 3030, and 3031

Administrative practice and procedure.

39 CFR Part 3017

Administrative practice and procedure, Postal Service, Treaties.

39 CFR Part 3032

Administrative practice and procedure, Postal Service, Trademarks.

39 CFR Part 3050

Administrative practice and procedure, Postal Service, Reporting and recordkeeping requirements.

39 CFR Part 3055 and 3060

Administrative practice and procedure, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

1. Under the authority of 39 U.S.C. 503, redesignate the parts in the “Current part” column as the parts in the “New part” column as shown in the following table:

Current part	New part
3035	3045
3020	3040
3015	3035
3030	3022
3010	3030
3025	3021
3017	3025
3032	3024

3031	3023
3005	3013
3008	3012
3007	3011
3001	3010
3004	3006
3003	3005
3000	3001
3002	3000

SUBCHAPTER A—THE COMMISSION

2. Designate newly redesignated parts 3000 and 3001 as subchapter A under the heading set forth above.

SUBCHAPTER B—SEEKING INFORMATION FROM THE COMMISSION

3. Designate newly redesignated parts 3005 and 3006 as subchapter B under the heading set forth above.

SUBCHAPTER C—GENERAL RULES OF PRACTICE FOR PROCEEDINGS BEFORE THE COMMISSION

4. Designate newly redesignated parts 3010 through 3013 as subchapter C under the heading set forth above.

SUBCHAPTER D—SPECIAL RULES OF PRACTICE FOR SPECIFIC PROCEEDING TYPES

5. Designate newly redesignated parts 3020 through 3025 as subchapter D under the heading set forth above.

SUBCHAPTER E—REGULATIONS GOVERNING MARKET DOMINANT PRODUCTS, COMPETITIVE PRODUCTS, PRODUCT LISTS, AND MARKET TESTS

6. Designate newly redesignated parts 3030 through 3045 as subchapter E under the heading set forth above.

SUBCHAPTER F—PERIODIC REPORTING, ACCOUNTING PRACTICES, AND TAX RULES

7. Designate newly redesignated parts 3050 through 3099 as subchapter F under the heading set forth above.

PART 3040—PRODUCT LISTS AND THE MAIL CLASSIFICATION SCHEDULE

8. Under the authority of 39 U.S.C. 503, for newly redesignated part 3040, redesignate §§ 3020.1 through 3020.112 as §§ 3040.101 through 3040.212, respectively.

PART 3035—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

9. Under the authority of 39 U.S.C. 503, for newly redesignated part 3035, redesignate §§ 3015.1 through 3015.7 as §§ 3035.101 through 3035.107, respectively.

PART 3030—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

10. Under the authority of 39 U.S.C. 503, for newly redesignated part 3030, redesignate §§ 3010.1 through 3010.66 as §§ 3030.501 through 3030.566, respectively.

PART 3025—PROCEDURES RELATED TO COMMISSION VIEWS SUBMITTED TO THE SECRETARY OF STATE

11. Under the authority of 39 U.S.C. 503, for newly redesignated part 3025, redesignate §§ 3017.1 through 3017.5 as §§ 3025.101 through 3025.105, respectively.

PART 3005—PRIVACY ACT RULES

12. Under the authority of 39 U.S.C. 503, for newly redesignated part 3005, redesignate §§ 3033.1 through 3033.7 as §§ 3005.101 through 3005.107, respectively.

PART 3001—STANDARDS OF CONDUCT

13. Under the authority of 39 U.S.C. 503, for newly redesignated part 3001, redesignate §§ 3000.5 through 3000.55 as §§ 3001.105 through 3001.155, respectively.

PART 3000—ORGANIZATION

14. Under the authority of 39 U.S.C. 503, for newly redesignated part 3000, redesignate §§ 3002.1 through 3002.16 as §§ 3000.101 through 3000.116, respectively.

PART 3000—THE COMMISSION AND ITS OFFICES

15. The authority for newly redesignated part 3000 continues to read as follows:

Authority: 39 U.S.C. 503; 5 U.S.C. 552.

16. Revise heading for newly redesignated part 3000 to read as set forth above.

17. Amend newly redesignated § 3000.102 by revising paragraph (b) to read as follows:

§ 3000.102 Statutory functions.

* * * * *

(b) *Public participation.* Interested persons may participate in proceedings before the Commission as described in part 3010, subpart C of this chapter. Pursuant to 39 U.S.C. 3662(a) and part 3022 of this chapter, any interested person may lodge rate and service complaints with the Commission. Persons served by a post office that

the Postal Service decides to close or consolidate may appeal such determinations in accordance with 39 U.S.C. 404(d) and part 3021 of this chapter.

18. Amend newly redesignated § 3000.110 by revising paragraphs (b) and (c) to read as follows:

§ 3000.110 The Commission and its offices.

* * * * *

(b) *The Chairman and Vice Chairman.* The Chairman has the administrative responsibility for assigning the business of the Commission to the other Commissioners and to the offices and employees of the Commission. The Chairman has the administrative duty to preside at the meetings and sessions of the Commission and to represent the Commission in matters specified by statute or executive order or as the Commission directs. The Commission shall elect annually a member of the Commission to serve as Vice Chairman of the Commission for a term of one year or until a successor is elected. In case of a vacancy in the Office of the Chairman of the Commission, or in the absence or inability of the Chairman to serve, the Vice Chairman, unless otherwise directed by the Chairman, shall have the administrative responsibilities and duties of the Chairman during the period of vacancy, absence, or inability.

(c) The Commission's offices are located at 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001. On these premises, the Commission maintains offices for Commissioners and staff; a docket room where documents may be filed with the Commission pursuant to part 3010, subpart B of this chapter and examined by interested persons, a public reading room where the Commission's public records are

available for inspection and copying; and a hearing room where formal evidentiary proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the Internet, on its website at *http://www.prc.gov.*

19. Amend newly redesignated § 3000.112 by revising paragraph (b) to read as follows:

§ 3000.112 Office of Accountability and Compliance.

* * * * *

(b) The Office of Accountability and Compliance provides the analytic support to the Commission for the review of rate changes, negotiated service agreements, classification of products, the Annual Compliance Determination, the Annual Report, changes to postal services, post office closings and other issues which come before the Commission. The functional areas of expertise within this office are:

* * * * *

20. Amend newly redesignated § 3000.115 by revising paragraph (b)(2) to read as follows:

§ 3000.115 Office of Public Affairs and Government Relations.

* * * * *

(b) * * *

(2) *Consumer Affairs.* As the principal source of outreach and education to the public, the Office of Public Affairs and Government Relations provides information to postal consumers and assists in the resolution of rate and service inquiries from

members of the public pursuant to part 3023 of this chapter. It supports the impartial resolution of those inquiries through use of the Postal Service's Office of Consumer Advocate and reports the results to the Commission. The Office of Public Affairs and Government Relations also utilizes procedures available under the Commission's rules and applicable law to assist relevant stakeholders in appeals of Postal Service decisions to close or consolidate individual post offices; maintains a record of service-related inquiries; and posts calendar updates and other public information on the Commission's website.

* * * * *

PART 3001—EMPLOYEE STANDARDS OF CONDUCT

21. The authority for newly redesignated part 3001 continues to read as follows:

Authority: 39 U.S.C. 503, 504, 3603; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 56 FR 42547, 3 CFR, 1990 Comp., p. 396; 5 CFR parts 2634 and 2635.

22. Revise heading of newly redesignated part 3001 to read as set forth above.

23. Amend newly redesignated § 3001.105 by revising paragraph (b) to read as follows:

§ 3001.105 Post-employment restrictions.

* * * * *

(b) No former employee of the Commission may within one year after the individual's employment has ceased, practice before or act as an attorney, expert

witness, or representative in connection with any proceeding or matter before the Commission that was under the official responsibility of such individual, as defined in 18 U.S.C. 202(b), while in the service of the Commission.

24. Amend newly redesignated § 3001.150 by revising paragraph (b) to read as follows:

§ 3001.150 Ex parte communications prohibited.

* * * * *

(b) Additional ex parte communications requirements, applicable to specific docket types, are described in part 3012 of this chapter.

PART 3005—PRIVACY ACT RULES

25. The authority for newly redesignated part 3005 continues to read as follows:

Authority: Privacy Act of 1974 (Pub. L. 93-579), 5 U.S.C. 552a.

26. Amend newly redesignated § 3005.103 by revising paragraphs (a)(1) through (3) and (c)(3) and (4) to read as follows:

§ 3005.103 Procedures for requesting inspection, copying, or correction.

(a) * * *

(1) Wishes to know whether a Commission system of records contains a record about the individual,

(2) Seeks access to a Commission record about the individual that is maintained in a system of records (including the accounting of disclosures), or

(3) Seeks to amend a record about the individual that is maintained in a system of records, may file a written request with the chief administrative officer of the Commission at the Commission's current address (901 New York Avenue NW, Suite 200, Washington, DC 20268-0001). The request should state on the outside of the envelope and in the request that it is a Privacy Act request.

* * * * *

(c) * * *

(3) If accompanied by another individual, must sign a statement, if requested by the chief administrative officer, authorizing discussion of the individual's record in the presence of that individual;

(4) Who files a request by mail must include the individual's date of birth, dates of employment at the Commission (if applicable), and suitable proof of identity, such as a facsimile of a driver's license, employee identification card, or Medicare card; and

* * * * *

PART 3006—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

27. The authority for newly redesignated part 3006 continues to read as follows:

Authority: 5 U.S.C. 552; 39 U.S.C. 503.

28. Amend newly redesignated § 3006.1 by revising paragraphs (b) and (c) to read as follows:

§ 3006.1 Purpose.

* * * * *

(b) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in part 3000 of this chapter, and on the Commission's website at *http://www.prc.gov.* The Commission's guide to FOIA, all required FOIA indexes, and recent annual FOIA reports are also available on the website.

(c) Section 3006.10 identifies records that the Commission has determined to be public.

29. Amend newly redesignated § 3006.2 by revising paragraph (b) to read as follows:

§ 3006.2 Presumption of openness.

* * * * *

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness. The Commission will only withhold information if it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption, as enumerated in § 3006.11, or disclosure is otherwise prohibited by law.

* * * * *

30. Amend newly redesignated § 3006.10 by revising paragraph (a) introductory text to read as follows:

§ 3006.10 Public records.

(a) Except as provided in § 3006.11 and in § 3011.200 of this chapter, the public records of the Commission include all submissions and filings as follows:

* * * * *

31. Amend newly redesignated § 3006.12 by revising paragraph (b) to read as follows:

§ 3006.12 Reading room.

* * * * *

(b) The records available for public inspection and printing include, for example, decisions; reports; opinions; orders; notices; findings; determinations; statements of policy; copies of selected records released under FOIA; indexes required to be maintained under FOIA; and records described in § 3006.10 relating to any matter or proceeding before the Commission.

* * * * *

32. Amend newly redesignated § 3006.30 by revising paragraphs (b), (d) introductory text, (d)(2), and (e)(2) to read as follows:

§ 3006.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.

* * * * *

(b) *Requesting records subject to the Privacy Act.* A request by an individual for the individual's own records contained in a system of records is governed by the Privacy Act. Release will first be considered under the Privacy Act pursuant to part 3005 of this chapter. However, if there is any record that the Commission need not release under the Privacy Act, the Commission will also consider the request under FOIA, and will release the record if FOIA requires it.

* * * * *

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records. In all instances that the Postal Service submits materials to the Commission that the Postal Service reasonably believes to be exempt from public disclosure, the Postal Service shall follow the procedures described in subpart B of part 3011 of this chapter.

* * * * *

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by the Postal Service shall be considered under the applicable standards set forth in that part.

(e) * * *

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by a person other than the Postal Service shall be considered under the applicable standards set forth in that part.

33. Amend newly redesignated § 3006.40 by revising paragraph (a)(6) to read as follows:

§ 3006.40 Hard copy requests for records and for expedited processing.

(a) * * *

(6) Identify the request category under § 3006.51; and

* * * * *

34. Amend newly redesignated § 3006.41 by revising paragraph (a)(4) to read as follows:

§ 3006.41 Electronic requests for records and for expedited processing.

(a) * * *

(4) Identify the request category under § 3006.51; and

* * * * *

35. Amend newly redesignated § 3006.43 by revising paragraph (f) to read as follows:

§ 3006.43 Response to requests.

* * * * *

(f) Where a compelling need is not shown in an expedited request as specified in § 3006.41(b)(1), the Commission may grant requests for expedited processing at its discretion.

36. Amend newly redesignated § 3006.51 by revising paragraph (b) to read as follows:

§ 3006.51 Fees—request category.

* * * * *

(b) *Privacy Act.* A request by an individual for the individual's own records in a system of records will be charged fees as provided under the Commission's Privacy Act regulations in part 3005 of this chapter.

37. Amend newly redesignated § 3006.52 by revising paragraphs (e) introductory text and (e)(1) to read as follows:

§ 3006.52 Fees—general provisions.

* * * * *

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§ 3006.43 and 3006.44, unless:

(1) The Commission extends the time limit for its response due to unusual circumstances, pursuant to § 3006.45(a), and the Commission completes its response within the extension of time provided under that section; or

* * * * *

38. Amend newly redesignated § 3006.53 by revising paragraph (b) to read as follows:

§ 3006.53 Fee schedule.

* * * * *

(b) In addition to the fee waiver provisions of § 3006.52(d), fees may be waived at the discretion of the Commission.

39. Amend newly redesignated § 3006.54 by revising paragraph (a)(2) to read as follows:

§ 3006.54 Procedure for assessing and collecting fees.

(a) * * *

(2) When advance payment is required, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) (§ 3006.43) begin only after such payment has been received.

* * * * *

40. Revise newly redesignated § 3006.61 to read as follows:

§ 3006.61 Freedom of Information Act Public Liaison.

The Commission designates the Director of the Office of Public Affairs and Government Relations or the individual's designee as the FOIA Public Liaison who shall assist in the resolution of any dispute between a requester and the Commission. The FOIA Public Liaison may be contacted via e-mail at *PRC-PAGR@prc.gov* or telephone at 202-789-6800.

41. Amend newly redesignated § 3006.70 by revising paragraphs (a) through (c) to read as follows:

§ 3006.70 Submission of non-public materials by a person other than the Postal Service.

(a) *Overlap with treatment of non-public materials.* Any person who submits materials to the Commission (submitter) that the submitter reasonably believes to be exempt from public disclosure shall follow the procedures described in subpart B of part 3011 of this chapter.

(b) *Notice of request.* Except as provided in § 3006.30(d), if a FOIA request seeks materials designated as non-public materials, the Commission will provide the submitter with notice of the request. The Commission may also provide notice when it has reason to believe that materials submitted by a person other than the Postal Service are possibly exempt from disclosure and may fall within the scope of any FOIA request.

(c) *Objections to disclosure.* A submitter may file written objections to the request specifying all grounds for withholding the information under FOIA within seven days of the date of the notice. If the submitter fails to respond to the notice, the

submitter will be considered to have no objection, beyond those objections articulated in its application for non-public treatment pursuant to § 3011.201 of this chapter, to the disclosure of the information.

* * * * *

42. Add new part 3007, consisting of § 3007.100, to subchapter B to read as follows:

PART 3007—COMMISSION MEETINGS

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

§ 3007.100 Public access to Commission meetings.

(a) *Definition*. *Commission meeting* means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business.

(b) *Open Commission meetings.* (1) Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in paragraph (d) of this section, every portion of every meeting of the Commission shall be open to public observation.

(2) Members of the public may not participate in open meetings. They may record the proceedings, provided they use battery-operated recording devices at their seats. Cameras may be used by observers to photograph proceedings, provided it is done from their seats and no flash or lighting equipment is used. Persons may electronically record or photograph a meeting, as long as such activity does not impede or disturb the members of the Commission in the performance of their duties, or

members of the public attempting to observe, or to record or photograph, the Commission meeting.

(c) *Physical arrangements for open meetings.* The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate acoustics are provided for public observation of the Commission meetings.

(d) *Closed Commission meetings.* Except in a case where the Commission finds that the public interest requires otherwise, the second sentence of paragraph (b) of this section shall not apply to any portion of a Commission meeting, and the requirements of paragraphs (f) and (g) of this section shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the Commission properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(1) Disclose matters that:

(i) Are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy; and

(ii) Are in fact properly classified pursuant to such Executive order.

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute:

(i) Requires the matter to be withheld from the public in such a manner as to leave no discretion on the issue; or

(ii) Establishes particular criteria for withholding or refers to particular types of matters to be withheld.

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would:

(i) Interfere with enforcement proceedings;

(ii) Deprive a person of a right to a fair trial or an impartial adjudication;

(iii) Constitute an unwarranted invasion of personal privacy;

(iv) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(v) Disclose investigative techniques and procedures; or

(vi) Endanger the life or physical safety of law enforcement personnel.

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action, except that this paragraph (d)(9) shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or appellate proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal Commission adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(e) *Procedures for closing meetings.* (1) Action under paragraph (d) of this section shall be taken only when three Commissioners vote to take such action. A separate vote of the Commissioners shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to paragraph (d) of this section, or with respect to any information which is proposed to be withheld under paragraph (d) of this section. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each

Commissioner participating in such vote shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (d)(5), (6), or (7) of this section, the Commission upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (e)(1) or (2) of this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Commission shall, within one day of the vote taken pursuant to paragraph (e)(1) or (2) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any person may protest a Commission decision to hold a closed meeting under paragraph (e)(1) or (2) of this section by filing a motion to open the meeting. Such motion shall be addressed to the Commission and shall set forth with particularity the statutory or other authority relied upon, the reasons for which the movant believes the meeting should not be closed, and the reasons for which the movant believes that the public interest requires the meeting to be open. Such motion shall be filed with the Secretary no later than 24 hours prior to the time for which the closed meeting is scheduled.

(5) The Commission has determined that a majority of its meetings may be closed to the public pursuant to paragraph (d)(4), (8) or (10) of this section or any combination thereof. Therefore, pursuant to 5 U.S.C. 552b(d)(4), Commission meetings shall be closed to the public pursuant to paragraph (d)(4), (8) or (10) of this section or any combination thereof when three Commissioners vote by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each Commissioner on the question, is made available to the public. The provisions of paragraphs (e)(1) through (3) and (f) of this section shall not apply to any portion of a meeting to which paragraph (e)(5) of this section applies: Provided, that the Commission shall, except to the extent that such information is exempt from disclosure under the provisions of paragraph (d) of this section, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(f) *Scheduling and public announcement.* (1) In the case of each meeting, the Commission shall make public announcement, at least one week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting. Such announcement shall be made unless three Commissioners determine by a recorded vote that Commission business requires that such meeting be called at an earlier date, in which case the Commission shall make public announcement of the time, place, and

subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (f)(1) of this section only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or a portion of a meeting, to the public, may be changed following the public announcement required by paragraph (f)(1) of this section only if:

(i) Three Commissioners determine by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible; and

(ii) The Commission publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by this paragraph (f), notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting, shall also be submitted for publication in the **Federal Register**.

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

(i) Publicly posting a copy of the document in the reception area of the Postal Regulatory Commission located at 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001;

(ii) Mailing a copy to all persons whose names are on a mailing list maintained for this purpose;

(iii) Operating a recorded telephone announcement, giving the announcement; and

(iv) Any other means which the Secretary believes will serve to further inform any persons who might be interested.

(g) *Certification of closed meetings; transcripts, electronic recordings, and minutes.* (1) Before any meeting to be closed pursuant to paragraphs (d)(1) through (10) of this section, the General Counsel of the Commission, or in the General Counsel's absence, the senior advisory staff attorney available, should publicly certify that, in the individual's opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission. The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (d)(8) or (10) of this section, the Commission shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each

Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The Commission shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (g)(1) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines by a majority vote of all its members contains information which may be withheld under paragraph (d) of this section, and is not required by the public interest to be made available. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Commission shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(h) *Requests to open or close Commission meetings.* (1)(i) Any person may request in writing that the Commission open to public observation discussion of a matter which it has earlier decided to close.

(ii) Such requests shall be captioned “Request to open _____ (date) Commission meeting on item _____ (number or description).” The request shall state

the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

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

(2)(i) Any person whose interests may be directly affected may request in writing that the Commission close to public observation discussion of a matter which it has earlier decided to open as provided for in paragraph (e)(2) of this section.

(ii) Such requests shall be captioned “Request to Close _____ (date) Commission meeting on item _____ (number or description),” shall state the reason(s) therefor, the name and address of the person making the request and, if desired, a telephone number.

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

(3) The Secretary shall retain one copy of timely requests and forward one copy to each Commissioner, one copy to the interested Office, and two copies to the Docket Section, one for entry in the appropriate docket file, if any, and one to be posted on the Public Notice Board located in that section as an attachment to the Notice of Meeting to which it pertains.

(4) Pleadings replying to requests to open or close shall not be accepted.

(5) Any Commissioner may require that the Commission vote upon the request to open or close. If the request is supported by the votes of a majority of the agency membership, notice of change in meeting shall be issued and the Secretary shall immediately notify the requester and, before the close of business the next working day, have posted such vote and other material required by paragraphs (e) and (f) of this section on the Commission's Public Notice Board.

(6) If no Commissioner requests that a vote be taken on a request to open or close a Commission meeting, the Secretary shall by the close of the next working day after the meeting to which such request pertains certify that no vote was taken. The Secretary shall forward one copy of that certification to the requester and two copies of that certification to the Docket Section, one to be placed in the appropriate docket file, if any, and one to be posted on the Public Notice Board, where it will be displayed for one week.

43. Revise newly redesignated part 3010 to read as follows:

PART 3010—RULES OF PRACTICE AND PROCEDURE

Subpart A—General Provisions

Sec.
3010.100 Applicability and scope of rules.
3010.101 Definitions.
3010.102 Commission dockets.
3010.103 Procedural schedules in docketed proceedings.
3010.104 Consolidation and severance of proceedings.
3010.105 Consideration of matters before the Commission.
3010.106 Presiding officers.
3010.107 Appeals from interlocutory rulings by presiding officers.
3010.108 Computation of time.
3010.109 Automatic closure of inactive dockets.

Subpart B—Filing Requirements

3010.120 Filing material with the Commission.
3010.121 Filing Online system.
3010.122 Material filed using method other than the Filing Online system.
3010.123 Rejected filings.
3010.124 Form and content of text-based documents filed with the Commission.
3010.125 Library references.
3010.126 Subscription.
3010.127 Service.

Subpart C—Participation in Commission Proceedings

3010.140 Opportunity for comment.
3010.141 Appeals of Postal Service determinations to close or consolidate post offices.
3010.142 Parties to hearings on the record.
3010.143 Representation of persons.
3010.144 Limitation of participation by investigative or prosecuting officers.

Subpart D—Notices, Motions, and Information Requests

3010.150 Notices.
3010.151 Notices and orders initiating proceeding.
3010.152 Notices initiating dockets for consideration of negotiated service agreements.
3010.160 Motions.
3010.161 Motions for waiver.
3010.162 Motions for continuances and extensions of time.
3010.163 Motions for late acceptance.
3010.164 Motions to strike.
3010.170 Information requests.

Subpart E—Proceedings Using Notice and Comment Procedures

3010.200 Applicability.
3010.201 Initiation of a proceeding.
3010.202 Participation in notice and comment proceedings.
3010.203 Commission action.

Subpart F—Proceedings with an Opportunity for a Hearing on the Record

3010.300 Applicability.
3010.301 Notice of proceeding.
3010.302 Prehearing conferences.
3010.303 Hearing format.
3010.304 Scheduling order.
3010.310 Discovery—general policy.
3010.311 Interrogatories for purpose of discovery.
3010.312 Requests for production of documents or things for purpose of discovery.
3010.313 Requests for admissions for purpose of discovery.
3010.320 Settlement conferences.
3010.321 Hearings.
3010.322 Evidence—general.
3010.323 Evidence—introduction and reliance upon studies and analyses.
3010.324 In camera orders.
3010.325 Depositions.
3010.330 Briefs.
3010.331 Proposed findings and conclusions.
3010.332 Oral argument before the presiding officer.
3010.333 Oral argument before the Commission.
3010.334 Commission decisions.
3010.335 Intermediate decisions.
3010.336 Exceptions to intermediate decisions.

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

Subpart A—General Provisions

§ 3010.100 Applicability and scope of rules.

(a) The rules in this part apply to practice before the Postal Regulatory Commission.

(b) When a general rule conflicts with a rule governing a specific practice area, the rule governing the specific practice area shall take precedence.

(c) The rules in this part shall be liberally construed to secure a just and speedy determination of issues. They permit the informal disposition of any matter for which formal procedures are not specifically required by statute.

(d) Except when specifically required by statute, the rules in this part may be waived for good cause and appropriate alternative procedures may be prescribed.

(e) The rules in this part shall be referred to as the "rules of practice." Rules are to be cited using only the numbers and letters to the right of the decimal point. For example, paragraph (a) of "§ 3010.120 Filing material with the Commission" shall be referred to as "section 120(a) of the rules of practice (39 CFR 3-1-.120(a))" or as "rule 120(a)" (39 CFR 3010.120(a)).

§ 3010.101 Definitions.

(a) *Act* means title 39 of the United States Code, as amended.

