

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

Before Commissioners:

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

Amendment to Rules of
Practice and Procedure

Docket No. RM2022-4

ORDER ADOPTING FINAL RULES REGARDING
NOTICES, MOTIONS, AND INFORMATION REQUESTS

(Issued July 12, 2022)

I. INTRODUCTION

On April 5, 2022, the Commission issued a notice of proposed rulemaking that proposed revisions to the Commission's rules of practice and procedure regarding notices, motions, and information requests.¹ The proposed amendments provide rules relating to motions for reconsideration of final Commission orders.² For the reasons discussed below, the Commission adopts the rules, as proposed in Order No. 6141,

¹ Notice of Proposed Rulemaking to Amend Rules Regarding Notices, Motions, and Information Requests, April 5, 2022 (Order No. 6141).

² Motions for review of other Commission determinations may be filed in accordance with 39 C.F.R. § 3010.160.

with a revision to provide greater clarity with respect to appellate deadlines under 39 U.S.C. § 3663.

II. BACKGROUND

The Commission currently considers timely motions for reconsideration of its final orders to determine if those motions raise material errors of fact or law.³ However, there are no existing Commission rules specific to motions for reconsideration, including when such a motion should be considered timely. Movants file such motions citing to the Commission's general rule for motions, found in 39 C.F.R. § 3010.160, or the underlying rules governing the subject matter of the docket.

The instant revisions provide rules specific to motions for reconsideration. These revised rules provide guidance with respect to the timing, content, and procedural requirements of these motions, as well as their effect on appellate deadlines, to facilitate public participation in Commission dockets, and to ensure finality of Commission orders.

III. COMMENTS

The Commission received comments on the proposed rules from the Postal Service⁴ and the Public Representative.⁵ The Postal Service and Public Representative each suggest revisions to the proposed rules. Postal Service Comments at 2-3; Public Representative Comments at 4.

The Postal Service seeks two revisions to the proposed rules. First, the Postal Service proposes a revision that would allow motions for reconsideration that do not comply with the limitations described in proposed 39 C.F.R. § 3010.165(b)(2) when such motions are "necessary to correct a clear error or prevent a manifest injustice."

³ See, e.g., Docket No. RM2020-9, Order Denying United Parcel Service, Inc.'s Motion for Reconsideration of Order No. 6048, January 28, 2022 (Order No. 6097).

⁴ Comments of the United States Postal Service, May 26, 2022 (Postal Service Comments).

⁵ Public Representative Comments on Proposed Rules Relating to Motions for Reconsideration, May 26, 2022 (PR Comments).

Postal Service Comments at 3. The Postal Service describes its proposed language as a “standard for reconsideration of final judgments . . . [that] is substantively identical to the standard under F.R.C.P. 59(e).” *Id.* at 2. Second, the Postal Service requests that the Commission extend the filing deadline included in the proposed rules from 15 days to 30 days. *Id.* at 1. The Postal Service contends that “a 30-day limit will improve the quality of the motions” and that “administrative and judicial economy militates in favor of allowing more time for higher quality motions for reconsideration so that the Commission has a better chance of fully considering and disposing of all issues in contention.” *Id.* at 4-5. The Postal Service further argues that “a 30-day deadline will make little change to the status quo” while acknowledging that “30 days has not been a de facto rule.” *Id.* at 5.

The Public Representative notes that “[t]he language of the proposed rules is consistent with those from other agencies” and supports the proposed rules. PR Comments at 1. The Public Representative also proposes two revisions. *Id.* First, the Public Representative suggests additional language specifying that motions for reconsideration toll the deadline for appellate review of Commission final orders. *Id.* at 4. Second, she suggests including a deadline for responses from other parties and an explanation of the potential Commission actions with respect to the motion. *Id.*

IV. COMMISSION ANALYSIS

After consideration of the comments submitted, the Commission declines to adopt the suggested changes and will implement the rules as initially proposed with one exception. As explained below, the suggested changes regarding standards for evaluation, filing deadlines, response filing deadlines, and potential Commission actions would not improve the proposed rules. However, the Commission amends the proposed rules to provide greater clarity with respect to appellate deadlines under 39 U.S.C. § 3663.

Explanatory language regarding the standard for evaluation of motions for reconsideration is not necessary because the standard is clearly stated in the proposed

rules as “*material* errors of fact or law.” 39 C.F.R. § 3010.165(a) (proposed) (emphasis added). In fact, the language suggested by the Postal Service does not provide a standard for evaluating motions for reconsideration. Instead, the suggested revision would provide additional grounds for motions of reconsideration, allowing parties to re-litigate issues that would be precluded under proposed 39 C.F.R. 3010.165(b)(2) when doing so would prevent a manifest injustice. As the Postal Service notes,⁶ federal courts provide such an exception, despite the fact that “[t]here is no precise definition of what constitutes ‘manifest injustice.’”⁷ Nevertheless, the Postal Service does not explain why an exception for manifest injustice is necessary in the context of the Commission’s regulation of it or provide examples of what might constitute a manifest injustice that might justify an exception to proposed 39 C.F.R. § 3010.165(b)(2). It is clear, however, that the Commission has numerous administrative tools at its disposal to address such a situation without the suggested language and that nothing in the proposed rules limits the Commission’s ability to act in such a circumstance. The proposed rules clearly state the standard for motions for reconsideration and are consistent with the comparable rules of other federal agencies. See, e.g., 17 C.F.R. § 201.470.