(b) *Commission* or *Commissioner* means, respectively, the Postal Regulatory Commission established by the Act or a member thereof. The Commission is located at 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001. The Commission's regular business hours are from 8 a.m. to 4:30 p.m. Eastern Time, except for Saturdays, Sundays, and Federal holidays.

(c) *Complainant* means a person who files a complaint with the Commission pursuant to section 3662 of the Act in the form and manner hereinafter prescribed.

(d) *Effective date*, when used with respect to a notice, order, ruling, or other document issued by the Commission or an officer thereof (excluding documents issued for publication in the Federal Register), means the date the filing is posted on the Daily Listing page of the Commission's website unless otherwise specifically provided.

(e) *Hearing on the record* means a hearing conducted under sections 556 and 557 of title 5, U.S.C. (80 Stat. 386), as provided by section 3661 of the Act or in any other proceeding noticed by the Commission for a hearing on the record.

(f) *Negotiated service agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, which provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract. A rate associated with a negotiated service agreement is not a rate of general applicability.

(g) *Participant* means any person who participates, or seeks to participate, in a proceeding before the Commission.

(h) *Party* means the Postal Service, the Public Representative, a complainant, or a person who has intervened in a proceeding docketed for a hearing on the record before the Commission.

(i) *Person* means an individual, a partnership, corporation, limited liability company, trust, unincorporated association, public or private organization, or governmental entity.

(j) *Petitioner* means a person who is permitted by section 404(d)(5) of the Act to appeal to the Commission a determination of the Postal Service to close or consolidate a post office.

(k) *Postal Service* means the United States Postal Service established by the Act.

(l) *Postal service* refers to the delivery of letters, printed matter, or mailable packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.

(m) *Presiding officer* means a person designated by the Chairman of the Commission or the Commission to preside over a Commission proceeding or over a hearing held on the record before the Commission.

(n) *Proceeding* means a Commission process initiated by the issuance of a notice or order that establishes a docket for the consideration of a matter before the Commission.

(o) *Product* means a postal service with a distinct cost or market characteristic for which a rate or rates are, or may reasonably be, applied.

(p) *Public Representative* or *PR* means an officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

(q) *Rate or class of general applicability* means a rate or class that is available to all mailers equally on the same terms and conditions.

(r) *Record* means all documents and other material in a docket, including pleadings, testimony, exhibits, library references, transcripts of oral testimony or

statements given or made during a hearing, comments, briefs, and *in camera* material, whether or not relied upon by the Commission or presiding officer in reaching a decision.

(s) *Secretary* means the Secretary of the Commission, the Acting Secretary, or the Secretary's designee.

(t) *Small business concern* means a for-profit business entity that:

(1) Is independently owned and operated;

(2) Is not dominant in its field of operation;

(3) Has a place of business located in the United States;

(4) Operates primarily within the United States or makes a significant contribution to the United States economy by paying taxes or using American products, materials, or labor; and

(5) Together with its affiliates, qualifies as *small* in its primary industry under the criteria and size standards established by the Small Business Administration in 13 CFR 121.201 based on annual receipts or number of employees.

(u) *Website* means the Commission's website located at *https://www.prc.gov*.

§ 3010.102 Commission dockets.

(a) The Commission may initiate a proceeding by issuing a notice or order that establishes a docket in which a proceeding is to be conducted.

(b) When permitted by statute or regulation, any person may seek the initiation of a proceeding by filing a request with the Commission that complies with the rules governing the type of proceeding being requested.

(c) The Secretary shall maintain a docket for all matters that come before the Commission.

(d)(1) The Secretary shall assign docket designations to each matter that comes before the Commission that reflect the nature of the matter, set forth the fiscal year in which the matter came before the Commission, and where applicable, the sequential number of the docket type within the fiscal year. Available docket types are:

(i) Appeal of a Post Office Closing (A);

(ii) Annual Compliance Report (ACR);

(iii) Complaint (C);

(iv) Competitive Product Rates (CP);

(v) General (G);

(vi) International Mail (IM);

(vii) Mail Classification (MC);

(viii) Market Test (MT);

(ix) Change in the Nature of Postal Services (N);

(x) Public Inquiry (PI);

(xi) Market Dominant Rates (R);

(xii) Rulemaking (RM);

(xiii) Special Studies (SS); and

(xiv) Annual Review of Tax Calculation (T).

(2) The Commission may modify the list of docket types and document formats without prior notice.

(e) The Secretary's assignment of a docket designation does not, by itself, establish a docket or initiate a proceeding. A docket is formally established and proceedings initiated only by the issuance of a Commission notice or order except for certain negotiated service agreements for which the authority to establish a docket and initiate a proceeding by issuance of a Secretary's notice has been delegated to the Secretary.

(f) The substance of the matter presented to the Commission, not the assigned docket type, shall govern the procedural requirements for the docket.

(g) Material filed with the Commission following the Secretary's assignment of a docket designation shall include the assigned docket designation.

(h) Public material filed within a docket may be viewed at the Commission's Docket Section during regular business hours. Public documents filed in a docket that appear in electronic format may also be accessed remotely via the Commission's website. Confidential material filed under seal in a docket may only be accessed with prior authorization. Part 3011 of this chapter sets forth the procedures for obtaining such authorization. Persons who wish to access confidential material should contact the Commission's Docket Section for the appropriate mode for transmitting material filed under seal.

(i) Active dockets may only be closed by the Commission.

§ 3010.103 Procedural schedules in docketed proceedings.

Procedural schedules shall be established and may be periodically modified for each matter that is assigned a docket designation.

§ 3010.104 Consolidation and severance of proceedings.

The Commission may order proceedings involving related issues or facts to be consolidated for consideration of any or all matters at issue in such proceedings. The Commission may sever proceedings which have been consolidated or order separate proceedings on any issue presented if it appears that separate proceedings will be more convenient, expeditious, or otherwise appropriate.

§ 3010.105 Consideration of matters before the Commission.

(a) Unless it orders otherwise, the Commission shall sit *en banc* in all matters that come before it. In those proceedings in which a presiding officer is appointed, the Commission will continue to sit *en banc*, unless modified by Commission notice or order, with the presiding officer responsible for those matters within the scope of the presiding officer's authority.

(b) A decision to establish a docket (other than certain negotiated service agreement dockets), close an active docket, or reach a final decision in any docket shall be by majority vote of the Commissioners then in office.

§ 3010.106 Presiding officers.

(a) *Designation of presiding officers.* The Chairman, in consultation with all other Commissioners then in office, may designate any Commissioner, including the Chairman, to act as presiding officer over any matter before the Commission. Subject to approval by majority vote of all Commissioners then in office, the Chairman may also designate any member of the Commission's staff, an Administrative Law Judge employed by the Commission for a specific proceeding, or any person under contract

with the Commission to serve as presiding officer over any matter before the Commission. Contracts between the Commission and any person who is to serve as a presiding officer must include provisions that incorporate the ethical requirements and standards applicable to Commission employees who serve as presiding officers.

(b) *Notice of designation.* The Secretary shall issue a notice of any decision to designate a presiding officer. The notice shall identify the presiding officer and the date of appointment. Any expansion or limitation on the presiding officer's authority, or specific direction to a presiding officer (such as specific direction to issue an intermediate decision for the Commission's consideration) not specified in this section shall be included in the notice.

(c) *Authority delegated.* Presiding officers shall have the authority, within the Commission's powers and subject to its published rules to:

(1) Regulate the course of a proceeding before the Commission, including ruling on all matters not specifically reserved for the Commission, either orally during a hearing or by issuing written presiding officer rulings;

(2) Regulate the course of a public hearing, including the recessing, reconvening, and adjournment thereof;

(3) Issue presiding officer information requests;

(4) Administer oaths and affirmations;

(5) Issue subpoenas authorized by law (limited to Commissioners and Administrative Law Judges designated as presiding officers);

(6) Rule upon offers of proof and receive relevant evidence;

(7) Take or authorize that depositions be taken as provided in § 3010.324;

(8) Hold appropriate conferences before or during hearings and to rule on matters raised at such conferences, including prehearing conferences held pursuant to § 3010.302;

(9) Dispose of procedural requests or similar matters except for motions to dismiss or to otherwise make a final determination of a proceeding prior to the issuance of an intermediate decision as provided in § 3010.106(c)(11);

(10) Certify, within their discretion, or upon direction of the Commission, any question to the Commission for its consideration and disposition including, without limitation, motions to dismiss or to otherwise make a final determination of a proceeding prior to the issuance of an intermediate decision as provided in § 3010.106(c)(11);

(11) Submit an intermediate decision in accordance with § 3010.335, when directed; and

(12) Take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

(d) *Conduct of hearings.* It is the duty of the presiding officer to conduct fair and impartial hearings and to maintain order. Any disregard by participants or counsel of presiding officer rulings on matters of order or procedure shall be noted on the record, and where the presiding officer deems it necessary shall be made the subject of a special written report to the Commission. In the event that participants or counsel should be guilty of disrespectful, disorderly, or contumacious language or conduct in

connection with any hearing, the presiding officer may immediately submit to the Commission a report thereon, together with recommendations, and in the presiding officer's discretion, suspend the hearing.

(e) *Disqualification.* A presiding officer may withdraw from a proceeding when necessary due to disqualification, or may be removed by the Commission for good cause.

§ 3010.107 Appeals from interlocutory rulings by presiding officers.

(a) *General policy.* The Commission will not review interlocutory rulings of a presiding officer except in extraordinary circumstances.

(b) *Appeals certified by the presiding officer.* (1) Rulings of the presiding officer may be appealed to the Commission when the presiding officer certifies in writing that an interlocutory appeal is warranted. The presiding officer shall not certify an appeal unless the officer finds that:

(i) The ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion; and

(ii) An immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy.

(2) A request for the presiding officer to certify an appeal shall be made by motion within five days after the presiding officer's ruling has been issued. The request shall set forth with specificity the reasons that a participant believes that an appeal meets the criteria of paragraphs (b)(1)(i) and (ii) of this section. Such requests shall also state in detail the legal, policy, and factual arguments supporting the participant's

position that the ruling should be modified. If the appeal is from a ruling rejecting or excluding evidence, such request shall include a statement of the substance of the evidence which the participant contends would be adduced by the excluded evidence and the conclusions intended to be derived therefrom.

(3) The presiding officer may request responsive pleadings from other participants prior to ruling upon the request to certify an appeal to the Commission.

(c) *Appeals not certified by the presiding officer.* A participant may request Commission review of a presiding officer's decision denying certification of an appeal by motion within five days of the decision. If the presiding officer fails to act on a request for certification within 15 days of the issuance of the ruling in question, the participant seeking certification may apply for review by the Commission within 20 days of the ruling in question. Unless the Commission directs otherwise, its review of the application for review will be based on the record and pleadings filed before the presiding officer pursuant to paragraph (b) of this section.

(d) *Action by the Commission.* (1) The Commission may dismiss an appeal certified by the presiding officer if it determines that:

(i) The objection to the ruling should be deferred until the Commission's consideration of the entire proceeding; or

(ii) Interlocutory review is otherwise not warranted or appropriate under the circumstances.

(2) When the presiding officer declines to certify an appeal, the Commission will not permit an interlocutory appeal unless it determines:

(i) That the presiding officer should have certified the matter;

(ii) That extraordinary circumstances exist; and

(iii) That prompt Commission decision is necessary to prevent grave detriment to the public interest.

(3) If the Commission fails to issue an order permitting an interlocutory appeal within 15 days after the presiding officer certifies the appeal or a participant files an application for review, the appeal shall be deemed denied. If the Commission issues an order permitting an appeal, it may rule upon the merits of the appeal in that order or at a later time.

(e) *Effect of appeals.* Unless the presiding officer or the Commission so orders, the certification of an appeal or the filing of an application for review shall not stay the proceeding or the effectiveness of any ruling.

(f) *Review at conclusion of proceeding.* If the Commission does not entertain an interlocutory appeal of a presiding officer's ruling, objection to the ruling may be raised:

(1) In briefs to the presiding officer or the Commission at the conclusion of hearings on the record; or

(2) By the deadline for submission of comments or reply comments, whichever is later, in all other proceedings in which a hearing on the record is not held.

§ 3010.108 Computation of time.

(a) In computing time periods, the term "day" shall mean calendar day.

(b) Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule, presiding officer ruling,

or regulation of the Commission or a presiding officer, the day of the act, event, or default after which a designated period of time begins to run is not to be included.

(c) The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal holiday, or a day on which the Commission is not continuously open from 8 a.m. to 4:30 p.m. or on which the Commission's docketing system is not accessible continuously during that time. In any such case, the applicable time period shall run until the end of the next full business day that the Commission is open and its docketing system is accessible.

(d) Except in proceedings to consider changes in the nature of postal services conducted under part 3020 of this chapter, in computing a period of time which is five days or less, all Saturdays, Sundays, Federal holidays, or days on which the Commission is not continuously open from 8 a.m. to 4:30 p.m. or on which the Commission's docketing system is not accessible continuously during that time are to be excluded.

§ 3010.109 Automatic closure of inactive dockets.

(a) *Automatic closure.* The Commission shall automatically close a docket in which there has been no activity of record by any person for 12 consecutive months, except dockets in which further action by the Commission is required by statute or regulation, or dockets for which the Commission finds good cause to remain open.

(b) *Notice of closure.* Each month, the Commission shall post on its website a list of dockets that will be subject to automatic closure during the following calendar month and will include the date on which the docket will automatically close.

(c) *Motions to stay automatic closure.* (1) Persons, including the Postal Service or a Public Representative, may file a motion to stay automatic closure of a docket and request that the docket remain open for a specified term not to exceed 12 months. Motions to stay automatic closure must be filed at least 15 days prior to the automatic closure date.

(2) The Commission may order a docket remain open for a specified term not to exceed 12 months and must file such order at least 15 days prior to the automatic closure date.

(d) *Motions to reopen automatically closed dockets.* (1) If, at any time after a docket has been automatically closed, persons, including the Postal Service or a Public Representative, may file a motion to reopen the docket and must set forth with particularity good cause for reopening the docket.

(2) The Commission may order a closed docket to be reopened, and must set forth the basis for reopening the docket.

Subpart B—Filing Requirements

§ 3010.120 Filing material with the Commission.

(a) All material filed with the Commission shall be transmitted to the Commission in electronic format using the Filing Online system available over the Internet through the Commission's website at *http://www.prc.gov*. The material must satisfy the Filing Online system compatibility requirements specified by the Secretary in the Filing Online User Guide, which shall also be accessible on the Commission's website. The exceptions to this rule are:

(1) Material that cannot reasonably be converted to electronic format;

(2) Confidential material filed under seal pursuant to part 3011 of this chapter shall not be transmitted electronically using the Filing Online system or any other electronic filing system unless authorized in advance by the Secretary;

(3) Hardcopy material filed by persons who do not have the ability to submit material using the Filing Online system and who files not more than ten pages of material with the Commission in any one calendar year;

(4) Hardcopy material filed by persons participating in proceedings that consider the appeal of a Postal Service determination to close or consolidate a post office, other than the Postal Service, that do not have the ability to submit material using the internet; and

(5) Hardcopy material filed in docketed proceedings with the approval of the Secretary for good cause shown.

(b) Material subject to the exceptions specified in paragraph (a) of this section may be filed either by mailing or by hand delivery during regular business hours to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001. The Secretary has authority to approve the use of secure alternative electronic filing systems pursuant to § 3011.203(c)(2) of this chapter for confidential material filed under seal. The Secretary also has authority to approve the use of alternative electronic filing systems for non-confidential material on a case-by-case basis when necessary to facilitate efficient docketing operations.

§ 3010.121 Filing Online system.

(a) Only registered users of the Filing Online system may file material using the Filing Online system. Both temporary and permanent account registrations are available. Information for establishing a Filing Online account may be obtained on the Commission's website at *http://www.prc.gov*.

(b) A temporary account allows a user to file materials immediately, but expires after 35 days. The purpose of a temporary account is to permit persons to file comments solicited by the Commission on a one-time or infrequent basis, or to file notices of intervention where there is limited time in which to establish a permanent account. A temporary account also may be used on an extraordinary basis for good cause shown.

(c) A permanent account requires the authorization of the Secretary prior to use, but remains active until cancelled. Registration can be in the form of a principal account holder or as an agent of the principal account holder. When a principal account holder is representing the interests of another person, the authority of the principal account holder to represent the person on whose behalf the document is filed must be valid and current, in conformance with § 3010.143. The authority of an agent account holder to submit documents for a principal account holder must be valid and current. A principal account holder must promptly inform the Secretary of any change in the principal account holder's authority to represent participants in a proceeding or any change in the authority delegated to an agent account holder to submit documents on the principal account holder's behalf.

(d) Only such material that conforms to the requirements of this part and any other applicable Commission rule or order shall be accepted for filing. In order for material to be accepted using the Filing Online system, it must be submitted to the Commission by a temporary or permanent account holder. Material submitted through the Filing Online system is considered to have been filed on the date indicated on the receipt issued by the Secretary. A filing is accepted when the Secretary, after review, posts the filing on the Daily Listing page of the Commission's website. Material received after the close of regular business hours or on a Saturday, Sunday, Federal holiday or other day on which the Commission is closed shall be deemed to be filed on the next regular business day.

§ 3010.122 Material filed using method other than the Filing Online system.

(a) *Hardcopy and other forms of material.* A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, posts the document on the Daily Listing page of the Commission's website. Any other form of material filed with the Commission must be accompanied by a hardcopy notice of filing, which describes the material being filed, identifies the person filing the material, and specifies the docket caption and docket number under which the material is being filed. This material is accepted when the Secretary, after review, posts the notice of filing on the Daily Listing page of the Commission's website. Material received after the close of regular business hours or on a Saturday, Sunday, or Federal holiday shall be deemed to be filed on the next regular business day.

(b) *Computer media.* With the prior approval of the Secretary, a participant may submit a document on a compact disk or other media or method approved in advance by the Secretary, simultaneously with the filing of one printed original hardcopy, provided that the stored document is a file generated in either Acrobat (pdf), Word, WordPerfect, or Rich Text Format (rtf).

§ 3010.123 Rejected filings.

Any filing that does not comply with an applicable Commission rule 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 will attempt to 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 subsequently striking all or any part of any document. Any controversies concerning the acceptability of a filing shall be resolved after review by the Office of General Counsel.

§ 3010.124 Form and content of text-based documents filed with the Commission.

(a) *Equivalent paper size.* Each document filed in paper form shall 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 0.75 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. For a multiple page document, the preference is for the document to be not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or

equivalent. If the document is bound, it shall be bound on the left side. Each document filed in electronic form must be capable of meeting the above requirements when printed from a text-based pdf formatted file version of the document. Consideration may be given to alternative file formats where necessary.

(b) *Line spacing and font.* The text of documents filed with the Commission shall be formatted in not less than one and one-half spaced lines except that tables of content, captions, tables, footnotes and quotations may be single-spaced. Documents shall be submitted in a san-serif font such as Arial (or substantially equivalent). Body text shall be 12 point, except that footnotes and quotations may appear as small as 10 point. Where necessary, special text such as in tables or charts, may appear as small as 9 point. These requirements may be waived on a case-by-case basis, based on both substantial compliance and the readability of the document.

(c) *Caption, title, page numbering, and table of contents.* 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). Each page, after the first page, of a document shall be consecutively numbered. Unique page numbers are permissible for introductory material such as cover pages and table of contents, and for appendixes. Each document filed with the

Commission consisting of 20 or more pages shall include a table of contents with page references. For briefs also *see* § 3010.330.

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

(e) *Exception for appeals of post office closings and consolidations.* The requirements of paragraphs (a) through (c) of this section are encouraged, but optional, for participants other than the Postal Service in proceedings to consider the appeal of a Postal Service determination to close or consolidate a post office conducted pursuant to part 3021 of this chapter.

§ 3010.125 Library references.

(a) A library reference is a special type of filing, which is accepted by the Commission for the convenience of the person filing material that is not conducive to typical text based filings. The filing of a document as a library reference is appropriate when interest in the material is limited, when the material constitutes a secondary source that provides background or support for a position or matter, or when references to, or identification of, the material filed as a library reference would be facilitated. Examples of materials that are appropriate for filing as library references include electronic spreadsheets, workpapers in support of primary documents, pre-existing materials, secondary sources such as books or materials that are not readily available elsewhere, or other foundational materials filed in support of a primary document. Whenever possible, library references are to be filed in electronic format. The Commission reserves the right to refuse acceptance of any library reference material in

its docket room and its right to take other action to ensure all persons' ability to obtain access to the material.

(b) *Categorization of library references.* To the extent possible, material filed as a library reference shall be identified and referred to by participants in terms of the following categories:

(1) Category 1—Reporting Systems Material (consisting of library references relating to the Postal Service's statistical cost and revenue reporting systems, and their primary outputs);

(2) Category 2—Witness Foundational Material (consisting of material relating to the testimony of specific witnesses, primarily that which is essential to the establishment of a proper foundation for receiving into evidence the results of studies and analyses);

(3) Category 3—Reference Material (consisting of previously published material provided for the convenience of the reader, such as books, chapters or other portions of books, articles, reports, manuals, handbooks, guides, and contracts);

(4) Category 4—Material Provided in Response to Discovery (consisting of material provided in response to discovery requests);

(5) Category 5—Disassociated Material (consisting of material filed at the request of another, from which the filing party wishes to be disassociated, is not vouching for or sponsoring the material provided);

(6) Category 6—All Other Material (consisting of library references not fitting any of the other categories).

(c) *Labeling.* Material filed as a library reference shall be labeled in a manner consistent with standard Commission notation and any other conditions the Commission or presiding officer establishes. Each library reference shall be identified by a unique identification number. The standard format for an identification number shall be "[abbreviated name of person filing]-LR-[docket identification]-[optional: NP][sequential number by person filing]." For example, "PRC-LR-CP2010-1-NP8" read right to left would be the eighth (8) non-public (NP) item filed in Docket No. (CP2010-1) as a library reference (LR) by the Postal Regulatory Commission (PRC). Alternative formats may be used when required for clear identification of the material being filed.

(d) *Filing procedure.* Participants filing material as a library reference shall file contemporaneous written notice of this action. The notice shall:

(1) Set forth the reason(s) why the material is being designated as a library reference;

(2) Identify the category into which the material falls and describe in detail what the material consists of or represents, noting matters such as the presence of survey results;

(3) Explain in detail how the material relates to the participant's case or to issues in the proceeding;

(4) Identify authors or others materially contributing to substantive aspects of the preparation or development of the library reference;

(5) Identify the documents (such as testimony, exhibits, and an interrogatory) or request to which the library reference relates, to the extent practicable;

(6) Identify other library references or testimony relied upon or referred to in the designated material, to the extent practicable;

(7) Indicate whether the library reference is an update or revision to another library reference and, if it is, clearly identify the predecessor material; and

(8) To the extent feasible, for proceedings scheduled for a hearing on the record, identify portions expected to be entered into the record and the expected sponsor (if the participant filing a library reference anticipates seeking, on its own behalf, to enter all or part of the material contained therein into the evidentiary record). To the extent feasible, in all other proceeding types, identify portions relevant to the proceeding.

(e) *Optional preface or summary.* Inclusion of a preface or summary in a library reference addressing the matters set out in paragraphs (d)(1) through (8) of this section is encouraged, but optional.

§ 3010.126 Subscription.

(a) Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that the person filing the document has read the document being filed; that the person filing the document knows the contents thereof; that if executed in any representative capacity, the document has been subscribed in the capacity specified in the document with full power and authority so to do; that to the best of the person's 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. This requirement extends to notices of filing for library

references or other material, including the underlying library references or other material to the extent referenced in the notice of filing.

(b) For a document or notice of filing filed via the Filing Online system, the subscription requirement is met when the document or notice of filing is filed with the Commission.

(c) For a hardcopy document or hardcopy notice of filing, the subscription requirement is met by signing in ink, by affixing an electronic signature, or by including the typed name of the individual, authorized office, employee, attorney, or other representative who files the document or notice.

§ 3010.127 Service.

(a) Material filed by a person participating in a docket shall be deemed served on all other persons (except those served by the Secretary pursuant to paragraph (b) of this section) who are participating in the docket as of the date the material, or notice of the material's filing is posted by the Secretary on the Commission's website.

(b) The Secretary shall provide service by First-Class Mail, which is deemed complete upon mailing, to the following persons upon a demonstration of the inability to effectively utilize the Filing Online system (until alternative arrangements are established):

(1) Petitioners in dockets appealing Postal Service determinations to close or consolidate post offices conducted pursuant to part 3021 of this chapter;

(2) Parties that have intervened in proceedings docketed for a hearing on the record; and

(3) Where necessary for fairness and protection of due process, an active participant in a proceeding affecting the substantial rights of that participant.

(c) The Secretary shall maintain a current service list in each proceeding docketed for a hearing on the record which shall include the parties that have intervened in that proceeding and up to two individuals designated for physical service of documents, if necessary, by each party. The service list for each current proceeding will be available on the Commission's website at *http://www.prc.gov.* Each party who has internet access shall be responsible for ensuring that its listing on the Commission's website is accurate and should promptly notify the Secretary of any errors. The Secretary or the Secretary's designee shall be responsible for ensuring the accuracy of listings of any parties who lack internet access.

Subpart C—Participation in Commission Proceedings

§ 3010.140 Opportunity for comment.

Except for proceedings involving an appeal of a Postal Service determination to close or consolidate a post office, any person may submit comments in proceedings before the Commission. An opportunity to provide a reply to comments shall be at the discretion of the Commission, or the presiding officer if one is appointed. The scope and timing of comments and reply comments may be specified by notice, order, or presiding officer's ruling. There is no requirement to intervene in a proceeding as a party in order to submit comments.

§ 3010.141 Appeals of Postal Service determinations to close or consolidate post offices.

(a) Only a person served by the post office in which the Postal Service has issued a decision to close or consolidate a post office may file an appeal of the decision with the Commission.

(b) Any other person served by the same post office under review who desires to participate in the proceeding, or any Postmaster, counsel, agent, or other person authorized or recognized by the Postal Service as such person's representative, may participate in an appeal by submitting comments.

(c) Except for persons identified in paragraph (a) or (b) of this section, the designated Public Representative, and the Postal Service, no other person may participate in a proceeding to consider the appeal of a Postal Service determination to close or consolidate a post office.

(d) Opposition to a person asserting eligibility for participation shall be made within three days of that person's first filing in the proceeding.

§ 3010.142 Parties to hearings on the record.

(a) *Parties to a proceeding.* Any interested person may become a party to proceedings docketed for a hearing on the record by filing a notice of intervention. The Postal Service, and the Public Representative are automatically deemed parties in such proceedings without the need to file a notice of intervention. Persons who file a complaint are also automatically deemed a party to a complaint proceeding without the need to file a notice of intervention. Parties may be provided an opportunity to participate in discovery, file testimony, participate in the written or oral examination of witnesses, file briefs, or present oral argument before the Commission or the presiding

officer. Persons that have not intervened may participate in a proceeding docketed for a hearing on the record, but such participation shall be limited to providing comments pursuant to § 3010.140 unless otherwise directed.

(b) *Notices of intervention.* A notice of intervention shall clearly and concisely set forth the nature and extent of the intervenor's interest in the issues to be decided, including the postal services utilized by the intervenor giving rise to the intervenor's interest in the proceeding, and to the extent known, the position of the intervenor with regard to the proposed changes in postal rates, fees, classifications, or services, or the subject matter of the complaint, as described in the notice of the proceeding. Such notice shall state whether or not the intervenor requests a hearing or in lieu thereof, a conference, and whether or not the intervenor intends to actively participate in a hearing. Such notice shall also include on page one thereof the name and full mailing address of no more than two persons who are to receive service, when necessary, of any documents relating to such proceeding.

(c) *Form and time of filing.* Notices of intervention shall be filed no later than the date fixed for such filing by the Commission or its Secretary, unless for good cause shown, the Commission authorizes a late filing. Without a showing for good cause, late intervenors shall be subject to and may not challenge decisions by the Commission or presiding officer made prior to acceptance of the request for late intervention.

(d) *Oppositions.* (1) Except as otherwise provided in paragraph (d)(2) of this section, oppositions to notices of intervention may be filed by any party in the proceeding no later than ten days after the notice of intervention is filed.

(2) Oppositions to notices of interventions in proceedings considering the change in the nature of a postal service pursuant to part 3020 of this chapter may be filed by any party in the proceeding no later than three days after the notice of intervention is filed.

(3) Pending Commission action, an opposition to intervention shall, in all proceedings except those considering the change in the nature of a postal service pursuant to part 3020 of this chapter, delay on a day-for-day basis the date for responses to discovery requests filed by that intervenor.

(e) *Effect of intervention.* A person filing a notice of intervention shall be a party to the proceeding subject, however, to a determination by the Commission, either in response to an opposition, or *sua sponte,* that party status is not appropriate under the Act. Intervenors are also subject to the right of the Commission or the presiding officer as specified in § 3010.104 to require two or more intervenors having substantially like interests and positions to join together for purposes of service of documents, presenting evidence, making and arguing motions and objections, propounding discovery, cross-examining witnesses, filing briefs, and presenting oral arguments to the Commission or presiding officer. No intervention shall be deemed to constitute a decision by the Commission that the intervenor is aggrieved for purposes of perfecting an appeal of any final order of the Commission.

§ 3010.143 Representation of persons.

(a) *By whom.* An individual may participate on the individual's own behalf; a member of a partnership may represent the partnership; and an officer may represent a

corporation, limited liability company, trust, unincorporated association, or governmental entity. A person may be represented in a proceeding by an attorney at law admitted to practice and in good standing before the Supreme Court of the United States, the highest court of any State or Territory of the United States or the District of Columbia, or the Court of Appeals or the District Court for the District of Columbia.

(b) *Authority to act.* When an officer or an attorney acting in a representative capacity appears in person, submits a document to the Commission using the Filing Online system as a principal account holder, or signs a paper filed with the Commission, the personal appearance, online submission, or signature, shall constitute a representation to the Commission that that individual is authorized to represent the particular person on whose behalf the individual acts. Any individual appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of the individual's authority to act in such capacity.

(c) *Notice of appearance and withdrawal of appearance.* An individual intending to appear before the Commission or its presiding officer in a representative capacity in a proceeding before the Commission 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 person whom the individual represents as the individual to whom communications from the Commission in regard to the filing are to be addressed. An individual whose authority to represent a person in a specific Commission proceeding

has been terminated shall file a timely notice of withdrawal of appearance with the Commission.

(d) *Standards of conduct.* Individuals practicing before the Commission shall conform to the standards of ethical conduct required of practitioners by the District of Columbia Rules of Professional Conduct.

(e) *Disqualification and suspension.* After hearing, the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing and practicing before it in any way to any individual who is found not to possess the requisite qualifications, or to have engaged in unethical or improper professional conduct. Contumacious conduct at any hearing before the Commission or its presiding officer shall be grounds for exclusion of any individual from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

§ 3010.144 Limitation of participation by investigative or prosecuting officers.

No officer, employee, or agent of the Commission who participates in a proceeding before the Commission as an attorney or witness or who actively participates in the preparation of evidence or argument presented by such persons, shall participate or advise as to the intermediate decision or Commission decision in that proceeding.

Subpart D—Notices, Motions, and Information Requests

§ 3010.150 Notices.

(a) *Purpose.* A notice is a document that announces a past, present, or future, event or occurrence. A notice shall not be combined with a request for any order or

ruling that otherwise should be presented by motion. The Commission or presiding officer shall not combine a notice with a Commission order or a presiding officer's ruling, unless the title of the document clearly states the intent of document being issued.

(b) *Filing requirements.* The title of any document filed as a notice shall contain the word "notice." Additional requirements for the content of specific forms of notices are provided throughout chapter III of this title, where appropriate.

§ 3010.151 Notices and orders initiating proceeding.

(a) Upon a finding that a matter is properly before the Commission, the Commission shall issue a notice and order initiating the proceeding to consider that matter. The rules in this section apply to all proceedings except for:

(1) Proceedings to consider certain negotiated service agreements, which are noticed pursuant to § 3010.152; and

(2) Proceedings to consider the appeal of a Postal Service determination to close or consolidate post office, pursuant to part 3021 of this chapter.

(b) The notice and order shall:

(1) Describe the general nature of the proceeding, *i.e.,* a complaint, a rulemaking, a change in rates, a change in the product lists, a change in the nature of postal services, etc.;

(2) Identify the person(s) requesting the initiation of the docket, if applicable;

(3) Refer to the legal authority under which the proceeding is to be conducted;

(4) Provide a sufficient description of the matter being considered such that the reader is informed of the substance of the proceeding, and provide direction as to where further information may be obtained;

(5) Establish the docket under which the proceeding will be conducted;

(6) Assign a Public Representative to represent the interests of the public, when required;

(7) Describe how interested persons may participate in the proceeding;

(8) Establish procedural deadlines, if known; and

(9) Include such other information as the Commission deems appropriate.

(c) For proceedings docketed for a hearing on the record pursuant to subpart F of this part, the notice and order shall also:

(1) Specify the date by which notices of intervention and requests for hearing must be filed;

(2) Specify the date, time, and place of a prehearing conference or first public hearing, if known; and

(3) Include the procedural schedule provided for under § 3020.110 of this chapter in proceedings to consider changes in the nature of postal services pursuant to part 3020 of this chapter.

(d) The document shall be published in the **Federal Register**.

§ 3010.152 Notices initiating dockets for consideration of negotiated service agreements.

(a) The Secretary shall issue a notice to initiate a docket for each Postal Service request which proposes the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list. Multiple requests may be combined into a single notice.

(b) The document shall specify:

(1) The docket number associated with each Postal Service request;

(2) The title of each Postal Service request;

(3) The request's acceptance date;

(4) The legal authority cited by the Postal Service for each request;

(5) The appointment of an officer of the Commission to represent the interests of the general public in the proceeding; and

(6) The comment deadline pertaining to each request.

(c) The document shall be published in the **Federal Register**.

§ 3010.160 Motions.

(a) *Motions.* A motion is an application for a Commission order or ruling by a presiding officer. Motions may be presented by any person who participates in, or who seeks to participate in, a proceeding before the Commission. Motions may be supported by declarations, exhibits, library references, attachments, and other submissions. Motions shall set forth with particularity the ruling or relief sought, the grounds therefore and the statutory and other authorities relied upon. Motions shall be

in writing, except that after a hearing has convened, motions may be made orally to the Commission or to the presiding officer if one has been appointed.

(b) *Responses to motions.* A response to a motion may be presented by any person who participates in, or who seeks to participate in, a proceeding before the Commission. Responses shall state with particularity the position of the person submitting the response with regard to the relief or ruling requested in the motion and the grounds therefore and the statutory and other authorities relied upon. Responses to written motions must be filed within seven days after the motion is filed and posted on the Commission's website, or such other deadline as the rules of practice provide or as the Commission or presiding officer may establish. Responses to oral motions made during a hearing may be made orally to the Commission or to the presiding officer if one has been appointed, unless directed to reduce the response to writing for subsequent consideration.

(c) *Replies.* Unless the Commission or presiding officer otherwise provides, no reply to a response or any further responsive document may be filed.

(d) *Rulings.* The Commission or the presiding office may rule on a motion in writing, or orally during a hearing. A ruling may be issued immediately, without waiting for a response, whenever the person propounding the motion asserts that all affected persons have been contacted and agree not to oppose the motion or when the Commission in its discretion determines that immediate action is appropriate.

§ 3010.161 Motions for waiver.

(a) Any person may file a motion requesting that any requirement imposed by regulation, order, ruling, or Commission, Chairman, or presiding officer request be waived.

(b) Motions for waiver will not be entertained unless timely filed so as to permit disposition of the motion prior to the date specified for the requirement for which waiver is requested. The pendency of a motion for waiver does not excuse any person from timely meeting the requirement for which the waiver is requested.

(c) Motions for waiver may be granted in whole or in part to the extent permitted by law upon a showing of good cause and that such waiver will be consistent with the public interest and will not unduly prejudice the interests of other participants.

§ 3010.162 Motions for continuances and extensions of time.

(a) Any person may file a motion requesting the continuance of a hearing or the extension of time for any deadline.

(b) The motion should be filed before the expiration of the specified time for the deadline for preforming the act for which the continuance or extension is requested.

(c) The motion shall only be granted upon consideration of the potential adverse impact, if any, on other participants and the overall impact on the procedural schedule.

§ 3010.163 Motions for late acceptance.

(a) Any person may file a motion requesting that the Commission or the presiding officer accept any material filed by that person after an established filing deadline.

(b) The motion should be filed prior to or concurrent with the filing of any material filed after the established deadline.

(c) The Commission or the presiding officer are under no obligation to further consider any material filed after an established deadline, unless late acceptance is approved by the Commission or presiding officer. Posting late filed material to the Commission's website alone is not an indication that the material will be considered.

§ 3010.164 Motions to strike.

(a) Any person may, by motion, request that any material be stricken from consideration in any proceeding.

(b) Motions to strike are requests for extraordinary relief that must be supported with justification for why the material should be stricken from consideration. Motions to strike shall not be used as a substitute for rebuttal testimony, briefs, comments, or any other form of pleading.

§ 3010.170 Information requests.

(a) An information request is an informal discovery mechanism used at the discretion of the Commission, the Chairman of the Commission, or a presiding officer to obtain information that is likely to materially assist the Commission in the conduct of its proceedings, in the preparation of its reports, or in the performance of its functions under title 39 of the United States Code.

(b) Information requests may be used to:

(1) Require the Postal Service in any proceeding, or any party to a Commission hearing on the record, to provide any information, and associated documents or things

in its possession or control, or any information, and any associated documents or things that it can obtain through reasonable effort and expense; or

(2) Request that any person other than the Postal Service or a party to a Commission hearing on the record provide any information, and any associated documents or things that it can obtain through reasonable effort and expense.

(c) Information that can be sought by information request includes, but is not limited to, explanations, confirmations, factual descriptions, data, documents, and other materials. Documents refer to hard copy or electronic conveyance of information and may be stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form. Documents include, but are not limited to, writings, notes, graphs, charts, data files, emails, drawings, photographs, and images. Materials include all matter, other than documents, that convey information.

(d) Information requests shall describe the information, documents, or things sought; shall briefly explain the reason for the request; and shall specify a date by which the response(s) shall be due.

(e) Any person may request the issuance of an information request by motion. The motion shall list the information, documents, or things sought; shall explain the reasons the information request should be issued; and shall demonstrate why the information sought is relevant and material to the Commission's duties under title 39 of the United States Code. Upon consideration of the motion and any responses, the Commission, the Chairman of the Commission, or presiding officer may issue an

information request that includes some or all of the proposed questions or modified versions of some or all of the proposed questions. Motions that do not result in the issuance of an information request prior to the Commission's final decision in the docket shall be deemed denied.

Subpart E—Proceedings Using Notice and Comment Procedures

§ 3010.200 Applicability.

(a) Except as otherwise provided in this section, the Commission shall conduct proceedings in conformance with the notice and comment procedures of this subpart whenever:

(1) The Commission is considering the issuance, amendment, or repeal of any Commission rule or regulation;

(2) The Commission is seeking information to inform potential future Commission action with or without the issuance of a final decision; or

(3) The Commission in the exercise of its discretion determines it is appropriate.

(b) Unless the Commission orders otherwise, the rules in this subpart shall not apply to proceedings governed by subpart F of this part (Proceedings with an Opportunity for a Hearing on the Record). The rules in this subpart also shall not apply to the following parts of subchapter D of chapter III (Special Rules of Practice for Specific Proceeding Types) of this title: part 3020 (Rules Applicable to Requests for Changes in the Nature of Postal Services) of this chapter, part 3021 (Rules for Appeals of Postal Service Determinations to Close or Consolidate Post Offices) of this chapter, part 3022 (Rules for Complaints) of this chapter, part 3023 (Rules for Rate or Service

Inquiries) of this chapter, and part 3024 (Special Rules for Complaints Alleging Violations of 39 U.S.C. 404a) of this chapter.

§ 3010.201 Initiation of a proceeding.

(a) The Commission may on its own motion initiate a proceeding under this subpart by issuing a notice and order initiating proceeding pursuant to § 3010.151.

(b)(1) Any person may request the initiation of a proceeding under this subpart by filing a petition with the Commission pursuant to the filing requirements of subpart B of this part. The petition shall:

(i) Provide the name, address, phone number and other pertinent contact information of the requesting person;

(ii) Identify the subject matter of the petition;

(iii) Provide specific proposals, including specific language, in regard to the subject matter of the petition;

(iv) Provide all facts, views, arguments, and data deemed to support the action requested; and

(v) Describe the impact of the proposal on the person filing the petition, the Postal Service, the mailing community, and the Commission, as applicable.

(2) Upon consideration of the petition, the Commission in its discretion may initiate a proceeding under this subpart by issuing a notice and order initiating proceeding pursuant to § 3010.151, reject the petition, or defer a decision whether to grant or reject the petition. The Commission shall provide an explanation for the rejection or delay in consideration of any petition.

(c) Subparts A, B, C, and D of this part apply to the initiation and conduct of proceedings under this subpart E.

§ 3010.202 Participation in notice and comment proceedings.

(a) *Comments.* The primary method for participating in notice and comment proceedings is through the filing of comments in accordance with § 3010.140. The notice and order initiating proceeding filed pursuant to § 3010.151 shall provide the deadline for filing comments, and if provided for, reply comments.

(b) *Information requests.* The Commission, Chairman, or presiding officer may in its or their own discretion or, if requested by an interested person by motion, issue information requests pursuant to § 3010.170.

(c) *Technical conferences.* The Commission, Chairman, or presiding officer may in its or their own discretion or, if requested by an interested person by motion, convene one or more off the record technical conferences to consider the matters being considered.

(d) *Oral presentations.* The Commission, Chairman, or presiding officer may in its or their own discretion or, if requested by an interested person by motion, permit oral presentations regarding the matters being considered.

(e) *Other procedures.* The Commission, the Chairman, or presiding officer may order additional procedures as appropriate.

§ 3010.203 Commission action.

(a) The Commission shall consider all relevant comments and material of record before taking any final action. Any final decision which includes the issuance,

amendment, or repeal of a rule or regulation, shall, at a minimum, publish the final rule or regulation in the **Federal Register**.

(b) Any issuance, amendment, or repeal of a rule or regulation will be made effective not less than 30 days from the time it is published in the **Federal Register** except as otherwise specified in paragraph (c) of this section. If the order issuing, amending, or repealing a rule does not specify an effective date, the effective date shall be 30 days after the date on which the Commission's order is published in the **Federal Register**, unless a later date is required by statute or is otherwise specified by the Commission.

(c) For good cause shown by publication with the rule, any issuance, amendment, or repeal of a rule may be made effective in less than 30 days from the time the Commission's order is published in the **Federal Register**.

(d) Rules involving any military, naval or foreign affairs function of the United States; matters relating to agency management or personnel, public property, loans, grants, benefits or contracts; rules granting or recognizing exemption or relieving restriction; rules of organization, procedure or practice; or interpretative rules; and statements of policy may be made effective without regard to the 30-day requirement.

Subpart F—Proceedings with an Opportunity for a Hearing on the Record.

§ 3010.300 Applicability.

The Commission shall conduct proceedings on the record with the opportunity for a hearing subject to this subpart whenever:

(a) The Commission determines that a complaint filed under part 3022 of this chapter raises one or more material issues of fact or law in accordance with § 3022.30 of this chapter and a proceeding on the record with the opportunity for a hearing is necessary;

(b) The Commission determines that the streamlined procedures in part 3020 of this chapter applicable to a Postal Service request to change the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis are not appropriate; or

(c) The Commission in the exercise of its discretion determines it is appropriate.

§ 3010.301 Notice of proceeding.

Whenever the Commission determines that a proceeding will be held on the record with an opportunity for a hearing under this part, it shall publish notice of the proceeding in the **Federal Register** pursuant to § 3010.151.

§ 3010.302 Prehearing conferences.

(a) *Initiation and purposes.* The Commission or the presiding officer, if one has been appointed, may direct the parties in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the proceeding, including those in paragraph (e) of this section. Prehearing conference procedures shall be rigorously pursued by all parties.

(b) *Who presides.* The presiding officer, if one has been designated, shall preside over prehearing conferences. If a presiding officer has not been designated or is otherwise unavailable for a prehearing conference, then the ranking Commissioner in

attendance shall be considered the presiding officer for that conference. The presiding officer shall open and close each prehearing conference session and shall be responsible for controlling the conduct of the conference.

(c) *Informal off-the-record procedures.* In order to make the prehearing conference as effective as possible, the presiding officer may direct that conferences be held off the record, without the presiding officer present. Informal off-the-record conferences shall be presided over by the Public Representative or such other person as the parties may select. At off-the-record conferences, parties shall be expected to reach agreement on those matters, which will expedite the proceeding, including the matters specified in the notice of the prehearing conference, in the ruling of the presiding officer directing that the off-the-record conference be held, and in paragraph (e) of this section. A report on the results of off-the-record conferences shall be made to the presiding officer on the record at a time specified by the presiding officer. The presiding officer shall then determine the further prehearing procedures, if any, to be followed.

(d) *Required preparation and cooperation of all parties.* All parties in any proceeding before the Commission are required and expected to come to prehearing conferences fully prepared to discuss in detail and resolve all matters, such as those specified in paragraph (e) of this section, in the notice of the prehearing conference, and in such other notice or agenda as may have been issued by the Commission or the presiding officer. All parties are required and expected to cooperate fully at all stages of the proceeding to achieve these objectives through thorough advance preparation for

the prehearing conference, including informal communications between the parties, requests for discovery and appropriate discovery procedures at the earliest possible time and no later than at the prehearing conference, and the commencement of preparation of evidence and cross-examination. The failure of any party to appear at the prehearing conference or to raise any matters that could reasonably be anticipated and resolved at the prehearing conference shall not be permitted to unduly delay the progress of the proceeding and shall constitute a waiver of the rights of the party with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.

(e) *Matters to be pursued.* At the prehearing conference, the presiding officer and the parties shall consider and resolve such matters as:

(1) The definition and simplification of the issues, including any appropriate explanation, clarification, or amendment of any proposal, filing, evidence, complaint or other pleading filed by any party;

(2) Arrangements for timely completion of discovery from the Postal Service or any other party of information regarding any issues in the proceeding, prior filings, evidence or pleadings of any party;

(3) Procedures for timely discovery with regard to any future evidentiary filings of any party;

(4) Stipulations, admissions or concessions as to evidentiary facts, and agreements as to documentary matters, exhibits and matters of official notice, which will avoid unnecessary proof or dispute;

(5) The possible grouping of parties with substantially like interests for purposes of presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral argument to the Commission or presiding officer;

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding;

(7) Limitation of the scope of the evidence and the number of witnesses in order to eliminate irrelevant, immaterial, or cumulative and repetitious evidence;

(8) Procedures to direct and control the use of discovery prior to the hearing and submission of written testimony and exhibits on matters in dispute so as to restrict to a bare minimum the amount of hearing time required for oral cross-examination of witnesses;

(9) Division of the proceeding where practicable into two or more phases for separate and, if advisable, simultaneous hearings;

(10) Establishment of dates for the submission and service of such written testimony and exhibits as may be appropriate in advance of the hearing;

(11) The order of presentation of the evidence and cross-examination of witnesses so that the hearing may proceed in the most expeditious and orderly manner possible; and

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the parties to the conduct of the entire proceedings off the record.

(f) *Rulings by presiding officer.* (1) The presiding officer at a prehearing conference, shall, irrespective of the consent of the parties, dispose of by ruling:

(i) Any of the procedural matters itemized in paragraph (e) of this section; and

(ii) Such other procedural matters on which the presiding officer is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding.

(2) Either on the record at the conclusion of such prehearing conference, or by order issued shortly thereafter, the presiding officer shall state the agreements reached by the parties, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified during the hearing to prevent manifest injustice.

§ 3010.303 Hearing format.

(a) In any case noticed for a proceeding to be determined on the record, the Commission or the presiding officer, if one has been appointed, may determine whether to hold a public hearing, or to hold a hearing by written submission of material only. A public hearing may be held if a hearing is requested by any party to the proceeding or if the Commission determines that a hearing is in the public interest. Generally, public hearings provide an opportunity for oral cross-examination of witnesses whereas hearings held by written submission of material only do not.

(b) Once established, requests to change the hearing format may be proposed by motion, or by the Commission's or presiding officer's own motion.

(c) Only representatives of the Commission, parties that have intervened in a proceeding, or persons intending to intervene prior to the deadline for notices of intervention may participate in a public hearing. However, public hearings are generally open to the public for observation. Public hearings may be closed to the public for good cause, or when confidential material is being presented.

§ 3010.304 Scheduling order.

(a) *When issued.* Upon consideration of the outcome of the prehearing conference, if held, and a determination of the need for a public hearing, the Commission, or the presiding officer if one has been appointed, shall issue a scheduling order. The scheduling order may be combined with any other order or ruling that the Commission or the presiding officer may issue. The scheduling order may be periodically modified as warranted.

(b) *Content of scheduling order.* The content of the scheduling order shall be tailored to the specifics of the matter before the Commission, including any requirement for a public hearing. The Commission or the presiding officer shall consider scheduling the following:

(1) A deadline for conclusion of discovery on proponent's direct case;

(2) A deadline to request oral cross-examination of proponent's witnesses;

(3) A deadline for designation of written cross-examination on proponent's direct case;

(4) The time and date for a public hearing on proponent's direct case, or the date and procedures for entering a proponent's direct case into evidence in a hearing by written submission of material only;

(5) A deadline for parties other than the proponent to file testimony in support of, or in rebuttal to, the proponent's direct case;

(6) A deadline for conclusion of discovery on testimony supporting or rebutting the proponent's direct case;

(7) A deadline to request oral cross-examination of other parties' witnesses;

(8) A deadline for designation of written cross-examination on other parties' testimony;

(9) The time and date for a public hearing on other parties' testimony, or the date and procedures for entering other parties' testimony in a hearing by written submission of material only;

(10) A deadline for the proponent to file surrebuttal testimony to other parties' direct cases;

(11) A deadline for conclusion of discovery on any proponent's surrebuttal rebuttal testimony;

(12) A deadline to request oral cross-examination of proponent's surrebuttal witnesses;

(13) A deadline for designation of written cross-examination on proponent's surrebuttal testimony;

(14) The time and date for a public hearing on a proponent's surrebuttal testimony, or the date and procedures for entering a proponent's surrebuttal testimony in a hearing by written submission of material only;

(15) A deadline for filing briefs;

(16) A deadline for filing reply briefs; and

(17) A deadline for requesting oral argument.