The proposed filing deadline is also consistent with the rules of other federal agencies and provides sufficient time for parties. Although the Postal Service argues that any deadline less than 30 days is “anomalous,” it concedes that other federal agencies have deadlines less than 30 days and some have deadlines as short as 10 days. Postal Service Comments at 3-5. The Commission is similarly unpersuaded by the Postal Service’s argument that “[a] 30-day timeframe would also promote administrative economy and reduce unnecessary litigation.” *Id.* at 6. As proposed, the deadline promotes administrative, and therefore judicial, economy and efficiency with an

⁶ Postal Service Comments at 1-4.

⁷ *AARP v. U.S. Equal Emp. Opportunity Comm’n*, 292 F. Supp. 3d 238, 241 (D.D.C. 2017) (citing *Piper v. U.S. Dep’t of Just.*, 312 F.Supp.2d 17, 22 (D.D.C. 2004), as amended (May 13, 2004)).

appropriate deadline that is consistent with those adopted by other federal agencies and provides sufficient time to parties.

Finally, the proposed rules do not need to specifically enumerate potential Commission responses to motions for reconsideration, such as grant, denial, or other action, or give a fixed deadline for responses from other parties. The Commission's general rules on motions do not explicitly state which actions the Commission may take with respect to those motions. 39 C.F.R. § 3010.160. The proposed rules are consistent with the general rules in this regard and the Commission's options with respect to motions for reconsideration are not unique to those motions to reconsideration. It is also not necessary to set deadlines for responses. In the unlikely event that responsive filings to a motion for reconsideration are necessary, the Commission will entertain requests by motion for timely submissions of these filings.

Nevertheless, the Commission amends the proposed rules to better clarify the effect of motions for reconsideration on parties' deadlines for appeal, pursuant to 39 U.S.C. § 3663. This additional language allows greater clarity for some parties before the Commission who wish to seek appellate review following reconsideration by the Commission.

For the aforementioned reasons, the Commission declines to adopt the commenters' suggested revisions regarding standards for evaluation, filing deadlines, response filing deadlines, and potential Commission actions. These suggested revisions would not improve the proposed rules because they are unnecessary, could cause confusion, reduce administrative economy, and/or are inconsistent with other Commission rules. However, the Commission revises the proposed rules to clarify the effect of motions for reconsideration on deadlines for appeal, pursuant to 39 U.S.C. § 3663.

V. ADMINISTRATIVE ACTIONS

The Regulatory Flexibility Act requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. See 5 U.S.C. § 601, *et seq.* (1980). If the proposed or final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities, the head of the agency may certify that the initial and final regulatory flexibility analysis requirements of 5 U.S.C. §§ 603 and 604 do not apply. See 5 U.S.C. § 605(b).

In the context of this rulemaking, the Commission's primary responsibility is in the regulatory oversight of the United States Postal Service. The rules that are the subject of this rulemaking have a regulatory impact on the Postal Service, but do not impose any regulatory obligation upon any other entity. Based on these findings, the Chairman of the Commission certifies that the rules that are the subject of this rulemaking will not have a significant economic impact on a substantial number of small entities. Therefore, pursuant to 5 U.S.C. § 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. §§ 603 and 604.

VI. ORDERING PARAGRAPHS

It is ordered:

1. Part 3010 of title 39, Code of Federal Regulations, is revised as set forth below the signature of this Order.
2. The Secretary shall arrange for publication of the amended rules and general statement as to the basis and purpose of the amended rules in the *Federal Register*.

3. The revisions adopted by this Order shall take effect on July 12, 2022.

By the Commission.

Erica A. Barker
Secretary

List of Subjects in 39 CFR Part 3010

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

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

PART 3010—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3010 continues to read as follows:

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

2. Add § 3010.165 as follows:

§ 3010.165 Motions for reconsideration.

(a) Any person may file a motion requesting reconsideration of a final order by the Commission.

(b) The motion shall be filed within 15 days of the issuance of the final order that is the subject of the motion and must:

(1) Briefly and specifically allege material errors of fact or law and the relief sought; and

(2) Be confined to new questions raised by the determination or action ordered and upon which the moving party had no prior opportunity to submit arguments.

(c) Upon filing a motion for reconsideration, the underlying Commission order is not deemed to be final for purposes of 39 U.S.C. 3663 until final disposition of the motion.