(c) *Witness availability.* Parties shall promptly file notice of potential witness unavailability to appear at any public hearing as soon as known. Witness unavailability will be considered when establishing the initial, or any subsequent, procedural schedules. Once the initial scheduling order is issued, but no later than ten calendar days prior to a scheduled hearing, parties may file notice of preferences for dates and times of witness appearance at any public hearing.

(d) *Subsequent scheduling of public hearings.* At the adjournment of any public hearing (including prehearing conferences), the Commission, or the presiding officer if appointed, shall announce when the hearing will reconvene. If an announcement is not made, the Commission or the presiding officer shall announce the time, date, and location of the subsequent hearing, or prehearing conference in writing by notice, order, or presiding officer ruling.

§ 3010.310 Discovery—general policy.

(a) Sections 3010.311 through 3010.313 allow discovery reasonably calculated to lead to admissible evidence during a proceeding noticed for hearing on the record. In general, discovery against a party will be scheduled to end prior to the receipt into

evidence of that party's direct case. An exception to this procedure shall operate in all proceedings set for hearing when a party needs to obtain information (such as operating procedures or data) available only from the Postal Service. Such discovery requests are permissible only for the purpose of the development of rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

(b) The discovery procedures set forth in §§ 3010.311 through 3010.313 are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a party or an officer or agent of a party fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3010.311 through 3010.313, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the parties obtaining the order, or prohibit the disobedient party from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

§ 3010.311 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 party may propound to any other party in a proceeding written, sequentially numbered interrogatories, by witness, requesting non-privileged information relevant to the subject matter and reasonably calculated to lead to the discovery of admissible evidence in such proceeding, to be answered by the party served, who shall furnish such information as is available to the requesting party. A party through interrogatories may require any other party to identify each person whom the other party expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The party propounding the interrogatories shall file them with the Commission and serve them on the answering party. 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 seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the party 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 party responding to the interrogatories shall file the answers with the Commission and serve them on the requesting party 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 grounds for every objection shall be clearly and fully stated. If an objection is made to part of an interrogatory, the part shall be specified. A party claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A party 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 and served on the requesting party within ten days of the filing of the interrogatories. Any ground not stated in a timely objection is waived unless excused by the Commission or presiding officer for good cause shown.

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

answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any party 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 overruled, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be filed with the Commission and served on the compelling party within seven 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.

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

(g) *Orders.* The Commission or the presiding officer may order that any party or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as

justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

§ 3010.312 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 party may serve on any other party to the proceeding a request to produce and permit the party making the request, or someone acting on behalf of the requesting party or the requesting party's agent 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 or reasonably calculated to lead to the discovery of admissible evidence and that are in the custody or control of the party 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 party requesting the production of documents or things shall file its request with the Commission and serve the request on the responding party.

(b) *Answers.* The party responding to the request shall file an answer with the Commission and serve the answer on the requesting party 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. The responding party may produce copies of documents or of electronically stored information in lieu of permitting inspection. Production must be completed no later than the time for inspection specified in the request unless good cause is shown.

(c) *Objections.* In the interest of expedition, the grounds for objection shall be clearly and fully stated. If an objection is made to part of an item or category, the part shall be specified. Any objection must state whether any responsive materials are being withheld on the basis of that objection. A party claiming privilege shall identify the specific evidentiary privilege asserted and state with particularity the reasons for its applicability. A party 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 and served on the requesting party within ten days of the request for production. The responding party may state an objection to a request to produce electronically stored information. If it objects to the form of the documents or things requested (or if no form was specified in the request), the responding party must state the form or forms it intends to use to produce the requested information.

(d) *Motions to compel requests for production of documents or things for purposes of discovery.* Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Parties who have objected to requests for production of documents or things which are the subject

of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* Upon motion of any party 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 overruled. Such compelled documents or things shall be made available to the party making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(f) *Orders and rulings.* The Commission or the presiding officer may direct any party or person to respond to a request for inspection on such terms and conditions as are just and may for good cause impose any protective conditions, including limitations or preconditions for inspections, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

§ 3010.313 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any party may serve upon any other party 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. Each requested admission shall be set forth separately and shall be deemed admitted unless within 14 days after the request is filed (or such other period as may be fixed by the Commission or presiding officer) the party to whom the request is directed files a written answer denying the

requested admission pursuant to paragraph (c) of this section or objecting pursuant to paragraph (d) of this section. The party requesting an admission shall file its request with the Commission and serve the request on the responding party.

(b) *Answers.* Answers that fail to admit a matter as requested shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When a party qualifies an answer or denies only a part of the admission requested, the party shall specify so much of the requested admission as is true and qualify or deny the remainder. A failure to admit or deny for lack of information or knowledge shall not be made unless the responding party states that it has made a reasonable inquiry and that information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who answers a request for admission shall file its answer with the Commission and serve the answer on the requesting party.

(c) *Objections.* If an objection is made, the grounds for such objection shall be clearly and fully stated. If an objection is made to part of an item, the part to which an objection is made shall be specified. A party claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A party 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 and served on the requesting party, within ten days of the request for admissions.

(d) *Motions to compel responses to requests for admissions.* The party who has requested an admission may move to determine the sufficiency of the answers or objections. Motions to compel a more responsive answer, or an answer to a request to which an objection was interposed, shall be filed within 14 days of the answer or objection to the request for admissions. The text of the request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Parties who have objected to requests for admissions which are the subject of a motion to compel shall have seven days to file a response. Responses will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* 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 overruled. Such compelled answers shall be filed with the Commission and served on the requesting party within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. 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.

§ 3010.320 Settlement conferences.

Any party to a proceeding may submit offers of settlement or proposals of adjustment at any time and may request a conference between the parties to consider such offers or proposals. The Commission or the presiding officer shall afford the

parties appropriate opportunity prior to or during the hearing for conferences for the purpose of considering such offers or proposals as time, the nature of the proceeding, and the public interest permit. Unaccepted offers of settlement or adjustment and proposed stipulations not agreed to shall be privileged and shall not be admissible in evidence against any party claiming such privilege.

§ 3010.321 Hearings.

(a) *How convened.* (1) Hearings shall be convened by the issuance of a notice, order, or presiding officer's ruling that is published in the **Federal Register.** Only the first session of a public hearing need be noticed and published in the **Federal Register.** All subsequent sessions within a docket are to be considered part of the same hearing. If there is a prehearing conference, the prehearing conference is to be considered the first hearing session in that docket.

(2) At the adjournment of each hearing session, the presiding officer responsible for the conduct of that hearing session shall announce if and when the hearing will reconvene. If an announcement is not made at the adjournment of the hearing session, the Commission or presiding officer shall announce the time, date, and location of any subsequent hearing, or prehearing conference, in writing by notice, order, or presiding officer ruling.

(b) *Who presides.* The presiding officer, if designated, shall preside over a public hearing. If a presiding officer has not been designated or is otherwise unavailable for a hearing, then the ranking Commissioner in attendance shall be considered the presiding officer for that hearing. The presiding officer shall open and

close each session of the hearing, and shall be responsible for controlling the conduct of the hearing.

(c) *Entering of appearances.* The presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing on whose behalf each such appearance has been made.

(d) *Witnesses.* All witnesses are expected to be available for public hearings. Unless otherwise ordered by the presiding officer, a witness need only attend a hearing on those days scheduled for entering that witness's testimony. Subject to the discretion and prior approval of the presiding officer, a witness may be excused from appearing at a hearing and may have the witness's written testimony and cross-examination entered into evidence by counsel.

(e) *Order of presentations.* (1) The proponent of a matter before the Commission shall present the proponent's direct case first. In matters initiated by the Postal Service, the Postal Service shall be considered the proponent. In complaint proceedings under section 3662 of the Act, the complainant shall be considered the proponent. The proponent also shall be provided an opportunity to respond to any rebuttal to the proponent's direct case. In all other instances, the Commission or the presiding officer shall determine the order of presentation.

(2) The order of presentations by parties other than the proponent shall be determined by the Commission or the presiding officer.

(3) The Commission or presiding officer shall announce the order of presentation of parties and individual witnesses prior to hearing sessions and shall issue such other

procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing. Parties may present their preferences for order of appearance to the Commission or the presiding officer orally at a hearing or by filing a notice prior to the scheduled hearing date. Parties who disagree with a proposed order of appearances may move for a revised order of appearances either orally at a hearing or by filing a written motion pursuant to § 3010.160.

(f) *Swearing in of witnesses*. (1) Witnesses attending a hearing whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them. The witness shall be sworn by means of the following (or an equivalent): "Please raise your right hand. Do you solemnly swear (or affirm), that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth? Please state your full name."

(2) The oath shall be given upon the first appearance of the witness providing testimony. Upon subsequent appearances, the witness is to be reminded by the presiding officer that the witness remains under oath for the duration of the proceeding.

(3) Witnesses not attending a hearing whose testimony is entered by counsel during a hearing shall attach a signed declaration that the testimony being submitted is that of the witness. A declaration shall be included with each piece of written testimony, and each set of written cross-examination. The declaration shall state the following (or an equivalent): "Declaration of [witness name]. I, [witness name], hereby declare under penalty of perjury that: The [testimony, designated responses to written cross-examination] filed under my name were prepared by me or under my direction; and

were I to [provide oral testimony, respond orally to the questions appearing in the interrogatories], my answers would be the same."

(4) Hearings that are conducted by the written submission of testimony only shall also attach written declarations to testimony and cross-examination as described above.

(g) *Presentation of the evidence*. (1) *Presentations by parties.* Each party shall have the right to present evidence, cross-examine witnesses (limited to testimony adverse to the party conducting the cross-examination), and to present objections, motions, and arguments. The case-in-chief of parties other than the proponent shall be in writing and shall include the party's direct case and rebuttal, if any, to the initial proponent's case-in-chief. A party's presentation may be accompanied by a trial brief or legal memoranda. Legal memoranda on matters at issue are generally welcome at any stage of the proceeding. Parties will be given an opportunity to rebut presentations of other parties, including an opportunity for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written testimony.* (i) Written testimony shall be offered in evidence by motion. The motion shall be made orally during a hearing, or in writing when the hearing is conducted by the written submission of testimony only. When a party moves to enter testimony into the record, three hard copies of the document shall simultaneously be submitted to the Commission for the record. The copies are to be

printed single-sided, and not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent.

(ii) Witnesses shall be provided an opportunity to verify that the written testimony they are sponsoring is their testimony and that it would be the same if given orally. The witness, or counsel, shall state the original filing date of the testimony and identify all subsequent filings that amended the original testimony. If there are any final corrections to the testimony, the corrections may be noted on the hard copies submitted to the Commission. However, the witness shall be required to file errata to the testimony within seven days of the hearing, making corrections only to the extent as identified during the hearing. Any other changes shall be requested separately by motion to amend the record.

(iii) Parties shall be provided an opportunity to object to all or part of a witness's written testimony prior to entering that testimony into the record. Objections that have not previously been made in writing at least 14 days prior to the hearing date shall be granted only under extraordinary circumstances.

(iv) After resolution of all objections, the presiding officer shall order the testimony entered into the record as evidence. Unless otherwise ordered by the presiding officer, the written testimony shall not be copied into the hearing transcript.

(3) *Library references.* (i) Library references sponsored by a witness and associated with the witness's written testimony or written cross-examination may be offered in evidence by motion. The motion shall be made orally during a public hearing, or in writing for a hearing that is conducted by the written submission of testimony only.

(ii) Witnesses shall be provided an opportunity to verify that the library reference is their library reference and to affirm that they are in fact sponsoring the library reference. If a witness inadvertently fails to verify and affirm that the witness is sponsoring a library reference that is cited in written testimony or in response to written cross-examination, it will be presumed that the library reference is to be included in the record to the extent specified in the notice of the filing of the library reference.

(iii) Parties shall be provided an opportunity to object to all or any part of the library reference being entered into the record. Objections that have not been made in writing at least 14 days prior to the hearing date shall be granted only under extraordinary circumstances.

(iv) After resolution of all objections, the presiding officer shall order the library reference be entered into the record as evidence. Unless ordered by the presiding officer, library references shall not be copied into the hearing transcript.

(4) *Written cross-examination.* (i) Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Written cross-examination may be offered in evidence by motion. The motion shall be made orally during a public hearing, or in writing for a hearing that is conducted by the written submission of testimony only. Written cross-examination proposed by parties other than the party associated with the witness shall be considered first, followed by that of the party of the witness.

(ii) Designations of written cross-examination should be filed with the Commission and served on the answering party no later than three working days before

the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the party who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "PR-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997))." When a party designates written cross-examination, three hard copies of the documents to be included shall simultaneously be submitted to the Secretary. The documents are to be printed single-sided, and not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent. The Secretary shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel.

(iii) A witness shall be provided an opportunity to verify that the written cross-examination is that of the witness and to assert that if the written cross-examination were being provided orally at the hearing it would be that of the witness. If there are any final corrections to the written cross-examination, the corrections may be noted on the hard copies before submission to the Commission.

(iv) Parties shall be provided an opportunity to object to all or any part of the written cross-examination prior to entering the testimony into the record.

(v) After resolution of all objections, the presiding officer shall order the written cross-examination entered into the record as evidence. The presiding office shall direct that the written cross-examination be copied into the hearing transcript.

(5) *Oral cross-examination.* (i) Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions, or other opinion evidence.

(ii) 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. If no notices are filed, and the Commission or presiding officer has no other reason for the witness to appear, the Commission or the presiding officer, in their discretion, may excuse the witness from appearing at the hearing and direct that the witness's testimony be entered by counsel.

(iii) A party 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 full business days before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the party. When presented, examination exhibits are not to be considered record evidence. They are to be transcribed into the record for reference only. If adopted by the witness, the examination exhibit may be offered in evidence by motion.

(iv) At the conclusion of oral cross-examination, the witness shall be given an opportunity to consult with counsel. Counsel shall then be provided an opportunity to examine the witness for the purpose of clarifying statements previously made during oral cross-examination.

(h) *Institutional testimony.* (1) This paragraph (h) is applicable to testimony offered in evidence that is not sponsored by an individual witness. This typically occurs when discovery questions are answered by the institution, and not by an individual witness.

(2) When institutional responses are offered in evidence by any party, the responding party shall make available at the hearing an officer of the institution that has the authority to attest to the authenticity and truthfulness of the responses, and that has the knowledge to be subject to oral cross-examination in regard to the responses. Section 3010.321 applies as if the officer of the institution were an individual witness.

(i) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately the number of witnesses to be heard upon any issue, the examination by any party to specific issues, and the cross-examination of a witness to that required for a full and true disclosure of the facts necessary for the disposition of the proceeding and to avoid irrelevant, immaterial, or unduly repetitious testimony.

(j) *Motions during hearing.* After a hearing has commenced, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall specify the ruling or relief sought, and state the grounds therefor and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any party shall have the opportunity to

answer or object to such motions at the time and in the manner directed by the presiding officer.

(k) *Rulings on motions.* The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon affirmatively by the presiding officer except as a part of a presiding officer's intermediate decision. This section shall not preclude a presiding officer, within the presiding officer's discretion, from referring any motion made in hearing to the Commission for ultimate determination.

(l) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a material substantive error in the transcription made at the hearing. Any request to correct a transcript shall be by motion filed no later than seven days after the transcript, or notice of the availability of a confidential transcript, is posted to the Commission's website. Corrections or changes to actual testimony shall not be allowed.

§ 3010.322 Evidence—general.

(a) *Form and admissibility.* In all hearings, relevant and material evidence which is not unduly repetitious or cumulative shall be admissible. Witnesses whose testimony

is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) *Documentary material*—(1) *General*. Documents and detailed data and information shall be presented as exhibits. Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony. Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference shall provide the location of that information within the library reference with sufficient specificity to permit ready reference, such as the page and line, or the file and the worksheet or spreadsheet page or cell. Where relevant and material matter offered in evidence is embraced in a document containing other matter not material or relevant or not intended to be put in evidence, the party offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or

presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the party offering the same to the other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

(2) *Status of library references.* Designation of material as a library reference and acceptance in the Commission's docket section do not confer evidentiary status. The evidentiary status of the material is governed by § 3010.321(g)(3).

(c) *Commission's files.* Except as otherwise provided in paragraph (e) of this section, any matter contained in a report or other document on file with the Commission may be offered in evidence by specifying the report, document, or other file containing the matter so offered and the report or other document need not be produced or marked for identification.

(d) *Public document items.* Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economic statistical data issued by any of the Executive Departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) and such document (or part thereof) has been shown by the offeror thereof to be reasonably available to the public, such document need not be produced or physically marked for identification, but may be offered in evidence as a public document item by clearly identifying the document and the relevant parts thereof.

(e) *Designation of evidence from other Commission dockets.* (1) Parties may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number.

(2) In proceedings to consider the appeal of a Postal Service determination to close or consolidate a post office conducted pursuant to part 3021 of this chapter, these requests must be made at least six days before the date for filing the party's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within three days. Oppositions to requests for counter-designations are due within two days.

(3) In all other proceedings subject to this section, these requests must, in the absence of extraordinary circumstances, be made at least 28 days before the date for filing the party's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days.

(4) In all proceedings subject to this section, the moving party must submit two copies of the identified material to the Secretary at the time requests for designations and counter-designations are made.

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a

documentary character shall, so far as practicable, conform to the requirements of § 3010.124(a) and (b).

(g) *Copies to parties.* Except as otherwise provided in these rules, copies of exhibits shall be furnished to the presiding officer and to the parties or counsel during a hearing, unless the presiding officer otherwise directs.

(h) *Reception and ruling.* The presiding officer shall rule on the admissibility of evidence and otherwise control the reception of evidence so as to confine it to the issues in the proceeding.

(i) *Offers of proof.* Any offer of proof made in connection with any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form, or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(j) *Official notice of facts.* Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the knowledge of the Commission as an expert body. Any party shall, on timely request, be afforded an opportunity to show the contrary.

§3010.323 Evidence—introduction and reliance upon studies and analyses.

(a) *Statistical studies.* All statistical studies offered in evidence in hearing proceedings or relied upon as support for other evidence shall include a comprehensive description of the assumptions made, the study plan utilized, the procedures

undertaken, and references from the academic literature supporting the procedures undertaken. Machine-readable data files, program files, workbooks, and all other necessary materials to enable independent replication of the results or program output if requested by the Commission or parties shall be provided in the form of a compact disk or other media or method approved in advance by the Secretary. Where a computer analysis is employed to obtain the result of a statistical study, all of the submissions required by paragraph (b) of this section shall be furnished, upon request. In addition, for each of the following types of statistical studies, the following information should be provided:

(1) *Market research.* The following information shall be provided:

(i) A clear and detailed description of the sample, observational, and data preparation designs, including definitions of the target population, sampling frame, units of analysis, questionnaires or data collection instruments, survey variables, and the possible values;

(ii) An explanation of methodology for the production and analysis of the major survey estimates and associated sampling errors;

(iii) A presentation of response, coverage and editing rates, and any other potential sources of error associated with the survey's quality assurance procedures;

(iv) A discussion of data comparability over time and with other data sources;

(v) A complete description and assessment of the effects of all editing and imputation employed;

(vi) Identification of all applicable statistical models considered and the reasons the model based procedures and/or models were selected over other models or procedures, when model-based procedures are employed; and

(vii) An explanation of all statistical tests performed and an appropriate set of summary statistics summarizing the results of each test.

(2) *Other sample surveys.* The following information shall be provided:

(i) A clear description of the survey design, including the definition of the universe under study, the sampling frame and units, and the validity and confidence limits that can be placed on major estimates; and

(ii) An explanation of the method of selecting the sample and the characteristics measured or counted.

(3) *Experimental analyses.* The following information shall be provided:

(i) A complete description of the experimental design, including a specification of the controlled conditions and how the controls were realized; and

(ii) A complete description of the methods of making observations and the adjustments, if any, to observed data.

(4) *Econometric studies.* The following information shall be provided:

(i) A presentation of the economic theory and assumptions underlying the study;

(ii) A complete description of the econometric model(s) and the reasons for each major assumption and specification;

(iii) The definition of the variables selected and the justification for their selection;

(iv) For any alternative model whose computed econometric results influenced the choice of the preferred model, a statement of the reasons for rejecting that alternative, an identification of any differences between that alternative and the preferred model with respect to variable definitions, equation forms, data, or estimation methods, and, upon request, the computed econometric results for that alternative;

(v) A reference to a detailed description in a text, manual, or technical journal for every econometric technique used in the estimation process and the reasons for selecting the technique, or, in the alternative, a description and analysis of the technique that is sufficient for a technical evaluation;

(vi) Summary descriptions and source citations for all input data and, upon request, a complete listing of the data. Complete descriptions of any alterations, adjustments, or transformations made to the data as received from the original sources, and the reasons for making the alterations, adjustments, or transformations;

(vii) A complete report of the econometric results including, where applicable coefficient estimates, standard errors and t-values, goodness-of-fit statistics, other appropriate test statistics, the variance/covariance matrix of the estimates, and computed residuals for results computed from samples composed of fewer than 250 observations, and, upon request, other computed residuals; and

(viii) Descriptions of all statistical tests of hypotheses and the results of such tests.

(5) *All other studies involving statistical methodology.* The following information shall be provided:

(i) The formula used for statistical estimates;

(ii) The standard errors of each component estimated;

(iii) Test statistics and the description of statistical tests and all related computations, and final results; and

(iv) Summary descriptions of input data, and upon request the actual input data shall be made available at the offices of the Commission.

(b) *Computer analyses.* (1) In the case of computer studies or analyses which 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 listing of the input and output data and source codes (or a showing pursuant to paragraph (b)(3) of this section as to why such codes cannot be so furnished) and such description shall be furnished in all cases. For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon request of a party, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing. The following information shall be provided:

(i) For all input data, designations of all sources of such data, and explanations of any modifications to such data made for use in the program;

(ii) Definitions of all input and output variables or sets of variables;

(iii) A description of input and output data file organization;

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

(v) All pertinent operating system and programming language manuals;

(vi) If the requested program is user interactive, a representative sample run, together with any explanation necessary to illustrate the response sequence;

(vii) 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; and

(viii) Computer simulation models offered in evidence or relied upon as support for other evidence, shall be bound by all applicable provisions of this paragraph (b) and the separate requirements of paragraph (a) of this section, to the extent that portions of the simulation model utilize or rely upon such studies. Information that compares the simulation model output results to the actual phenomena being modelled, using data other than those from which the model was developed, shall be separately identified and submitted as evidence supporting the test and validation of the simulation model. Separate statements concerning the model limitations, including limiting model design assumptions and range of data input utilized in model design, shall be provided. Where test and validation of the entire simulation model are not possible, test and validation information shall be provided for disaggregate portions of the model. If disaggregate

testing and validation are not possible, separate statements to that effect and statements regarding operational experts' review of model validity shall be provided.

(2) Upon timely and otherwise proper request of a party, or *sua sponte*, the Commission or the presiding officer may rule that matters other than those listed in paragraphs (b)(1)(i) through (viii) of this section are necessary to establish the foundation for reception of the evidence concerned and must be furnished.

(3) When the requestor is other than the Commission or the presiding officer, the cost of producing the material required in paragraph (b)(1)(iv), (vi), and (vii) of this section, shall be borne by the requesting party unless otherwise ordered, for good cause shown by the requestor. When the Commission or the presiding officer is the requestor, it may assume or equitably allocate such costs for good cause shown by the requester.

(4) If the recipient of a request for materials pursuant to this paragraph (b) asserts that compliance with the request would conflict with patent, copyright, trade secret or contract rights applicable to the requested material, the recipient shall immediately notify the requestor and the presiding officer. If valid, the presiding officer shall devise means of accommodating such rights. Such means may include protective orders, including access under protective conditions to the computer facilities of the recipient of a request, making material available for inspection, compensation, or other procedures, according to the nature of the right affected by compliance with this paragraph (b). If the presiding officer determines that compensation is necessary to accommodate the affected right, the cost of compensation shall be borne in the same

manner that paragraph (b)(3) of this section prescribes for bearing the costs referenced there. If such right cannot be accommodated by reasonable compensation, or by protective orders or other procedures, and, as a result, materials required by this paragraph (b) of this section cannot be provided, the presiding officer shall determine, in the presiding officer's discretion, whether evidence that relies upon the materials not provided shall be admissible or afforded limited weight.

(c) *Other studies and analyses.* In the case of all studies and analyses offered in evidence in hearing proceedings or relied upon as support for other evidence, other than the kinds described in paragraphs (a) and (b) of this section, there shall be a clear statement of the study plan, all relevant assumptions and a description of the techniques of data collection, estimation and/or testing. In addition, there shall be a clear statement of the facts and judgments upon which conclusions are based, together with an indication of the alternative courses of action considered and the steps taken to ensure the validity, accuracy, and reliability of the evidence. Tabulations of input data, workbooks, and all other materials necessary to replicate results shall be made available upon request at the offices of the Commission.

(d) *Expedition.* The party who offers studies or analyses in evidence shall expedite responses to requests made pursuant to this section for data or other information. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3010.127 no later than 3 days after a request is made under § 3010.322(e)(2) or no later than 14 days after a request is made under § 3010.322(e)(3).

§ 3010.324 In camera orders.

(a) *Definition.* Except as hereinafter provided, documents and testimony made subject to *in camera* orders are not made a part of the public record, but are kept confidential, and only authorized parties, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The right of the presiding officer, the Commission, and reviewing courts to disclose *in camera* data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* (1) Presiding officers shall have authority, but only in those unusual and exceptional circumstances when good cause is found on the record, to order documents or oral testimony offered in evidence whether admitted or rejected, to be placed *in camera.* The order shall specify the date on which *in camera* treatment expires and shall include:

(i) A description of the documents and testimony;

(ii) A full statement of the reasons for granting *in camera* treatment; and

(iii) A full statement of the reasons for the date on which *in camera* treatment expires.

(2) Any party desiring, for the preparation and presentation of the case, to disclose *in camera* documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the presiding officer setting forth the justification therefor. The presiding officer, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing

unnecessary disclosure of information. *In camera* documents and the transcript of testimony subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, bearing the title and docket number of the proceeding, the notation *"In Camera* Record under § 3010.323," and the date on which *in camera* treatment expires.

(c) *Release of in camera information. In camera* documents and testimony shall constitute a part of the confidential records of the Commission. However, the Commission, on its own motion or pursuant to a request, may make *in camera* documents and testimony available for inspection, copying, or use by any other governmental agency. The Commission shall, in such circumstances, give reasonable notice of the impending disclosure to the affected party. However, such notice may be waived in extraordinary circumstances for good cause.

(d) *Briefing of in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of *in camera* documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of *in camera* data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "confidential," which shall be placed *in camera* and become a part of the *in camera* record.

§ 3010.325 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition when authorized by the Commission or the presiding officer on application of any party before the hearing is closed. An authorization to take the deposition of a witness will be issued only if:

(1) The person whose deposition is to be taken would be unavailable at the hearing;

(2) The deposition is deemed necessary to perpetuate the testimony of the witness; or

(3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue delay or an undue burden to other parties.

(b) *Application.* An application for authorization to take testimony by deposition shall be filed with the Commission or the presiding officer and shall state:

(1) The name, identification, and post office address of the witness;

(2) The subject matter of the testimony.

(3) The time and place of taking the deposition;

(4) The name, identification, and post office address of the officer before whom the deposition is to be taken; and

(5) The reasons why the testimony of such witness should be taken by deposition.

(c) *Authorization.* If the application so warrants, the Commission or the presiding officer will issue and serve or cause to be served on the parties within a

reasonable time in advance of the time fixed for taking testimony, an authorization for the taking of such testimony by deposition. Such authorization shall name the witness, the time, place, and officer before whom the deposition shall be taken, and shall specify the number of copies of the deposition to be submitted to the Commission. The authorization may include such terms and conditions as the Commission or the presiding officer deems fair and reasonable.

(d) *Qualifications of officer before whom taken.* Such deposition may be taken before a presiding officer or other authorized representative of the Commission, or any officer, not being counsel or attorney for any party or having an interest in the proceeding, authorized to administer oaths by the laws of the United States or of the place where the deposition is to be taken.

(e) *Oath and reduction to writing.* The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3010.124(a), signed by the witness, and certified in the usual form by the officer. The original of the deposition, together with the number of copies required by the authorization to be made by such officer, shall be forwarded by the officer to the Secretary by personal delivery or registered mail. Upon receipt, the Secretary shall hold the original for use in the hearing upon request by any party and shall make copies available for public inspection.

(f) *Scope and conduct of examination.* Unless otherwise directed in the authorization, the witness may be questioned regarding any matter which is relevant to the issues involved in the proceeding. Parties shall have the right for cross-examination and objection. In lieu of participation in the oral examination, parties may transmit written interrogatories to the officer who shall propound them to the witness.

(g) *Objections.* The officer before whom the deposition is taken shall not have the power to rule upon procedural matters or the competency, materiality, or relevancy of questions. Procedural objections or objections to questions of evidence shall be stated briefly and recorded in the deposition without argument. Objections not stated before the officer shall be deemed waived.

(h) *When a part of the record.* No portion of a deposition shall constitute a part of the record in the proceeding unless received in evidence by the presiding officer. If only a portion of the deposition is offered in evidence by a party, any other party may require the party to introduce all of it which is relevant to the part introduced, and any party may offer in evidence any other portions.

(i) *Fees.* Witnesses whose depositions are taken and the officer taking the same shall be entitled to the same fees as are paid for like services in the District Courts of the United States to be paid directly by the party or parties on whose application the deposition was taken.

§ 3010.330 Briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs,

giving due regard to the timely issuance of the decision. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission may direct each party to file its brief simultaneously with the filing of briefs by other parties. In cases where, because of the nature of the issues and the record or the limited number of parties involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the parties may be directed to file more than one brief and at different times rather than a single brief filed simultaneously with briefs filed by other parties. The Commission or presiding officer may also order the filing of briefs during the course of the proceeding.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible, within any page limitation specified by the Commission or the presiding officer, 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;

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

(3) A clear, concise, and definitive statement of the position of the filing party as to the matter before the Commission and the decision to be issued;

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

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Incorporation by references.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading, or document.

(d) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(e) *Filing and service.* Briefs shall be filed with the Commission and served on all parties as required pursuant to subpart B of this part.

§ 3010.331 Proposed findings and conclusions.

The Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief statement of the supporting reasons for each proposed finding and conclusion.

§ 3010.332 Oral argument before the presiding officer.

In any case in which the presiding officer is to issue an intermediate decision, such officer may permit the presentation of oral argument when, in the presiding officer's opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants hearing such argument. The presiding officer shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument is to be

presented, the order in which the presentations shall be made, and the amount of time allowed each party. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

§ 3010.333 Oral argument before the Commission.

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any party or on its own initiative, may order oral argument when, in the Commission's discretion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and public interest warrants such argument.

(b) *How requested.* Any party in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion. In a proceeding before the Commission on exceptions to an intermediate decision, such motion shall be filed no later than the date for the filing of briefs on exceptions.

(c) *Notice of oral argument.* The Commission shall rule on requests for oral argument, and if argument is allowed, the Commission shall notify the parties of the time and place set for argument, the amount of time allowed each party, and the issue or issues on which oral argument is to be heard. Unless otherwise ordered by the Commission, oral argument shall be limited to matters properly raised on the record and in the briefs before the Commission.

(d) *Use of documents at oral argument.* Charts, graphs, maps, tables, and other written material may be presented to the Commission at oral argument only if limited to facts in the record of the case being argued and if copies of such documents are filed

with the Secretary and served on all parties at least seven days in advance of the argument. Enlargements of such charts, graphs, maps, and tables may be used at the argument provided copies are filed and served as required by this paragraph.

§ 3010.334 Commission decisions.

(a) At the conclusion of a proceeding on the record with the opportunity for a hearing, the Commission shall issue a final decision which either:

(1) Adopts an intermediate decision prepared by a presiding officer; or

(2) Rules upon the matters that are before the Commission, or provides explanation for why such rulings are not being provided.

(b) Commission decisions shall be based on the evidence entered into the record, and consider the arguments filed on brief. Argument provided in comments may further inform the Commission's decision, but have no evidentiary standing and are not required to be addressed in the final decision.

(c) An intermediate decision may be adopted by the Commission in whole or in part. When an intermediate decision is adopted in part, the Commission shall explain its decisions regarding both what is and is not adopted.

(d) When exceptions, or objections to exceptions, to an intermediate decision are filed pursuant to § 3010.336 by any party to the proceeding, the Commission shall consider and rule upon such exceptions, or objections to exceptions in its final decision.

(e) Commission decisions shall be filed in the docket and served on all parties. Commission decisions shall be part of the record of the proceeding.

§ 3010.335 Intermediate decisions.

(a) An intermediate decision shall be issued by the presiding officer which rules upon the matters that are before the Commission, or provides explanation for why such rulings are not being provided, in a proceeding on the record with the opportunity for a hearing when:

(1) The Commission is not sitting *en banc*; or

(2) The presiding office has been directed to issue an intermediate decision by Commission notice or order.

(b) Intermediate decisions shall be based on the evidence entered into the record, and shall consider the arguments filed on brief. Arguments provided in comments may further inform the presiding officer's decision, but are not required to be addressed in the intermediate decision.

(c) Intermediate decisions shall be filed in the docket and served on all parties. Intermediate decisions shall be part of the record of the proceeding.

(d) Intermediate decisions are subject to review by the Commission and subject to challenge by parties to the proceeding through the filing of exceptions pursuant to § 3010.336. After review and consideration of the exceptions filed, intermediate decisions may be adopted by the Commission, in whole or in part, as part of the final decision in the proceeding.

(e)(1) The Commission may, at any time, direct the omission of an intermediate decision and the certification of the record for the Commission's consideration sitting *en banc.* Parties to a proceeding may, by motion, request the omission of an intermediate

decision and the certification of the record for the Commission's consideration sitting *en banc.* Motions shall specify:

(i) The concurrence of other parties; and

(ii) Whether opportunity for filing briefs or presenting oral argument to the Commission is desired or waived.

(2) Failure of any party to object to such request shall constitute a waiver of any objections. Motions shall be filed no later than the deadline for the filing of briefs. In either instance, the decision to omit an intermediate decision shall be based upon the consideration of the novelty of the matters before the Commission, and the timely and efficient operation of the docket.

§ 3010.336 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any party in a proceeding may file exceptions to any intermediate decision by first filing a notice of intent to file a brief on exceptions with the Commission within seven days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. The brief on exceptions shall be filed with the Commission within 30 days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. Any party to a proceeding may file a response to briefs on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the Commission. No further response will be entertained unless the Commission, upon motion for good cause shown or on its own initiative, so orders.

(b) *Filing and contents.* Briefs on exceptions and briefs opposing exceptions shall be filed in accordance with § 3010.330. In briefs on exceptions, the discussion of evidence, reasons and authorities shall be specifically directed to the findings, conclusions and recommendations in the intermediate decision to which exception is taken. Briefs on exceptions should not include a discussion of evidence and authorities on matters and issues to which no exception to the intermediate decision is taken. Briefs on exceptions and briefs opposing exceptions need not contain a statement of the case to the extent that it was correctly stated in either the intermediate decision or the brief on exceptions of another party to which reference is made.

(c) *Failure to except results in waiver.* Any party who fails to except or object to any part of an intermediate decision in its brief on exceptions may not thereafter raise such exceptions or objections which shall be deemed to have been waived.

PART 3011—NON-PUBLIC MATERIALS PROVIDED TO THE COMMISSION

44. The authority for newly redesignated part 3011 continues to read as follows:

Authority: 39 U.S.C. 503, 504.

45. Amend newly redesignated § 3011.101 by revising paragraph (a) to read as follows:

§ 3011.101 Definitions.

(a) *Non-public materials* means any documents or things that are provided to the Commission and identified as containing non-public information. The Postal Service may claim that information that would be exempt from disclosure pursuant to 39 U.S.C.

410(c), 504(g), 3652(f), or 3654(f) is non-public information. Any person other than the Postal Service with a proprietary interest in the materials may claim that information that would be protectable under Federal Rule of Civil Procedure 26(c) is non-public information. Any person may claim that information that is exempt from public disclosure under 5 U.S.C. 552(b) is non-public information. Non-public materials cease to be non-public if the status has expired or has been terminated by the Commission pursuant to this part. Except as provided by § 3011.205, non-public materials cease to be non-public if the submitter publicly discloses the materials with the consent of each affected person with a propriety interest in the materials (if applicable). The cessation of non-public status applies to the particular document or thing and the particular information contained therein (in whole or in part, as applicable).

* * * * *

46. Amend newly redesignated § 3011.102 by revising paragraph (a) to read as follows:

§ 3011.102 Treatment of non-public materials.

(a) Except as described in part 3011 or part 3006 of this chapter, the Commission will neither disclose nor grant access to any non-public materials (and the non-public information contained therein).

* * * * *

47. Amend newly redesignated § 3011.103 by revising paragraphs (a) and (c) to read as follows:

§ 3011.103 Commission action to determine non-public treatment.

(a) Information requests as described in § 3010.170 of this chapter, preliminary notices, or interim orders may be issued to help the Commission determine the non-public treatment, if any, to be accorded to the materials claimed by any person to be non-public.

* * * * *

(c) Upon its own motion, the Commission may issue notice of its preliminary determination concerning the appropriate degree of protection, if any, to be accorded to materials claimed by any person to be non-public. A response is due within seven calendar days of issuance of the preliminary determination, unless the Commission otherwise provides. No reply to a response shall be filed, unless the Commission otherwise provides. Pending the Commission's resolution of the preliminary determination, information designated as non-public will be accorded non-public treatment. The Commission will enter an order determining what non-public treatment, if any, will be accorded to the materials after the response period described in this paragraph has expired. The determination of the Commission shall follow the applicable standard described in § 3011.104.

48. Amend newly redesignated § 3011.200 by revising paragraph (a) to read as follows:

§ 3011.200 General requirements for submitting non-public materials and seeking non-public treatment.

(a) Whenever providing non-public materials to the Commission, the submitter shall concomitantly provide the following: An application for non-public treatment that

clearly identifies all non-public materials and describes the circumstances causing them to be submitted to the Commission in accordance with § 3011.201, a redacted (public) version of the non-public materials in accordance with § 3011.202, and an unredacted (sealed) version of the non-public materials in accordance with § 3011.203.

* * * * *

49. Amend newly redesignated § 3011.203 by revising paragraph (b) to read as follows:

§ 3011.203 Unredacted version of the non-public materials.

* * * * *

(b) The Filing Online method that results in posting a document that is available to the public, which is accessible through the Commission's website (*http://www.prc.gov*) described under part 3010, subpart B of this chapter may not be used to submit the unredacted version of non-public materials.

* * * * *

50. Amend newly redesignated § 3011.205 by revising paragraphs (a) through (c) introductory text and (c)(3) to read as follows:

§ 3011.205 Non-public materials inadvertently submitted publicly.

(a) Any filer or person with a proprietary interest that discovers the inclusion of materials that could have been subject to a claim for non-public treatment are contained within a public filing made in accordance with subpart B to part 3010 of this chapter shall telephone Dockets personnel immediately to request that the non-public materials be removed from the publicly available materials. Upon receipt of that telephone

request, Dockets personnel will remove from the publicly available materials those materials for which non-public treatment are being requested until the end of the next business day in order to provide the filer or person with a proprietary interest an opportunity to file an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any filer makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this filer as necessary to ensure secure filing of non-public materials.

(b) Any submitter or person with a proprietary interest that discovers the inclusion of materials that could have been subject to a claim for non-public treatment are contained within a publicly available submission made to the Commission in circumstances other than through a public filing made in accordance with subpart B to part 3010 of this chapter shall telephone the Commission personnel to whom the submission was directed immediately to request that the non-public materials be removed from the publicly available materials. Upon receipt of that telephone request, the Commission personnel will remove from the publicly available materials those materials for which non-public treatment are being requested until the end of the next business day in order to provide the submitter or person with a proprietary interest an opportunity to submit an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any submitter makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this submitter as necessary to ensure secure submission of non-public materials.

(c) An application for non-public treatment made under paragraph (a) or (b) of this section shall also clearly indicate if any special relief is sought. Examples of special relief include a request that any person not granted access to the materials under § 3011.300 or § 3011.301 perform any or all of the following actions:

* * * * *

(3) Take reasonable steps to retrieve any materials, and the information contained therein, that are claimed to be non-public and were disclosed to any person not granted access to the materials under § 3011.300 or § 3011.301 prior to the submission of application for non-public treatment.

51. Amend newly redesignated § 3011.300 by revising paragraphs (a) and (c) to read as follows:

§ 3011.300 Eligibility for access to non-public materials.

(a) The following persons may access non-public materials without an order issued pursuant to § 3011.301(e):

* * * * *

(c) Any person not described in paragraph (a) or (b) of this section may request access to non-public materials as described in § 3011.301, for the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings) or aiding the initiation of a proceeding before the Commission.

52. Amend newly redesignated § 3011.301 by revising paragraphs (b)(4), (c), and (e) to read as follows:

§ 3011.301 Motion for access to non-public materials.

* * * * *

(b) * * *

(4) Specify if actual notice of the motion has been provided to each person identified in the application pursuant to § 3011.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person;

* * * * *

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3011.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within three business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within seven calendar days of filing the motion, unless the Commission otherwise provides.

* * * * *

(e) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that actual notice has been given to each person identified pursuant to § 3011.201(b)(2) and that the movant is authorized to represent

that the motion is uncontested. In all other circumstances, the Commission will enter an order determining if access will be granted after the response period described in paragraph (c) of this section has expired. If no opposition to the motion has been filed by the submitter or any person other than the submitter with a proprietary interest before the expiration of the response period described in paragraph (c) of this section, the Commission may issue an order granting access, subject to the agreed protective conditions. In determining whether to grant access to non-public materials, the Commission shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c). If access is granted, access shall commence following the issuance of the appropriate order setting forth all protective conditions.

53. Revise newly redesignated § 3011.302 to read as follows:

§ 3011.302 Non-dissemination, use, and care of non-public materials.

(a) No person who has been granted access to non-public materials in accordance with § 3011.300 or § 3011.301 may disseminate the materials or the information contained therein, in whole or in part, to any person not allowed access pursuant to § 3011.300 or § 3011.301.

(b) Persons with access to non-public materials under § 3011.300 or § 3011.301 shall use non-public materials only for the purposes for which the non-public materials are supplied.

(c) Persons with access to non-public materials under § 3011.300 or § 3011.301 shall protect the non-public materials from any person not granted access under §

3011.300 or § 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

54. Amend newly redesignated § 3011.303 by revising paragraph (a) introductory text to read as follows:

§ 3011.303 Sanctions for violating protective conditions.

(a) If a person who has been granted access to non-public materials under § 3011.301 violates the terms of the order granting access, the Commission may impose sanctions on the person who violated the order, the persons or entities on whose behalf the person was acting, or both. The sanctions may include any or all of the following:

* * * * *

55. Amend newly redesignated § 3011.304 by revising paragraphs (a)(1) and (b) to read as follows:

§ 3011.304 Termination and amendment of access to non-public materials.

(a) * * *

(1) Except as provided in paragraph (b) of this section, access to non-public materials granted under § 3011.301 terminates either when the Commission issues the final order or report concluding the proceeding(s) in which the participant who filed the motion seeking access represented that the non-public materials would be used, or when the person granted access withdraws or is otherwise no longer involved in the

proceeding(s), whichever occurs first. For purposes of this paragraph, an order or report is not considered final until after the possibility of judicial review expires (including the completion of any Commission response to judicial review, if applicable).

* * * * *

(b) *Amendment of access.* Any person may file a motion seeking to amend any protective conditions related to access of non-public materials, including extending the timeframe for which access is granted or expanding the persons to whom access is to be granted, in accordance with § 3011.301.

56. Amend newly redesignated § 3011.305 by revising paragraph (a) to read as follows:

§ 3011.305 Producing non-public materials in non-Commission proceedings.

(a) If a court or other administrative agency issues a subpoena or orders production of non-public materials that a person obtained under protective conditions ordered by the Commission, the target of the subpoena or order shall, within two days of receipt of the subpoena or order, notify each person identified pursuant to § 3011.201(b)(2) of the pendency of the subpoena or order to allow time to object to that production or to seek a protective order or other relief.

* * * * *

57. Revise the newly redesignated appendix A to subpart C of part 3011 to read as follows:

Appendix A to Subpart C of Part 3011—Template Forms

Protective Conditions Statement

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter "these materials") in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed). _____ (name of participant filing motion) (hereinafter "the movant") requests access to these materials related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter "this matter").

The movant has provided to each person seeking access to these materials:

- this Protective Conditions Statement;
- the Certification to Comply with Protective Conditions;
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission's rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3011 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing /s/ before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

1. In accordance with 39 CFR 3011.303, the Commission may impose sanctions on any person who violates these protective conditions, the persons or entities on whose behalf the person was acting, or both.

2. In accordance with 39 CFR 3011.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials shall be granted access to these materials. Involved in competitive decision-making includes consulting on marketing or advertising strategies, pricing, product research and development, product design, or the competitive structuring and composition of bids, offers or proposals. It does not include rendering legal advice or performing other services that are not directly in furtherance of activities in competition with an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3011.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3011.300(a) (Commission and court personnel) or 3011.301 (other persons granted access by Commission order) except in compliance with:

a. Specific Commission order,

b. Subpart B of 39 CFR 3011 (procedure for filing these materials in Commission proceedings), or

c. 39 CFR 3011.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3011.302(b) and (c), all persons granted access to these materials:

a. must use these materials only related to this matter; and

b. must protect these materials from any person not authorized to obtain access under 39 CFR 3011.300 or 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials as those persons, in the ordinary course of business, would be expected to use to protect their own proprietary material or trade secrets and other internal, confidential, commercially sensitive, and privileged information.

5. The duties of each person granted access to these materials apply to all:

a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;

b. Excerpts from, parts of, or the entirety of these materials;

c. Written materials that quote or contain these materials; and

d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as “Confidential” and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3011.304(a)(1), each person (and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3011.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.

Respectfully submitted,

(signature of representative) /s/

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(e-mail address of representative)

(choose the appropriate response) Attorney / Non-Attorney Representative

for

(name of the movant)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(5).

Certification to Comply with Protective Conditions

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter "these materials") filed in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

_____ (name of participant filing motion) requests that the Commission grant me access to these materials to use related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter "this matter").

I certify that:

- I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;
- I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and
- I will comply with all protective conditions established by the Commission.

(signature of individual receiving access) /s/

(print name of individual receiving access) _____

_____

(title of individual receiving access)

(employer of individual receiving access)

(name of the participant filing the motion)

(date)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(6).

Certification of Compliance with Protective Conditions and Termination of Access

_____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter "these materials") filed in Commission Docket No(s). _____ (designation of docket(s) in which these materials were filed).

The Commission granted the request by _____ (name of participant filing notice) to grant me access to these materials to use related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter "this matter").

I certify that:

- I accessed, maintained, and used these materials in accordance with the protective conditions established by the Commission;
- Effective _____ (date), my access to these materials was terminated; and
- Effective _____ (date), I no longer have any of these materials or any duplicates.

(signature of individual granted access)

/s/

_____

(print name of individual granted access)

(title of individual granted access)

(employer of individual granted access)

(name of participant filing notice)

(date)

You may delete the instructional text to complete this form. This form should be filed as an attachment to the notice of termination of access to non-public materials under 39 CFR 3011.304(a)(2).

58. Amend newly redesignated § 3011.400 by revising paragraphs (a) through (c) and (f) to read as follows:

§ 3011.400 Motion for disclosure of non-public materials.

(a) *Application of this section.* This section applies to non-public materials during the initial duration of non-public status, up to ten years, and any non-public materials for which the Commission enters an order extending the duration of that status under § 3011.401(a).

(b) *Motion for disclosure of non-public materials.* Any person may file a motion with the Commission requesting that non-public materials be publicly disclosed. Any part of the motion revealing non-public information shall be filed in accordance with subpart B of this part. The motion shall justify why the non-public materials should be made public and specifically address any pertinent rationale(s) provided in the application for non-public treatment. The motion shall specify whether actual notice of the motion has been provided to each person identified in the application pursuant to § 3011.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person. The motion shall be filed in the docket in which the materials were filed or in

the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3011.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within three business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within seven calendar days of filing the motion, unless the Commission otherwise provides.

* * * * *

(f) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that actual notice has been given to each person identified pursuant to § 3011.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining what non-public treatment, if any, will be accorded to the materials after the response period described in paragraph (c) of this section has expired. The determination of the Commission shall follow the applicable standard described in § 3011.104.

59. Amend newly redesignated § 3011.401 by revising paragraphs (c) and (f) to read as follows:

§ 3011.401 Materials for which non-public treatment has expired.

* * * * *

(c) *Response.* A response to the request is due within seven calendar days of the filing of the request, unless the Commission otherwise provides. Any response opposing the request shall seek an extension of non-public status by including an application for non-public treatment compliant with § 3007.201 of this chapter. This extension application shall also include specific facts in support of any assertion that commercial injury is likely to occur if the information contained in the materials is publicly disclosed despite the passage of ten years or the timeframe established by Commission order.

* * * * *

(f) *Ruling.* The Commission may grant the request at any time after the response period described in paragraph (c) of this section has expired. The Commission may deny the request and enter an order extending the duration of non-public status at any time after the reply period described in paragraph (d) of this section has expired. The determination of the Commission shall follow the applicable standard described in § 3011.104.

60. Revise the newly redesignated appendix A to subpart D of part 3011 to read as follows:

Appendix A to Subpart D of Part 3011—Template Forms

Before the

POSTAL REGULATORY COMMISSION

WASHINGTON, DC 20268-0001

(Caption)_____ Docket No. _____-____

_____

REQUEST FOR MATERIALS

FOR WHICH NON-PUBLIC TREATMENT HAS EXPIRED

_____ __, 20__ (date)

On _____ (date non-public materials were initially submitted), non-public treatment was requested for the materials identified as _____ (non-confidential description of non-public materials) (hereinafter “these materials”). Because the non-public treatment of these materials has expired, I request that these materials be disclosed to the public.

Respectfully submitted,

(signature of representative) /s/

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(e-mail address of representative)

(choose the appropriate response) Attorney / Non-Attorney Representative

for

(name of the requestor)

You may delete the instructional text to complete this form and file a request under 39 CFR 3011.401(b).

PART 3012—EX PARTE COMMUNICATIONS

61. The authority for newly redesignated part 3012 continues to read as follows:

Authority: 39 U.S.C. 404(d)(5); 503; 504; 3661(c); 3662.

62. Amend newly redesignated § 3012.1 by revising paragraph (c) to read as follows:

§ 3012.1 Applicability.

* * * * *

(c) The rules in this section are not applicable to international mail (IM) proceedings undertaken pursuant to part 3025 of this chapter.

* * * * *

63. Amend newly redesignated § 3012.2 by revising paragraph (b)(3) to read as follows:

§ 3012.2 Definition of ex parte communications.

* * * * *

(b) * * *

(3) Communications during the course of off-the-record technical conferences associated with a matter before the Commission, or the pre-filing conference for nature of service cases required by § 3020.111 of this chapter, where advance public notice of the event is provided indicating the matter to be discussed, and the event is open to all persons participating in the matter before the Commission;

* * * * *

64. Amend newly redesignated § 3012.4 by revising paragraph (d)(2) to read as follows:

§ 3012.4 Definitions of persons subject to ex parte communication rules.

* * * * *

(d) * * *

(2) Commission personnel not participating in the decisional process owing to the prohibitions of § 3010.144 of this chapter regarding no participation by investigative or prosecuting officers;

* * * * *

65. Amend newly redesignated § 3012.7 by revising paragraphs (b) and (c) to read as follows:

§ 3012.7 Penalty for violation of ex parte communication rules.

* * * * *

(b) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of § 3012.5(a), the Commission or presiding officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why the participant's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) The Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, consider a

violation of § 3012.5(a) sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

PART 3013—PROCEDURES FOR COMPELLING PRODUCTION OF INFORMATION BY THE POSTAL SERVICE

66. The authority for newly redesignated part 3013 continues to read as follows:

Authority: 39 U.S.C. 503; 504; 3651(c); 3652(d).

67. Amend newly redesignated § 3013.1 by revising paragraph (b) to read as follows:

§ 3013.1 Scope and applicability of other parts of this title.

* * * * *

(b) Subparts A, B, and D to Part 3010 of this chapter apply unless otherwise stated in this part or otherwise ordered by the Commission.

68. Amend newly redesignated § 3013.11 by revising paragraphs (d)(4) and (e) to read as follows:

§ 3013.11 General rule—subpoenas.

* * * * *

(d) * * *

(4) That a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way as provided in part 3011 of this chapter; and

* * * * *

(e) Subpoenas shall be served in the manner provided by § 3013.14.

69. Amend newly redesignated § 3013.12 by revising paragraphs (a) and (d) to read as follows:

§ 3013.12 Subpoenas issued without receipt of a third-party request.

(a) A subpoena duly authorized by a majority of the Commissioners then holding office may be issued by the Chairman, a designated Commissioner, or an administrative law judge under § 3013.11 without a request having been made by a third party under § 3013.13.

* * * * *

(d) Subpoenas issued under this section shall be issued subject to the right of the Postal Service and other interested persons to file a motion pursuant to § 3010.160(a) of this chapter to quash the subpoena, to limit the scope of the subpoena, or to condition the subpoena as provided in § 3013.11(d). Such motion shall include any objections to the subpoena that are personal to the covered person responsible for providing the information being sought. Motions alleging undue burden or cost must state with particularity the basis for such claims. Answers to the motion may be filed by any interested person pursuant to § 3010.160(b) of this chapter. Pending the resolution of any such motion, the covered person shall secure and maintain the requested information.

70. Amend newly redesignated § 3013.13 by revising paragraphs (a) introductory text, (a)(2) through (4), (b) introductory text, and (b)(1) and (2) to read as follows:

§ 3013.13 Subpoenas issued in response to a third-party request.

(a) *Procedure for requesting and issuing subpoenas when hearings have been ordered.* A participant in any proceeding in which a hearing has been ordered by the Commission may request the issuance of a subpoena to a covered person pursuant to § 3013.11.

* * * * *

(2) Requests for subpoenas under this section shall be made by written motion filed with the presiding officer in the manner provided in § 3010.160 of this chapter. The Postal Service shall transmit a copy of the request to any covered person that it deems likely to be affected by the request and shall provide the person requesting the subpoena with the name, business address, and business phone number of the persons to whom the request has been transmitted.

(3) Answers to the motion may be filed by the Postal Service, by any person to whom the Postal Service has transmitted the request, and by any other participant. Answers raising objections, including allegations of undue burden or cost, must state with particularity the basis for such claims. Answers shall be filed as required by § 3010.160(b) of this chapter.

(4) The presiding officer shall forward copies of the motion and any responses to the Commission together with a recommendation of whether or not the requested subpoena should be issued and, if so, the scope and content thereof and conditions, if any, that should be placed on the subpoena. Copies of the presiding officer's recommendation shall be served in accordance with § 3010.127 of this chapter.

* * * * *

(b) *Procedure for requesting and issuing subpoenas when no hearings have been ordered.* Any person may request the issuance of a subpoena to a covered person pursuant to § 3013.11 to enforce an information request issued by the Commission or a Commissioner even though no hearings have been ordered by the Commission.

(1) A request for the issuance of a subpoena shall be made by motion as provided by § 3010.160 of this chapter. A copy of the request shall be served upon the Postal Service as provided by § 3010.127 of this chapter and by forwarding a copy to the General Counsel of the Postal Service, or such other person authorized to receive process by personal service, by Express Mail or Priority Mail, or by First-Class Mail, Return Receipt requested. The Postal Service shall transmit a copy of the request to any covered person that it deems likely to be affected by the request and shall provide the person requesting the subpoena with the name, business address and business phone number of the persons to whom the request has been transmitted. Proof of service of the request shall be filed with the Secretary by the person requesting the subpoena. The Secretary shall issue a notice of the filing of proof of service and the deadline for filing answers to the request.

(2) Answers to the motion may be filed by the Postal Service, by any person to whom the Postal Service has transmitted the request, and by any other person. Answers raising objections, including allegations of undue burden or cost, must state

with particularity the basis for such claims. Answers shall be filed as required by § 3010.160(b) of this chapter.

* * * * *

71. Amend newly redesignated § 3013.14 by revising paragraphs (a)(1), (2), and (4), (b)(1) introductory text, and (b)(2) to read as follows:

§ 3013.14 Service of subpoenas.

(a) * * *

(1) *Existing Postal Service officers and employees.* In addition to electronic service as provided by § 3010.127(a) of this chapter, subpoenas directed to existing Postal Service officers and employees must be served by personal service upon the General Counsel of the Postal Service or upon such other representative of the Postal Service as is authorized to receive process. Upon receipt, the subpoena shall be transmitted and delivered by the Postal Service to the existing officers and employees responsible for providing the information being sought by the subpoena. Subpoenas served upon the Postal Service and transmitted to Postal Service officers and employees shall be accompanied by a written notice of the return date of the subpoena.

(2) *Existing Postal Service agents and contractors.* In addition to electronic service as provided by § 3010.127(a) of this chapter, subpoenas directed to existing Postal Service agents and contractors must be served by personal service upon the General Counsel of the Postal Service or upon such other representative of the Postal Service as is authorized to receive process. Upon receipt, the subpoena shall be transmitted and delivered by the Postal Service to existing agents and contractors

responsible for providing the information being sought by the subpoena. Service upon such agents and contractors shall be accompanied by a written notice of the return date of the subpoena.

* * * * *

(4) *Service arrangements.* Arrangements for service upon the Postal Service under paragraph (a)(1) of this section or upon former Postal Service officers, employees, agents, or contractors under paragraph (a)(3) of this section shall be arranged either by the Commission or by the third party who requested issuance of the subpoena.

(b) * * *

(1) *Return of service*. Proof of service under paragraph (a) of this section must be filed with the Secretary within two business days following service, unless a shorter or longer period is ordered by the Commission, and must be accompanied by certifications of:

* * * * *

(2) *Proof of transmission.* The Postal Service shall within two business days of transmission of a subpoena by the Postal Service to an existing Postal Service officer, employee, agent, or contractor pursuant to paragraph (a)(1) or (2) of this section, or such shorter or longer period ordered by the Commission, file with the Secretary a certification of:

* * * * *

72. Amend newly redesignated § 3013.15 by revising paragraph (f) to read as follows:

§ 3013.15 Duties in responding to a subpoena.

* * * * *

(f) Request for confidential treatment of information shall be made in accordance with part 3011 of this chapter.

73. Revise the newly redesignated appendix A to part 3013 to read as follows:

Appendix A to Part 3013—Subpoena Form

UNITED STATES OF AMERICA

POSTAL REGULATORY COMMISSION

WASHINGTON, DC 20268-0001

In the Matter of:

[Case Name – If Applicable] [Docket No. – If Applicable]

[Report Name – If Applicable]

SUBPOENA

TO:

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to provide testimony in the above matter.

PLACE OF TESTIMONY	DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above matter.

PLACE OF DEPOSITION	DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (attach additional sheet if necessary).

PLACE	DATE AND TIME

ISSUING OFFICIAL'S SIGNATURE	DATE
ISSUING OFFICIAL'S NAME AND PHONE NUMBER	

ISSUING OFFICIAL IS (CHECK ONE):

☐ CHAIRMAN

☐ COMMISSIONER DESIGNATED BY THE CHAIRMAN

☐ ADMINISTRATIVE LAW JUDGE APPOINTED UNDER 5 U.S.C. 3105

I HEREBY CERTIFY THAT THE MAJORITY OF THE COMMISSIONERS CURRENTLY HOLDING OFFICE HAVE PREVIOUSLY CONCURRED IN WRITING WITH THE ISSUANCE OF THIS SUBPOENA.

ISSUING OFFICIAL'S SIGNATURE DATE

---

39 CFR § 3013.15:

(a) A covered person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the subpoena.

(b) If a subpoena does not specify the form or forms for producing electronically stored information, a covered person responding to a subpoena must produce the information in a form or forms in which the covered person ordinarily maintains it or in a form or forms that are reasonably usable.

(c) A covered person responding to a subpoena need not produce the same electronically stored information in more than one form.

(d) A covered person commanded to produce and permit inspection or copying of designated electronically stored information, books, papers, or documents need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing, or trial.

74. Add a new part 3020 to read as follows:

PART 3020—RULES APPLICABLE TO POSTAL SERVICE REQUESTS FOR CHANGES IN THE NATURE OF POSTAL SERVICES

Sec.

3020.101 Applicability.
3020.102 Advisory opinion and special studies.
3020.103 Computation of time.
3020.104 Service by the Postal Service.
3020.105 Motions.
3020.106-3020.109 [Reserved]
3020.110 Procedural schedule.
3020.111 Pre-filing requirements.
3020.112 Filing of formal requests.
3020.113 Contents of formal requests.
3020.114 Filing of prepared direct evidence.
3020.115 Mandatory technical conference.
3020.116 Discovery—in general.
3020.117 Interrogatories.
3020.118 Production of documents.
3020.119 Admissions.
3020.120 Rebuttal testimony.
3020.121 Surrebuttal testimony.
3020.122 Hearings.
3020.123 Initial and reply briefs.
Appendix A to Part 3020—Pro Forma N-Case Procedural Schedule

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

§ 3020.101 Applicability.

The rules in this part govern the procedure with regard to proposals of the Postal Service pursuant to 39 U.S.C. 3661 requesting from the Commission an advisory opinion on changes in the nature of postal services that will generally affect service on a nationwide or substantially nationwide basis. The Rules of General Applicability in part

3010 of this chapter are also applicable to proceedings conducted pursuant to this subpart except that §§ 3010.160 through 3010.164 (Motions); § 3010.310 (Discovery—general policy); § 3010.311 (Interrogatories for purposes of discovery); § 3010.312 (Requests for production of documents or things for the purpose of discovery); § 3010.321 (Hearings); § 3010.325 (Depositions); and § 3010.330 (Briefs) of this chapter do not apply in proceedings conducted under this part.

§ 3020.102 Advisory opinion and special studies.

(a) *Issuance of opinion.* In the absence of a determination of good cause for extension, the Commission shall issue an advisory opinion in proceedings conducted under this subpart not later than 90 days following the filing of the Postal Service's request for an advisory opinion.

(b) *Special studies.* Advisory opinions shall address the specific changes proposed by the Postal Service in the nature of postal services. If, in any proceeding, alternatives or related issues of significant importance arise, the Commission may, in its discretion, undertake an evaluation of such alternative or issues by means of special studies, public inquiry proceedings, or other appropriate means.

§ 3020.103 Computation of time.

In computing any period of time prescribed or allowed by this subpart, the term *day* means a calendar day unless explicitly specified otherwise. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or Federal holiday for the Commission, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor Federal holiday.

§ 3020.104 Service by the Postal Service.

By filing its request electronically with the Commission, the Postal Service is deemed to have effectively served copies of its formal request and its prepared direct evidence upon those persons, including the officer of the Commission, who participated in the pre-filing conference held under § 3020.111. The Postal Service shall be required to serve hard copies of its formal request and prepared direct evidence only upon those persons who have notified the Postal Service, in writing, during the pre-filing conference(s), that they do not have access to the Commission's website.

§ 3020.105 Motions.

(a) *In general.* (1) An application for an order or ruling not otherwise specifically provided for in this subpart shall be made by motion. A motion shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and served pursuant to the provisions of subpart B to part 3010 of this chapter. A motion to dismiss proceedings or any other motion that involves a final determination of the proceeding, any motion under § 3020.121, and a motion that seeks to extend the deadline for issuance of an advisory opinion shall be addressed to the Commission. After a presiding officer is designated in a proceeding, all other motions in that proceeding, except those filed under part 3011 of this chapter, shall be addressed to the presiding officer.

(2) Within five days after a motion is filed, or such other period as the Commission or presiding officer in any proceeding under this subpart may establish,

any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to subpart B to part 3010 of this chapter. Such an answer shall state with specificity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(b) *Motions to be excused from answering discovery requests.* (1) A motion to be excused from answering discovery requests shall be filed with the Commission within three days of the filing of the interrogatory, request for production, or request for admission to which the motion is directed. If a motion to be excused from answering is made part of an interrogatory, request for production, or request for admission, the part to which objection is made shall be clearly identified. Claims of privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. Claims of undue burden shall state with particularity the effort that would be required to answer or respond to the request, providing estimates of costs and workhours required, to the extent possible.

(2) An answer to a motion to be excused from answering a discovery request shall be filed within two days of the filing of the motion. The text of the discovery request and any answer previously provided by the Postal Service shall be included as an attachment to the answer.

(3) Unless the Commission or presiding officer grants the motion to be excused from answering, the Postal Service shall answer the interrogatory, production request,

or request for admission. Answers shall be filed in conformance with subpart B to part 3010 of this chapter within three days of the date on which a motion to be excused from answering is denied.

(4) The Commission or presiding officer may impose such terms and conditions as are just and may, for good cause, issue a protective order, including an order limiting or conditioning interrogatories, requests for production, and requests for admission as justice requires to protect the Postal Service from undue annoyance, embarrassment, oppression, or expense.

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

(d) *Motions for leave to file surrebuttal testimony.* Motions for leave to file surrebuttal testimony submitted pursuant to § 3020.121 and any answers thereto must be filed on or before the dates provided in the procedural schedule established by the Commission.

§§ 3020.106 - 3020.109 [Reserved]

§ 3020.110 Procedural schedule.

(a) *Notice.* Subject to paragraph (b) of this section, the Commission shall include in the notice of proceeding issued under § 3010.151 of this chapter a procedural

schedule based upon the pro forma schedule set forth in appendix A of this part. The procedural schedule shall include:

(1) A deadline for notices of interventions;

(2) The date(s) for the mandatory technical conference between the Postal Service, Commission staff, and interested parties;

(3) The deadline for discovery on the Postal Service's direct case;

(4) The deadline for responses to participant in discovery on the Postal Service's case;

(5) The deadline for participants to confirm their intent to file a rebuttal case;

(6) The date for filing participant rebuttal testimony, if any;

(7) The dates for filing motions for leave to file surrebuttal testimony and answers thereto;

(8) The date for filing surrebuttal, if any;

(9) The date(s) for hearings on the Postal Service's direct case, rebuttal testimony, and surrebuttal testimony, if any;

(10) The date for filing initial briefs;

(11) The date for filing reply briefs; and

(12) A deadline for issuance of an advisory opinion which is 90 days from the date of filing.

(b) *Changes for good cause.* These dates are subject to change for good cause only.

(c) *Incomplete request.* If at any time the Commission determines that the Postal Service's request is incomplete or that changes made subsequent to its filing significantly modify the request, the Commission may extend the deadlines established or take any other action as justice may require.

§ 3020.111 Pre-filing requirements.

(a) *Pre-filing conference required.* Prior to the Postal Service filing a request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to the procedures established in this subpart, the Postal Service shall conduct one or more pre-filing conference(s) with interested persons in the proceeding and shall make a good faith effort to address the concerns of such persons.

(b) *Purpose.* The purpose of a pre-filing conference is to expedite consideration of the Postal Service's request for the issuance of advisory opinions by informing interested persons of the Postal Service's proposal; by providing an opportunity for interested persons to give feedback to the Postal Service that can be used by the Postal Service to modify or refine its proposal before it is filed at the Commission; and by identifying relevant issues and information needed to address those issues during proceedings at the Commission.

(c) *Rationale for the proposal.* The Postal Service shall make available at the pre-filing conference a representative capable of discussing the policy rationale behind the Postal Service's proposal with interested persons.

(d) *Notice.* The Postal Service shall file with the Commission a notice of its intent to conduct any pre-filing conference(s) at least ten days before the first scheduled

conference. The notice filed by the Postal Service shall include a schedule of proposed date(s) and location(s) for the conference(s). Upon receipt of such notice, the Commission shall issue a notice of pre-filing conference(s), which shall be published in the **Federal Register**, and appoint a Public Representative.

(e) *Nature of conferences.* Discussions during the pre-filing conference(s) shall be informal and off the record. No formal record will be created during a pre-filing conference.

(f) *Noncompliance.* If the Postal Service's noncompliance with the requirements of the pre-filing conference under § 3020.113(b)(4) is established by a participant, the Commission may, in its discretion, consider an extension of, or modification to, the procedural schedule.

(g) *Informal meetings.* Interested persons may meet outside the context of a pre-filing conference, among themselves or with the Postal Service, individually or in groups, to discuss the proposed changes in the nature of postal services.

§ 3020.112 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of subpart B to part 3010 of this chapter and § 3020.113. The request shall be filed not less than 90 days before the proposed effective date of the change in the nature of postal services involved. Within five days after the Postal Service has filed a formal request for an advisory opinion in accordance

with this section, the Secretary shall lodge a notice thereof with the director of the Office of the **Federal Register** for publication in the **Federal Register**.

§ 3020.113 Contents of formal requests.

(a) *General requirements.* A formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and interested persons of the nature, scope, significance, and impact of the proposed change in the nature of postal services and to show that the change in the nature of postal services is in accordance with and conforms to the policies established under title 39, United States Code.

(b) *Specific information.* A formal request shall include:

(1) A detailed statement of the present nature of the postal services proposed to be changed and the change proposed;

(2) The proposed effective date for the proposed change in the nature of postal services;

(3) A full and complete statement of the reasons and basis for the Postal Service's determination that the proposed change in the nature of postal services is in accordance with and conforms to the policies of title 39, United States Code;

(4) A statement that the Postal Service has completed the pre-filing conference(s) required by § 3020.111, including the time and place of each conference and a certification that the Postal Service has made a good faith effort to address concerns of interested persons about the Postal Service's proposal raised at the pre-filing conference(s);

(5) The prepared direct evidence required by § 3020.114;

(6) The name of an institutional witness capable of providing information relevant to the Postal Service's proposal that is not provided by other Postal Service witnesses; and

(7) Confirmation that Postal Service witnesses, including its institutional witness, will be available for the mandatory technical conference provided for in § 3020.115.

(c) *Additional information.* The Commission may request additional information from the Postal Service concerning a formal request.

(d) *Reliance on prepared direct evidence.* The Postal Service may incorporate detailed data, information, and statements of reason or basis contained in prepared direct evidence submitted under paragraph (b)(5) of this section into its formal request by reference to specific portions of the prepared direct evidence.

§ 3020.114 Filing of prepared direct evidence.

As part of a formal request for an advisory opinion under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed change in the nature of postal services is in accordance with and conforms to the policies of title 39, United States Code. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with §§ 3010.322 and 3010.323 of this chapter.

§ 3020.115 Mandatory technical conference.

(a) *Date.* A date for a mandatory technical conference shall be included in the procedural schedule required by § 3020.110. The date for this technical conference shall be set based upon the pro forma schedule set forth in appendix A to this part. The conference shall be held at the offices of the Commission.

(b) *Witnesses.* The Postal Service shall make available at the technical conference each witness whose prepared direct testimony was filed pursuant to § 3020.114. If the Postal Service seeks for any witness to be excused on the basis that the witness's testimony neither presents nor is based upon technical information, it shall make such a motion concurrent with its request.

(c) *Purpose.* The purpose of the technical conference is to provide an informal, off-the-record opportunity for participants, the officer of the Commission representing the interests of the general public, and Commission staff to clarify technical issues and to identify and request information relevant to an evaluation of the nature of changes to postal services proposed by the Postal Service. The technical conference is not part of the formal record in the proceeding.

(d) *Relation to discovery process.* Information obtained during the mandatory technical conference may be used to discover additional relevant information by means of the formal discovery mechanisms provided for in §§ 3020.116 through 3020.119.

(e) *Record.* Information obtained during, or as a result of, the mandatory technical conference is not part of the decisional record unless admitted under the standards of § 3010.322(a) of this chapter.

§3020.116 Discovery—in general.

(a) *Purpose.* The rules in this subpart allow discovery that is reasonably calculated to lead to admissible evidence during a proceeding. The notice and scheduling order issued pursuant to § 3020.110 shall provide that discovery will be scheduled to end at least three days prior to the commencement of hearings.

(b) *Informal discovery.* The discovery procedures in this section and §§ 3020.117 through 3020.119 are not exclusive. Participants are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, or by other appropriate means. In the interest of reducing motion practice, participants also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) *Failure to obey orders or rulings.* If a participant fails to obey an order of the Commission or ruling of presiding officer to provide or permit discovery pursuant to this section or §§ 3020.117 through 3020.119, the Commission or the presiding officer may issue orders or rulings in regard to the failure as are just. These orders or rulings may, among other things:

(1) Direct that certain designated facts are established for the purposes of the proceeding;

(2) Prohibit a participant from introducing certain designated matters in evidence;

(3) Strike certain evidence, requests, pleadings, or parts thereof; or

(4) Such other relief as the Commission deems appropriate.

§ 3020.117 Interrogatories.

(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 in a proceeding may propound to any other participant no more than a total of 25 written, sequentially numbered interrogatories, by witness, requesting non-privileged information relevant to the subject matter of the proceeding. An interrogatory with subparts that are logically or factually subsumed within and necessarily related to the primary question will be counted as one interrogatory. The respondent shall answer each interrogatory and furnish such information as is available. The participant propounding the interrogatories shall file them with the Commission in conformance with part 3010, subpart B, of this chapter. Follow-up interrogatories that clarify or elaborate on the answer to an earlier discovery request may be filed after the period for intervenor discovery on the Postal Service case ends, if the interrogatories are filed within seven days of receipt of the answer to the previous interrogatory. In extraordinary circumstances, follow-up interrogatories may be filed not less than six days prior to the filing date for the participant's rebuttal or surrebuttal testimony.

(b) *Answers.* (1) Answers to interrogatories shall be prepared so that they can be incorporated into the record 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 propounded the interrogatory, and the number and text of the question.

(2) Each interrogatory shall be answered separately and fully in writing by the individual responsible for the answer, unless it is objected to, in which event the reasons for objection shall be stated in a motion to be excused from answering in the manner prescribed by paragraph (c) of this section.

(3) 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.

(4) Answers filed by a respondent shall be filed in conformance with subpart B to part 3010 of this chapter within seven days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer. Any other period fixed by the Commission or presiding officer shall end before the conclusion of the hearing.

(c) *Motion to be excused from answering.* A respondent may, in lieu of answering an interrogatory, file a motion pursuant to § 3020.105(b) to be excused from answering.

(d) *Supplemental answers.* A respondent has a duty to timely amend a prior answer if it obtains information upon the basis of which it knows that the answer was incorrect when made or is no longer true. A respondent shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. A respondent shall indicate whether the answer merely supplements the previous answer to make it current or whether it is a complete replacement for the previous answer.

§ 3020.118 Production of documents.

(a) *Service and contents.* (1) 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 a request to produce and permit the participant making the request, or someone acting on behalf of the participant, 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 respondent.

(2) 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 items shall file its request with the Commission in conformance with part 3010, subpart B, of this chapter.

(b) *Answers.* (1) The respondent shall file an answer to a request under paragraph (a) of this section with the Commission in conformance with subpart B to part 3010 of this chapter within seven 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, whether inspection will be permitted as requested.

(2) If the respondent objects to an item or category, it shall state the reasons for objection in a motion to be excused from answering as prescribed by paragraph (c) of this section.

(c) *Motions to be excused from answering.* A respondent may, in lieu of answering a request for production, file a motion pursuant to § 3020.105(b) to be excused from answering.

§ 3020.119 Admissions.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant a written request for the admission of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The admission shall be for purposes of the pending proceeding only. The participant requesting the admission shall file its request with the Commission in conformance with subpart B to part 3010 of this chapter.

(b) *Answers.* (1) A matter for which admission is requested shall be separately set forth in the request and is deemed admitted unless, within seven days after the request is filed, or within such other period as may be established by the Commission or presiding officer, the respondent files a written answer or motion to be excused from answering pursuant to paragraph (c) of this section. Answers to requests for admission shall be filed with the Commission in conformance with subpart B to part 3010 of this chapter.

(2) If the answer filed by the respondent does not admit a matter asserted in the participant's request, it must either specifically deny the matter or explain in detail why it cannot truthfully admit or deny the asserted matter. When good faith requires, the respondent must admit a portion of the asserted matter and either deny or qualify the remaining portion of such asserted matter. Lack of knowledge for failing to admit or

deny can be invoked only after reasonable inquiry if the information already possessed or reasonably obtainable is insufficient to enable an admission or denial.

(3) Grounds for objection to requests for admission must be stated. Objections cannot be based solely upon the ground that the request presents a genuine issue for trial.

(c) *Motion to be excused from answering.* A respondent may, in lieu of answering a request for admission, file a motion pursuant to § 3020.105(b) to be excused from answering.

§ 3020.120 Rebuttal testimony.

(a) *Timing.* Any participant may file rebuttal testimony on or before the date established for that purpose by the procedural schedule issued by the Commission pursuant to § 3020.110. Hearing on rebuttal testimony shall proceed as set forth in the procedural schedule.

(b) *Limitations.* The scope of rebuttal testimony shall be limited to material issues relevant to the specific proposal made by the Postal Service. Rebuttal testimony shall not propose, or seek to address, alternatives to the Postal Service's proposal.

(c) *Intent to file rebuttal testimony.* If a participant wishes to file rebuttal testimony, it must file a document confirming its intent to file rebuttal testimony with the Commission by the date provided in the procedural schedule.

(d) *Adjustment of dates.* If no participant files a confirmation of intent to file rebuttal testimony on or before the date established by the procedural schedule issued

by the Commission pursuant to § 3020.110, the Commission may adjust other dates in the procedural schedule as it deems to be necessary and appropriate.

§ 3020.121 Surrebuttal testimony.

(a) *Scope.* Surrebuttal testimony shall be limited to material issues relevant to the Postal Service's proposal and to the rebuttal testimony which the surrebuttal testimony seeks to address. Testimony that exceeds the scope of the Postal Service's proposal or rebuttal testimony shall not be permitted.

(b) *Motion for leave to file surrebuttal.* A participant who wishes to file surrebuttal testimony must obtain prior approval by filing with the Commission a motion for leave to file surrebuttal pursuant to § 3020.105(d) on or before the date provided in the procedural schedule established by the Commission. The motion must summarize the surrebuttal testimony the participant wishes to file and must identify and explain exceptional circumstances that require the filing of such testimony. The moving participant bears the burden of demonstrating exceptional circumstances that warrant a grant of the motion. Answers to such motions may be filed as provided in § 3020.105(d).

(c) *Deadline for filing surrebuttal authorized by the Commission.* In the event the Commission grants the motion for leave to file surrebuttal testimony, the moving participant must file its proposed surrebuttal testimony by the date provided in the procedural schedule established pursuant to § 3020.110.

(d) *Adjustment of procedural dates.* If no participant files a motion for leave to file surrebuttal testimony, or if the Commission denies all such motions as may be filed,

the remaining dates in the procedural schedule may be adjusted by the Commission as it deems to be necessary and appropriate.

§ 3020.122 Hearings.

(a) *Initiation.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice and scheduling order pursuant to § 3020.110.

(b) *Presiding officer.* All hearings shall be held before the Commission sitting *en banc* with a duly designated presiding officer.

(c) *Entering of appearances.* The Commission or the presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing on whose behalf each such appearance has been made.

(d) *Order of procedure.* In requests for advisory opinions before the Commission, the Postal Service shall be the first participant to present its case. Unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of all other participants and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e) *Presentation of the evidence.* (1) *Presentations by participants.* Each participant shall have the right in public hearings to present evidence relevant to the Postal Service's proposal, cross-examine (limited to testimony adverse to the participant conducting the cross-examination), object, move, and argue. The participant's presentation shall be in writing and may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of

the proceeding.) When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination shall be served in accordance with part 3010, subpart B, of this chapter no later than three days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the participant who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, "PR-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)"). When a participant designates written cross-examination, two hard copies of the documents (unfastened, single-spaced, not hole-punched) are to be included and shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will not be admitted into the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. Notices of intent to conduct oral cross-examination shall be filed three or more days before the announced appearance of the witness and shall include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. A participant 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 shall be filed at least two days (including one working day) before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the participant. If a participant has obtained permission to receive service of documents in hardcopy form, hardcopy notices of intent to conduct oral cross-examination of witnesses for that participant shall be delivered to counsel for that participant and served three or more working days before the announced appearance of the witness. Cross-examination exhibits shall be delivered to counsel for the witness at least two days (including one working day) before the scheduled appearance of the witness.

(f) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately:

(1) The number of witnesses to be heard upon any issue;

(2) The examination by any participant to specific issues; and

(3) The cross-examination of a witness to that required for a full and true disclosure of the facts necessary for exploration of the Postal Service's proposal, disposition of the proceeding, and the avoidance of irrelevant, immaterial, or unduly repetitious testimony.

(g) *Motions during hearing.* Except as provided in § 3020.105(a), after a hearing has commenced in a proceeding, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall set forth the ruling or relief sought, and state the grounds therefore and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any participant shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(h) *Rulings on motions.* The presiding officer is authorized to rule upon any motion not reserved for decision by the Commission in § 3020.105(a). This section shall not preclude a presiding officer from referring any motion made in hearing to the Commission for ultimate determination.

(i) *Transcript corrections.* Corrections to the transcript of a hearing shall not be requested except to correct a material substantive error in the transcription made at the hearing.

(j) *Field hearings.* Field hearings will not be held except upon a showing by any participant and determination by the Commission that there is exceptional need or utility for such a hearing which cannot be accomplished by alternative means.

§ 3020.123 Initial and reply briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, participants may file initial and reply briefs. The dates for filing initial and reply briefs shall be established in the procedural schedule issued pursuant to § 3020.110. Such dates may be modified by subsequent order issued by the Commission or the presiding officer.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible 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;

(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 filing participant as to the Postal Service request;

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

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Length.* Initial briefs filed by all participants other than the Postal Service shall not exceed 14,000 words. Initial briefs filed by the Postal Service shall not exceed 21,000 words. Reply briefs filed by all participants other than the Postal Service shall not exceed 7,000 words. Reply briefs filed by the Postal Service shall not exceed

10,500 words. All participants shall attest to the number of words contained in their brief. Tables of cases, tables of citations, and appendices shall not be considered as part of the word count.

(d) *Include by reference.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading, or document.

(e) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(f) *Filing and service.* Briefs shall be filed in the form and manner and served as required by subpart B to part 3010 of this chapter.

(g) *Statements of Position.* As an alternative to filing a formal brief, a participant may file a Statement of Position. To the extent practicable, the contents of each Statement of Position should include a clear, concise, and definitive statement of the position of the filing participant as to the Postal Service request, as well as any points or factors in the existing record that support the participant's position. Statements of Position shall be limited to the existing record and shall not include any new evidentiary material.

Appendix A to Part 3020—Pro Forma N-Case Procedural Schedule

Line	**Action**	**Day number**
1	Pre-Filing Consultations[1]	n/a.

2	Commission Order[2]	n/a.
3	Filing of Postal Service Request	0.
4	Commission Notice and Order[3]	1-3.
5	Technical Conference	10.
6	Participant Discovery on Postal Service Case Ends	28.
7	Responses to Participant Discovery on Postal Service Case	35.
8	Participants Confirm Intent to File a Rebuttal Case	37.[4]
9	Filing of Rebuttal Cases (if submitted)	42.
10	Deadline for Motions to Leave to File Surrebuttal	44.[5]
11	Deadline for Answers to Motions for Surrebuttal	46.
12	Filing of Surrebuttal Cases (if authorized)	49.[6]
13	Hearings	
	Hearings (with no Rebuttal Cases)	42-44.
	Hearings (with Rebuttal Cases, but no requests for leave to file Surrebuttal Cases)	49-51.
	Hearings (with Rebuttal Cases and requests for leave to file Surrebuttal Cases)	54-56.

14	Initial Briefs	(7 days after conclusion of hearings).
15	Reply Briefs	(7 days after filing of Initial Briefs).
16	Target Issuance Date of Advisory Opinion	90.

[1]The Postal Service would initiate pre-filing consultations and would file a notice with the Commission of such consultations prior to their commencement.

[2]This order would appoint a Public Representative.

[3]This notice and order would announce the Postal Service request, set a deadline for interventions, set a date for a technical conference, and establish a procedural schedule.

[4]If no participant elects to file a rebuttal case, hearings begin on Day 42.

[5]If no surrebuttal cases are requested, hearings begin on Day 49.

[6]If one or more surrebuttal cases are requested (whether or not authorized by the Commission), hearings begin on Day 54.

PART 3021— RULES FOR APPEALS OF POSTAL SERVICE DETERMINATIONS TO CLOSE OR CONSOLIDATE POST OFFICES

75. The authority for newly redesignated part 3021 continues to read as follows:

Authority: 39 U.S.C. 404(d).

76. Amend newly redesignated § 3021.2 by revising paragraph (b) to read as follows:

§ 3021.2 Applicability.

* * * * *

(b) Subparts A through D to part 3010 of this chapter apply to appeals of post office closings or consolidations.

* * * * *

77. Amend newly redesignated § 3021.13 by revising paragraph (a) to read as follows:

§ 3021.13 Deadlines for appeals.

(a) *In general.* If the Postal Service has issued a final determination to close or consolidate a post office, an appeal is due within 30 days of the final determination being made available in conformance with § 3021.3(b).

* * * * *

78. Revise newly redesignated § 3021.14 to read as follows:

§ 3021.14 Participation by others.

(a) 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, may participate in an appeal by sending written comments to the Postal Regulatory Commission in the manner described in § 3021.11.

(b) Persons may submit comments supporting or opposing a Commission order returning the entire matter to the Postal Service for further consideration. Comments must be filed in accordance with the deadlines established in §§ 3021.41 through 3021.43. Commenters may use PRC Form 61, which is available on the Commission's website, *http://www.prc.gov.*

79. Amend newly redesignated § 3021.40 by revising paragraph (a) to read as follows:

§ 3021.40 Participant statement.

(a) When a timely Petition for Review of a decision to close or consolidate a post office is filed, the Secretary shall furnish petitioner with a copy of PRC Form 61. This form is designed to inform petitioners on how to make a statement of the petitioner's arguments in support of the petition.

* * * * *

PART 3022—RULES FOR COMPLAINTS

80. The authority for newly redesignated part 3022 reads as follows:

Authority: 39 U.S.C. 503; 3622.

81. Revise newly redesignated § 3022.1 to read as follows:

§ 3022.1 Applicability.

(a) The rules in this part govern the procedure for complaints filed under 39 U.S.C. 3662 that meet the form and manner requirements of subpart B of this part. Part 3010 of this chapter applies unless otherwise stated in this part or otherwise ordered by the Commission.

(b) Subpart E to part 3010 of this chapter does not apply to this part unless and until the Commission makes a finding under § 3022.30(a)(1) that the complaint raises material issues of fact or law and that the issues shall be considered through a hearing on the record.

82. Amend newly redesignated § 3022.10 by revising paragraph (a)(10) to read as follows:

§ 3022.10 Complaint contents.

(a) * * *

(10) Include a certification that the complaint has been served on the United States Postal Service as required by § 3022.11.

* * * * *

83. Revise newly redesignated § 3022.11 to read as follows:

§ 3022.11 Service.

Any person filing a complaint must simultaneously serve a copy of the complaint on the Postal Service at thisaddress: *PRCCOMPLAINTS@usps.gov.* A person without internet access may contact the Secretary to obtain approval for alternative methods of service.

84. Amend newly redesignated § 3022.12 by revising paragraph (b)(2) to read as follows:

§ 3022.12 Pleadings filed in response to a complaint.

* * * * *

(b) * * *

(2) If the Commission invokes the rate or service inquiry special procedures under § 3022.13 to the complaint, the answer is due contemporaneously with the Postal Service's report under § 3023.11 of this chapter if the complaint has not been resolved by that date.

* * * * *

85. Amend newly redesignated § 3022.13 by revising paragraphs (b) and (c) to read as follows:

§ 3022.13 Conditions for applying rate or service inquiry procedures to complaints.

* * * * *

(b) The Commission may in its discretion, *sua sponte*, attempt to resolve a complaint through the rate or service inquiry procedures of § 3023.11 of this chapter if the Commission finds that there is a reasonable likelihood that such procedures may result in resolution of the complaint. The Commission will issue an order to apply the procedures of § 3023.11 of this chapter prior to the due date for the Postal Service answer set forth in § 3022.12.

(c) If the Commission determines that application of paragraph (a) of this section is appropriate and the Postal Service is unable to resolve the complaint within 45 days, or such other period of time as ordered by the Commission, the Postal Service shall file its answer in accordance with § 3022.12(b)(2).

86. Revise newly redesignated § 3022.20 to read as follows:

§ 3022.20 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the Commission determines that additional information is necessary to enable it to evaluate whether the complaint raises material issues of fact or law, the Commission shall, in its discretion, either require the complainant and/or the Postal Service to provide additional information as deemed necessary, issue an appropriate order to appoint an investigator in accordance with § 3022.21, or do both.

87. Amend newly redesignated § 3022.30 by revising paragraph (a)(1) to read as follows:

§ 3022.30 Beginning proceedings on complaints.

(a) * * *

(1) A notice and order in accordance with § 3010.151 of this chapter that finds the complaint raises one or more material issues of fact or law and begin proceedings on the complaint; or

* * * * *

88. Amend newly redesignated § 3022.41 by revising paragraph (a) introductory text to read as follows:

§ 3022.41 Satisfaction.

(a) If a complaint is resolved informally, in whole or in part, subsequent to Commission action under § 3022.30(a)(1), the complainant must promptly file:

* * * * *

PART 3023—RULES FOR RATE OR SERVICE INQUIRIES BY THE PUBLIC ABOUT POSTAL SERVICE ACTIVITY

89. The authority for newly redesignated part 3023 continues to read as follows:

Authority: 39 U.S.C. 503; 3662.

90. Amend newly redesignated § 3023.11 by revising paragraph (b) to read as follows:

§ 3023.11 Rate or service inquiry procedures.

* * * * *

(b) The Commission will monitor all rate or service inquiries to determine if Commission action under § 3023.12 is appropriate.

* * * * *

91. Revise newly redesignated § 3023.12 to read as follows:

§ 3023.12 Treatment as a complaint.

If the Commission receives a volume of rate or service inquiries on the same or similar issue such that there may be cause to warrant treatment as a complaint, it may appoint an investigator to review the matter under § 3022.21 of this chapter or appoint a

Public Representative representing the interests of the general public to pursue the matter.

PART 3024—SPECIAL RULES FOR COMPLAINTS ALLEGING VIOLATIONS OF 39 U.S.C. 404a

92. The authority for newly redesignated part 3024 continues to read as follows:

Authority: 39 U.S.C. 404a; 3662.

93. Revise newly redesignated § 3024.1 to read as follows:

§ 3024.1 Applicability.

The rules in this part govern proceedings filed under 39 U.S.C. 3662 alleging violations of 39 U.S.C. 404a that meet the requirements of §§ 3022.2 and 3022.10 of this chapter.

94. Amend newly redesignated § 3024.5 by revising paragraph (a) introductory text to read as follows:

§ 3024.5 Postal Service rules that create an unfair competitive advantage.

(a) A complaint alleging a violation of 39 U.S.C. 404a(a)(1) must show that a Postal Service rule, regulation, or standard has the effect of:

* * * * *

PART 3030—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

95. The authority for newly redesignated part 3030 continues to read as follows:

Authority: 39 U.S.C. 503; 3622.

96. Amend newly redesignated § 3030.501 by revising paragraphs (b)(1) through (3), (d), (e), (h) through (l), and (m)(1) and (2) to read as follows:

§ 3030.501 Definitions.

* * * * *

(b) * * *

(1) In the case of a notice of a Type 1-A or Type 1-B rate adjustment filed 12 or more months after the last Type 1-A or Type 1-B notice of rate adjustment, the full year limitation on the size of rate adjustments calculated pursuant to § 3030.521;

(2) In the case of a notice of a Type 1-A or Type 1-B rate adjustment filed less than 12 months after the last Type 1-A or Type 1-B notice of rate adjustment, the partial year limitation on the size of rate adjustments calculated pursuant to § 3030.522; and

(3) In the case of a notice of a Type 1-C rate adjustment, the annual limitation calculated pursuant to § 3030.521 or § 3030.522, as applicable, for the most recent notice of a Type 1-A or Type 1-B rate adjustment.

* * * * *

(d) *De minimis rate increase* means a rate adjustment described in § 3030.530.

(e) *Maximum rate adjustment* means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type1-A or Type 1-B rate adjustment. The maximum rate adjustment is calculated in accordance with § 3030.520.

* * * * *

(h) *Type 1-A rate adjustment* means a rate adjustment described in § 3030.504.

(i) *Type 1-B rate adjustment* means a rate adjustment described in § 3030.505.

(j) *Type 1-C rate adjustment* means a rate adjustment described in § 3030.506.

(k) *Type 2 rate adjustment* means a rate adjustment described in § 3030.507.

(l) *Type 3 rate adjustment* means a rate adjustment described in § 3030.508.

(m) * * *

(1) In the case of a Type 1-A or Type 1-B rate adjustment, the percentage calculated pursuant to § 3030.526; and

(2) In the case of a Type 1-C rate adjustment, the percentage calculated pursuant to § 3030.527.

97. Amend newly redesignated § 3030.504 by revising paragraph (c) to read as follows:

§ 3030.504 Type 1-A rate adjustment—in general.

* * * * *

(c) A Type 1-A rate adjustment for any class that is less than the applicable annual limitation results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent rate adjustment for that class, subject to the expiration terms in § 3030.526(e).

98. Amend newly redesignated § 3030.506 by revising paragraph (b)(1) to read as follows:

§ 3030.506 Type 1-C rate adjustment—in general.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, a Type 1-C rate adjustment may generate unused rate adjustment authority, as described in § 3030.527.

* * * * *

99. Amend newly redesignated § 3030.511 by revising paragraphs (b)(1) and (2), (d), and (k) to read as follows:

§ 3030.511 Proceedings for Type 1-A, Type 1-B, and Type 1-C rate adjustment filings.

* * * * *

(b) * * *

(1) Whether the planned rate adjustments measured using the formula established in § 3030.523(c) are at or below the annual limitation calculated under § 3030.521 or § 3030.522, as applicable; and

(2) Whether the planned rate adjustments measured using the formula established in § 3030.523(c) are at or below the limitation established in § 3030.529.

* * * * *

(d) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation calculated under § 3030.521 or § 3030.522, as applicable, the limitation set forth in § 3030.529, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

* * * * *

(k) A Commission finding that a planned Type 1-A, Type 1-B, or Type 1-C rate adjustment is in compliance with the annual limitation calculated under § 3030.521 or § 3030.522, as applicable; the limitation set forth in § 3030.529; and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned Type 1-A, Type 1-B, or Type 1-C rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter I is provisional and subject to subsequent review.

100. Amend newly redesignated § 3030.512 by revising paragraphs (b)(1), (3), and (4), (b)(9)(ii), and (e) to read as follows:

§ 3030.512 Contents of notice of rate adjustment.

* * * * *

(b) * * *

(1) The annual limitation calculated as required by § 3030.521 or § 3030.522, as appropriate. This information must be supported by workpapers in which all calculations are shown and all input values, including all relevant CPI-U values, are listed with citations to the original sources.

* * * * *

(3) The percentage change in rates for each class of mail calculated as required by § 3030.523. This information must be supported by workpapers in which all calculations are shown and all input values, including current rates, new rates, and billing determinants, are listed with citations to the original sources.

(4) The amount of new unused rate adjustment authority, if any, that will be generated by the rate adjustment calculated as required by § 3030.526 or § 3030.527,

as applicable. All calculations are to be shown with citations to the original sources. If new unused rate adjustment authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment.

* * * * *

(9) * * *

(ii) Whether the Postal Service has excluded the rate incentive from the calculation of the percentage change in rates under § 3030.523(e) or § 3030.524.

* * * * *

(e) The notice of rate adjustment shall identify for each affected class how much existing unused rate adjustment authority is used in the planned rates calculated as required by § 3030.528. All calculations are to be shown, including citations to the original sources.

* * * * *

101. Amend newly redesignated § 3030.520 by revising paragraphs (b) and (d)(2) to read as follows:

§ 3030.520 Calculation of maximum rate adjustment.

* * * * *

(b) Type 1-A and Type 1-B rate adjustments are subject to an inflation-based annual limitation computed using CPI-U values as detailed in §§ 3030.521(a) and 3030.522(a).

* * * * *

(d) * * *

(2) For a Type 1-B notice of rate adjustment, the annual limitation for the class plus the unused rate adjustment authority for the class that the Postal Service elects to use, subject to the limitation under § 3030.529.

* * * * *

102. Amend newly redesignated § 3030.523 by revising paragraph (e)(1) to read as follows:

§ 3030.523 Calculation of percentage change in rates.

* * * * *

(e) * * *

(1) Rate incentives may be excluded from a percentage change in rates calculation. If the Postal Service elects to exclude a rate incentive from a percentage change in rates calculation, the rate incentive shall be treated in the same manner as a rate under a negotiated service agreement (as described in § 3030.524).

* * * * *

103. Amend newly redesignated § 3030.524 by revising paragraph (a) to read as follows:

§ 3030.524 Treatment of volume associated with negotiated service agreements and rate incentives that are not rates of general applicability.

(a) Mail volumes sent at rates under a negotiated service agreement or a rate incentive that is not a rate of general applicability are to be included in the calculation of percentage change in rates under § 3030.523 as though they paid the appropriate rates

of general applicability. Where it is impractical to identify the rates of general applicability (*e.g.*, because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement or the rate incentive that is not a rate of general applicability shall be excluded from the calculation of percentage change in rates.

* * * * *

104. Revise newly redesignated § 3030.525 to read as follows:

§ 3030.525 Limitation on application of unused rate adjustment authority.

Unused rate adjustment authority may only be applied after applying the annual limitation calculated pursuant to § 3030.521 or § 3030.522.

105. Amend newly redesignated § 3030.526 by revising paragraphs (b) and (c)(2) to read as follows:

§ 3030.526 Calculation of unused rate adjustment authority for Type 1-A and Type 1-B rate adjustments.

* * * * *

(b) When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, annual unused rate adjustment authority will be calculated. Annual unused rate adjustment authority for a class is equal to the difference between the annual limitation calculated pursuant to § 3030.521 or § 3030.522 and the percentage change in rates for the class calculated pursuant to § 3030.523(b)(1).

(c) * * *

(2) Interim unused rate adjustment authority is equal to the Base Average applicable to the second notice of rate adjustment (as developed pursuant to § 3030.521(b)) divided by the Recent Average utilized in the first notice of rate adjustment (as developed pursuant to § 3030.521(b)) and subtracting 1 from the quotient. The result is expressed as a percentage.

* * * * *

106. Amend newly redesignated § 3030.527 by revising paragraphs (a), (c), and (d) to read as follows:

§ 3030.527 Calculation of unused rate adjustment authority for Type 1-C rate adjustments.

(a) For a notice of Type 1-C rate adjustment, unused rate adjustment authority for a class is calculated in two steps. First, the difference between the annual limitation calculated pursuant to § 3030.521 or § 3030.522 for the most recent notice of Type 1-A or Type 1-B rate adjustment and the percentage change in rates for the class calculated pursuant to § 3030.523(b)(2) is calculated. Second, the unused rate adjustment authority generated in the most recent Type 1-A or Type 1-B rate adjustment is subtracted from that result.

* * * * *

(c) Unused rate adjustment authority generated under paragraph (a) of this section for a class shall be added to the unused rate adjustment authority generated in the most recent notice of Type 1-A rate adjustment on the schedule maintained under § 3030.526(f). For purposes of § 3030.528, the unused rate adjustment authority

generated under paragraph (a) of this section for a class shall be deemed to have been added to the schedule maintained under § 3030.526(f) on the same date as the most recent notice of Type 1-A or Type 1-B rate adjustment.

(d) Unused rate adjustment authority generated under paragraph (a) of this section shall be subject to the limitation under § 3030.529, regardless of whether it is used alone or in combination with other existing unused rate adjustment authority.

107. Amend newly redesignated § 3030.530 by revising paragraph (b) to read as follows:

§ 3030.530 De minimis rate increases.

* * * * *

(b) No unused rate adjustment authority will be added to the schedule of unused rate adjustment authority maintained under § 3030.526(f) as a result of a *de minimis* rate increase.

* * * * *

108. Revise newly redesignated § 3030.562 to read as follows:

§ 3030.562 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide information in addition to that called for by § 3030.561 in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate adjustments requested.

109. Amend newly redesignated § 3030.563 by revising paragraph (b) to read as follows:

§ 3030.563 Treatment of unused rate adjustment authority.

* * * * *

(b) Pursuant to an exigent request, rate adjustments may use existing unused rate adjustment authority in amounts greater than the limitation described in § 3030.528 of this subpart.

* * * * *

110. Amend newly redesignated § 3030.565 by revising paragraphs (b) and (c) to read as follows:

§ 3030.565 Special procedures applicable to exigent requests.

* * * * *

(b) The Commission will hold a public hearing on the Postal Service request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service's request and the supporting information provided in response to the topics specified in § 3010.561 of this chapter.

(c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with part 3010, subpart B, of this chapter and will become part of the administrative record of the proceeding.

* * * * *

PART 3040—PRODUCT LISTS AND THE MAIL CLASSIFICATION SCHEDULE

111. The authority for newly redesignated part 3040 reads as follows:

Authority: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

112. Revise newly redesignated § 3040.102 to read as follows:

§ 3040.102 Product lists.

(a) *Market dominant product list.* The market dominant product list shall be published in the **Federal Register** at appendix A to subpart A of part 3040—Market Dominant Product List.

(b) *Competitive product list.* The competitive product list shall be published in the **Federal Register** at appendix B to subpart A of part 3040—Competitive Product List.

113. Amend newly redesignated § 3040.181 by revising paragraphs (b)(1) and (2) to read as follows:

§ 3040.181 Supporting justification for material changes to product descriptions.

* * * * *

(b)(1) As to market dominant products, explain why the changes are not inconsistent with each requirement of 39 U.S.C. 3622(d) and part 3030 of this chapter; or

(2) As to competitive products, explain why the changes will not result in the violation of any of the standards of 39 U.S.C. 3633 and part 3035 of this chapter.

* * * * *

114. Amend newly redesignated § 3040.190 by revising paragraph (c)(1) to read as follows:

§ 3040.190 Minor corrections to product descriptions.

* * * * *

(c) * * *

(1) Explain why the proposed corrections do not constitute material changes to the product description for purposes of § 3040.180;

* * * * *

PART 3045— RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

115. The authority for newly redesignated part 3045 continues to read as follows:

Authority: 39 U.S.C. 3641.

116. Amend newly redesignated § 3045.3 by revising paragraphs (a)(1)(ii) and (a)(2)(vi) to read as follows:

§ 3045.3 Contents of notice.

(a) * * *

(1) * * *

(ii) Establish that the introduction or continued offering of the experimental product will not create an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns, as defined in § 3010.101(t) of this chapter; and

* * * * *

(2) * * *

(vi) Includes a data collection plan for the market test, including a description of the specific data items to be collected. The minimum data collection plan requirements are described in § 3045.20.

117. Revise newly redesignated § 3045.10 to read as follows:

§ 3045.10 Duration.

A market test may not exceed 24 months in duration unless the Commission authorizes an extension pursuant to a request filed by the Postal Service under § 3045.11.

118. Amend newly redesignated § 3045.15 by revising paragraphs (a) and (b) to read as follows:

§ 3045.15 Dollar amount limitation.

(a) The Consumer Price Index used for calculations under this part is the CPI-U index, as specified in §§ 3030.521(a) and 3030.522(a) of this chapter.

(b) An experimental product may only be tested if total revenues that are anticipated or received by the Postal Service do not exceed $10 Million in any fiscal year, as adjusted for the change in the CPI-U index, as specified in paragraph (d) of this section ($10 Million Adjusted Limitation). Total revenues anticipated or received may exceed the $10 Million Adjusted Limitation in any fiscal year if an exemption is granted pursuant to § 3045.16.

* * * * *

119. Amend newly redesignated § 3045.16 by revising paragraph (f)(3) to read as follows:

§ 3045.16 Exemption from dollar amount limitation.

* * * * *

(f) * * *

(3) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year remaining on the market test, including any extension period granted by the Commission in accordance with § 3045.11(c), and provide available supporting documentation; and

* * * * *

120. Revise newly redesignated § 3045.17 to read as follows:

§ 3045.17 Prevention of market disruption.

Notwithstanding the $10 Million Adjusted Limitation or any adjustment granted pursuant to § 3045.16, the Commission may limit the amount of revenues the Postal Service may obtain from any particular geographic market as necessary to prevent the creation of an unfair or otherwise inappropriate competitive advantage for the Postal Service or any mailer, particularly in regard to small business concerns, as defined in § 3010.101(t) of this chapter.

121. Amend newly redesignated § 3045.18 by revising paragraph (a) to read as follows:

§ 3045.18 Request to add a non-experimental product or price category based on an experimental product to the product list.

(a) If the Postal Service seeks to add a non-experimental product or price category based on a former or current experimental product to the market dominant or

competitive product list, the Postal Service shall file a request, pursuant to 39 U.S.C. 3642 and part 3040, subpart B of this chapter, to add a non-experimental product or price category to the applicable product list.

* * * * *

(d) * * *

(1)(i) * * *

(B) The market test is expected to exceed any authorized limitation specified in §§3045.15 and 3045.16 during any fiscal year, whichever is earlier.

* * *

(2)(i) * * *

(B) The market test is expected to exceed any authorized limitation specified in §§3035.15 and 3035.16 §§3045.15 and 3045.16 during any fiscal year, whichever is earlier.

122. Amend newly redesignated § 3045.20 by revising paragraph (a) introductory text to read as follows:

§ 3045.20 Data collection and reporting requirements.

(a) A notice of a market test shall include a data collection plan for the market test as required by § 3045.3(a)(2)(vi). Data collection plans shall include, at a minimum:

PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING

123. The authority for newly redesignated part 3055 continues to read as follows:

Authority: 39 U.S.C. 503, 3622(a), 3652(d) and (e); 3657(c).

124. Revise newly redesignated § 3055.1 to read as follows:

§ 3055.1 Annual reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter, the Postal Service shall file a report as part of the section 3652 report addressing service performance achievements for the preceding fiscal year.

125. Revise newly redesignated § 3055.30 to read as follows:

§ 3055.30 Periodic reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter, the Postal Service shall file a Quarterly Report with the Commission addressing service performance achievements for the preceding fiscal quarter (within 40 days of the close of each fiscal quarter).

126. Revise newly redesignated § 3055.90 to read as follows:

§ 3055.90 Reporting of customer satisfaction.

For each market dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter, the Postal Service shall file a report as part of the section 3652 report, unless a more frequent filing is specifically indicated, addressing customer satisfaction achievements for the preceding

fiscal year. The report shall include, at a minimum, the specific reporting requirements presented in §§ 3055.91 through 3055.92.

PART 3060—ACCOUNTING PRACTICES AND TAX RULES FOR THE THEORETICAL COMPETITIVE PRODUCTS ENTERPRISE

127. The authority for newly redesignated part 3060 continues to read as follows:

Authority: 39 U.S.C. 503, 2011, 3633, 3634.

128. Revise newly redesignated § 3060.21 to read as follows:

§ 3060.21 Income report.

The Postal Service shall file an Income Report in the form and content of table 1 to § 3060.21.

TABLE 1 TO § 3060.21—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP-01

[$ in 000s]

	FY 20xx	**FY 20xx-1**	**Change from SPLY**	**Percent change from SPLY**
Revenue:	$x,xxx	$x,xxx	$xxx	xx.x
(1) Mail and Services Revenues	xxx	xxx	xx	xx.x
(2) Investment Income	x,xx	x,xxx	xxx	xx.x
(3) Total Competitive Products Revenue				
Expenses:	x,xxx			
(4) Volume-Variable Costs	x,xxx	x,xxx	xxx	xx.x
(5) Product Specific Costs	x,xxx	x,xxx	xxx	xx.x
(6) Incremental Inframarginal Costs	x,xxx	x,xxx	xxx	xx.x
(7) Total Competitive Products Attributable Costs	x,xxx	x,xxx	xxx	xx.x
(8) Net Contribution Competitive Products Market Tests	x,xxx	x,xxx	xxx	xx.x
(9) Net Income Before Institutional Cost Contribution	x,xxx	x,xxx	xxx	
(10) Required Institutional Cost Contribution	x,xxx	x,xxx	xxx	x.x.x
(11) Net Income (Loss) Before Tax	x,xxx	x,xxx	xxx	xx.x
(12) Assumed Federal Income Tax	x,xxx	x,xxx	xxx	xx.x
(13) Net Income (Loss) After Tax	x,xxx	x,xxx	xxx	xx.x
Line (1): Total revenues from Competitive Products volumes and Ancillary Services.				
Line (2): Income provided from investment of surplus Competitive Products revenues.				
Line (3): Sum total of revenues from Competitive Products volumes, services, and				

investments.
Line (4): Total Competitive Products volume-variable costs as shown in the Cost and Revenue Analysis (CRA) report.
Line (5): Total Competitive Products product-specific costs as shown in the CRA report.
Line (6): Inframarginal costs calculated as part of total Competitive Products incremental costs as shown in ACR Library Reference “Competitive Product Incremental and Group Specific Costs” (Currently NP10).
Line (7): Sum total of Competitive Products costs (sum of lines 4, 5, and 6).
Line (8): Net Contribution Competitive Products Market Tests as shown in the Annual Compliance Report.
Line (9): Difference between Competitive Products total revenues and attributable costs and Market Tests Contributions (line 3 less line 7 plus line 8).
Line (10): Minimum amount of Institutional cost contribution required under 39 CFR 3035.7 of this chapter.
Line (11): Line 9 less line 10.
Line (12): Total assumed Federal income tax as calculated under 39 CFR 3060.40.
Line (13): Line 11 less line 12.

CHAPTER III—[AMENDED]

129. In chapter III of title 39, revise all references to “Web site” to read “website.”

FORMER TITLE 39 C.F.R. DISPOSITION

Old			New	
Part	**Section**		**Part**	**Section**
3000			3001	
	3000.5			3001.105
	3000.10			3001.110
	3000.15			3001.115
	3000.20			3001.120
	3000.50			3001.150
	3000.55			3001.155
3001			3010	
	3001.1			3010.100
	3001.3			3010.100
	3001.4			3010.100
	3001.5			3010.101
	3001.6			3010.143
	3001.8			3010.144
	3001.9			3010.120
				3010.121
				3010.122
				3010.123
	3010.10			3010.120
				3010.122
				3010.124
	3001.11			3010.120
				3010.124
				3010.126
	3001.12			3010.127
	3001.13			3010.102
				3010.103
	3001.14			3010.104
	3001.15			3010.108
	3001.16			3010.162
	3001.17			3010.150
				3010.151
	3001.18			3010.301
				3010.303
	3001.19			3010.150

				3010.151
	3001.20			3010.142
	3001.21			3010.160
				3010.164
	3001.22			3010.161
	3001.23			3010.106
	3001.24			3030.302
	3001.25			3010.310
	3001.26			3010.311
	3001.27			3010.312
	3001.28			3010.313
	3001.29			3010.320
	3001.30			3010.321
	3001.31			3010.125
				3010.322
				3010.323
				3010.324
	3001.32			3010.107
	3001.33			3010.325
	3001.34			3010.330
	3001.35			3010.331
	3001.36			3010.332
	3001.37			3010.333
	3001.38			3010.335
	3001.39			3010.335
	3001.40			3010.336
	3001.41			3010.150
				3010.151
				3010.152
				3010.200
				3010.201
				3010.202
				3010.203
	3001.43			3007.100
	3001.44			3010.109
	3001.45			3010.109
	3001.100			3010.109
	3001.101			3010.109
3001			3020	

	3001.71			3020.101
	3001.72			3020.102
	3001.73			3020.103
	3001.74			3020.104
	3001.75			3020.105
	3001.80			3020.110
	3001.81			3020.111
	3001.82			3020.112
	3001.83			3020.113
	3001.84			3020.114
	3001.85			3020.115
	3001.86			3020.116
	3001.87			3020.117
	3001.88			3020.118
	3001.89			3020.119
	3001.90			3020.120
	3001.91			3020.121
	3001.92			3020.122
	3001.93			3020.123
	App A			App A
3002			3000	
	3002.1			3000.101
	3002.2			3000.102
	3002.3			3000.103
	3002.4-.9			3000.104-.109
	3002.10			3000.110
	3002.11			3000.111
	3002.12			3000.112
	3002.14			3000.114
	3002.15			3000.115
	3002.16			3000.116
3003			3005	
	3003.1			3005.101
	3003.2			3005.102
	3003.3			3005.103
	3003.4			3005.104
	3003.5			3005.105
	3003.6			3005.106

	3003.7			3005.107
3004			3006	
	3004.1			3006.1
	3004.2			3006.2
	3004.3			3006.3
	3004.10			3006.10
	3004.11			3006.11
	3004.12			3006.12
	3004.13			3006.13
	3004.20			3006.20
	3004.30			3006.30
	3004.40			3006.40
	3004.41			3006.41
	3004.42			3006.42
	3004.43			3006.43
	3004.44			3006.44
	3004.45			3006.45
	3004.50			3006.50
	3004.51			3006.51
	3004.52			3006.52
	3004.53			3006.53
	3004.54			3006.54
	3004.60			3006.60
	3004.61			3006.61
	3004.70			3006.70
3005			3013	
	3005.1			3013.1
	3005.2			3013.2
	3005.11			3013.11
	3005.12			3013.12
	3005.13			3013.13
	3005.14			3013.14
	3005.15			3013.15
	3005.16			3013.16
	3005.21			3013.21
	App A			App A
3007			3011	

	3007.100			3011.100
	3007.101			3011.101
	3007.102			3011.102
	3007.103			3011.103
	3007.104			3011.104
	3007.200			3011.200
	3007.201			3011.201
	3007.202			3011.202
	3007.203			3011.203
	3007.204			3011.204
	3007.205			3011.205
	3007.300			3011.300
	3007.301			3011.301
	3007.302			3011.302
	3007.303			3011.303
	3007.304			3011.304
	3007.305			3011.305
	App A			App A
	3007.400			3011.400
	3007.401			3011.401
	App A			App A
3008			3012	
	3008.1			3012.1
	3008.2			3012.2
	3008.3			3012.3
	3008.4			3012.4
	3008.5			3012.5
	3008.6			3012.6
	3008.7			3012.7
3010			3030	
	3010.1			3030.501
	3010.2			3030.502
	3010.3			3030.503
	3010.4			3030.504
	3010.5			3030.505
	3010.6			3030.506
	3010.7			3030.507

	3010.8			3030.508
	3010.9			3030.509
	3010.10			3030.510
	3010.11			3030.511
	3010.12			3030.512
	3010.20			3030.520
	3010.21			3030.521
	3010.22			3030.522
	3010.23			3030.523
	3010.24			3030.524
	3010.25			3030.525
	3010.26			3030.526
	3010.27			3030.527
	3010.28			3030.528
	3010.29			3030.529
	3010.30			3030.530
	3010.40			3030.540
	3010.41			3030.541
	3010.42			3030.542
	3010.43			3030.543
	3010.44			3030.544
	3010.60			3030.560
	3010.61			3030.561
	3010.62			3030.562
	3010.63			3030.563
	3010.64			3030.564
	3010.65			3030.565
	3010.66			3030.566
3015			3035	
	3015.1			3035.101
	3015.2			3035.102
	3015.3			3035.103
	3015.4			3035.104
	3015.5			3035.105
	3015.6			3035.106
	3015.7			3035.107
3017			3025	
	3017.1			3025.101

	3017.2			3025.102
	3017.3			3025.103
	3017.4			3025.104
	3017.5			3025.105
3020			3040	
	3020.1			3040.101
	3020.2			3040.102
	3020.3			3040.103
	3020.4			3040.104
	3020.5			3040.105
	App A			App A
	App B			App B
	3020.30			3040.130
	3020.31			3040.131
	3020.32			3040.132
	3020.33			3040.133
	3020.34			3040.134
	3020.35			3040.135
	3020.50			3040.150
	3020.51			3040.151
	3020.52			3040.152
	3020.53			3040.153
	3020.54			3040.154
	3020.55			3040.155
	3020.56			3040.156
	3020.70			3040.170
	3020.71			3040.171
	3020.72			3040.172
	3020.73			3040.173
	3020.74			3040.174
	3020.75			3040.175
	3020.76			3040.176
	3020.80			3040.180
	3020.81			3040.181
	3020.82			3040.182
	3020.83			3040.183
	3020.84-.89			3040.184-.189
	3020.90			3040.190
	3020.91			3040.191

	3020.92			3040.192
	3020.110			3040.210
	3020.111			3040.211
	3020.112			3040.212
3025			3021	
	3025.1			3021.1
	3025.2			3021.2
	3025.3			3021.3
	3025.10			3021.10
	3025.11			3021.11
	3025.12			3021.12
	3025.13			3021.13
	3025.14			3021.14
	3025.20			3021.20
	3025.21			3021.21
	3025.22			3021.22
	3025.30			3021.30
	3025.40			3021.40
	3025.41			3021.41
	3025.42			3021.42
	3025.43			3021.43
3030			3022	
	3030.1			3022.1
	3030.2			3022.2
	3030.10			3022.10
	3030.11			3022.11
	3030.12			3022.12
	3030.13			3022.13
	3030.14			3022.14
	3030.20			3022.20
	3030.21			3022.21
	3030.30			3022.30
	3030.40			3022.40
	3030.41			3022.41
	3030.50			3022.50
3031			3023	
	3031.10			3023.10

	3031.11			3023.11
	3031.12			3023.12
3032			3024	
	3032.1			3024.1
	3032.2-.4			3024.2-.4
	3032.5			3024.5
	3032.6			3024.6
	3032.7			3024.7
	3032.8			3024.8
3035			3045	
	3035.1			3045.1
	3035.2			3045.2
	3035.3			3045.3
	3035.4			3045.4
	3035.5			3045.5
	3035.6			3045.6
	3035.7-.9			3045.7-.9
	3035.10			3045.10
	3035.11			3045.11
	3035.12			3045.12
	3035.13-.14			3045.13-.14
	3035.15			3045.15
	3035.16			3045.16
	3035.17			3045.17
	3035.18			3045.18
	3035.19			3045.19
	3035.20			3045.20
3050			3050	
3055			3055	
3060			3060	

NEW TITLE 39 C.F.R. DERIVATION

New			Old	
Part	**Section**		**Part**	**Section**
3000			3002	
	3000.101			3002.1
	3000.102			3002.2
	3000.103			3002.3
	3000.104-.109			3002.4-.9
	3000.110			3002.10
	3000.111			3002.11
	3000.112			3002.12
	3000.114			3002.14
	3000.115			3002.15
	3000.116			3002.16
3001			3000	
	3001.105			3000.5
	3001.110			3000.10
	3001.115			3000.15
	3001.120			3000.20
	3001.150			3000.50
	3001.155			3000.55
3005			3003	
	3005.101			3003.1
	3005.102			3003.2
	3005.103			3003.3
	3005.104			3003.4
	3005.105			3003.5
	3005.106			3003.6
	3005.107			3003.7
3006			3004	
	3006.1			3004.1
	3006.2			3004.2
	3006.3			3004.3
	3006.10			3004.10
	3006.11			3004.11

	3006.12			3004.12
	3006.13			3004.13
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	3006.40			3004.40
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	3006.43			3004.43
	3006.44			3004.44
	3006.45			3004.45
	3006.50			3004.50
	3006.51			3004.51
	3006.52			3004.52
	3006.53			3004.53
	3006.54			3004.54
	3006.60			3004.60
	3006.61			3004.61
	3006.70			3004.70
3007			3001.43	
3010			3001	
	3010.100			3001.1
				3001.3
				3001.4
	3010.101			3001.5
	3010.102			3001.13
	3010.103			3001.13
	3010.104			3001.14
	3010.105			n/a
	3010.106			3001.23
	3010.107			3001.32
	3010.108			3001.15
	3010.109			3001.44
				3001.45
	3010.120			3001.9(a)
				3001.10(a)
				3001.11(a)
	3010.121			3001.9(c)

	3010.122			3001.9(c)
				3001.10(c)
	3010.123			3001.9(d)
	3010.124			3001.10
				3001.11
	3010.125			3001.31(b)(2)
	3010.126			3001.11(e)
	3010.127			3001.12
	3010.140			n/a
	3010.141			3025.10(a)
				3025.14
	3010.142			3001.2
				3001.20a
				3001.20b
	3010.143			3001.6
	3010.144			3001.8
	3010.150			3001.17
				3001.19
				3001.41
	3010.151			3001.17
				3001.19
				3001.41
	3010.152			3001.41
	3010.160			3001.21
	3010.161			3001.22
	3010.162			3001.16
	3010.163			3001.21
	3010.164			3001.21(c)
	3010.170			3001.1
				3001.101
	3010.200			3001.41
	3010.201			3001.41
	3010.202			3001.41
	3010.203			3001.41
	3010.300			n/a
	3010.301			3001.18(b, c)

	3010.302			3001.24
	3010.303			3001.18
	3010.304			n/a
	3010.310			3001.25
	3010.311			3001.26
	3010.312			3001.27
	3010.313			3001.28
	3010.320			3001.29
	3010.321			3001.3
	3010.322			3001.31(a-j)
	3010.323			3001.31(k)
	3010.324			3001.31a
	3010.325			3001.33
	3010.330			3001.34
	3010.331			3001.35
	3010.332			3001.36
	3010.333			3001.37
	3010.334			n/a
	3010.335			3001.38
				3001.39
	3010.336			3001.40
3011			3007	
	3011.100			3007.100
	3011.101			3007.101
	3011.102			3007.102
	3011.103			3007.103
	3011.104			3007.104
	3011.200			3007.200
	3011.201			3007.201
	3011.202			3007.202
	3011.203			3007.203
	3011.204			3007.204
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	App A			App A
	3011.400			3007.400
	3011.401			3007.401
	App A			App A
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	3012.3			3008.3
	3012.4			3008.4
	3012.5			3008.5
	3012.6			3008.6
	3012.7			3008.7
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	3013.2			3005.2
	3013.11			3005.11
	3013.12			3005.12
	3013.13			3005.13
	3013.14			3005.14
	3013.15			3005.15
	3013.16			3005.16
	3013.21			3005.21
	App A			App A
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	3020.102			3001.72
	3020.103			3001.73
	3020.104			3001.74
	3020.105			3001.75
	3020.106-109			3001.76-.79
	3020.110			3001.80
	3020.111			3001.81
	3020.112			3001.82
	3020.113			3001.83
	3020.114			3001.84
	3020.115			3001.85

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	3020.118			3001.88
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	3020.120			3001.90
	3020.121			3001.91
	3020.122			3001.92
	3020.123			3001.93
	App A			App A
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	3021.3			3025.3
	3021.10			3025.10
	3021.11			3025.11
	3021.12			3025.12
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	3021.14			3025.14
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	3021.30			3025.30
	3021.40			3025.40
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	3021.42			3025.42
	3021.43			3025.43
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	3022.10			3030.10
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	3022.20			3030.20
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	3023.11			3031.11
	3023.12			3031.12
3024			3032	
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	3024.2-.4			3032.2-.4
	3024.5			3032.5
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	3024.7			3032.7
	3024.8			3032.8
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	3025.105			3017.5
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	3030.566			3010.66
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	3035.104			3015.4
	3035.105			3015.5
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	3035.107			3015.7
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	3040.102			3020.2
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	3040.104			3020.4
	3040.105			3020.5
	App A			App A
	App B			App B
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	3040.131			3020.31
	3040.132			3020.32

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	3040.152			3020.52
	3040.153			3020.53
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	3040.155			3020.55
	3040.156			3020.56
	3040.170			3020.70
	3040.171			3020.71
	3040.172			3020.72
	3040.173			3020.73
	3040.174			3020.74
	3040.175			3020.75
	3040.176			3020.76
	3040.180			3020.80
	3040.181			3020.81
	3040.182			3020.82
	3040.183			3020.83
	3040.184-.189			3020.84-.89
	3040.190			3020.90
	3040.191			3020.91
	3040.192			3020.92
	3040.210			3020.110
	3040.211			3020.111
	3040.212			3020.112
3045			3035	
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	3045.6			3035.6
	3045.7-.9			3035.7-.9
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	3045.12			3035.12

	3045.13-.14			3035.13-.14
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