

Before the
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Rules for Complaints

Docket No. RM2008-3

PUBLIC REPRESENTATIVE COMMENTS
ON PROPOSED RULEMAKING ESTABLISHING RULES FOR COMPLAINTS
(October 6, 2008)

The Public Representative hereby comments on the Commission's Notice and Order¹ proposing to establish rules for complaints to implement title 39, section 3662, of the Postal Accountability and Enhancement Act (PAEA), Pub. L. No. 109-435, 120 Stat. 3218 (2006).

The proposed rules would delete the Commission's current complaint rules now located at 39 CFR 3001.81 and replace them with a new part 3030 and add a new part 3031 for rate and service inquiries.

The proposed rules establish a significant new process that will benefit the general public. The proposed rules establish a two-part structural approach to provide for (1) procedures for resolving complaints by persons who believe the Postal Service is not operating in conformance with chapter 36 and certain sections of title 39 or with any rule, order or other regulatory requirement based on any of these provisions and, (2) provide for a less formal inquiry process to meet the needs of individuals.

¹ Notice and Order of Proposed Rulemaking Establishing Rules for Complaints, Order No. 101, August 21, 2008.

This approach of establishing an alternative administrative inquiry process in lieu of a formal complaint proceeding will provide a broader avenue for the general public to resolve concerns about postal services. This is an important step in developing the new oversight process delegated to the Commission by the PAEA. It provides a more organized approach to obtaining and resolving the public's concerns about their postal service. It adds accountability and transparency to the process of resolving issues not rising to the level of formal complaints.

The new rate and service inquiry process in Part 3031 would establish new procedures that, with experience, may need to be revised for reasons of administrative feasibility. Questions about the scope of the new process will arise immediately. The following comments are intended to raise some of those potential issues at this stage of the process and to point out potential clarifications in the rules or the process.

Part 3030 Rules for Complaints

1. Section 3030.10 sets out the required contents of a complaint. Proposed section 3030.10(a)(9) requiring the complainant to certify an attempt to meet or confer with the Postal Service would be a useful and important addition to the rules. However, from the standpoint of the general public, the requirement is vague and may lead to misunderstandings as to the extent of the effort necessary to meet and confer. This section would apply to the contents of all complaints, whether national or individual in scope. If the complaint relates to a rate or service issue and applies to an individual, then only after the filing may the Commission determine, *sua sponte*, to treat the complaint as an inquiry where the initial filing requirements are more limited. Thus, it

would be helpful to individuals who may be filing complaints, but who are unfamiliar with the Postal Service's organization, if the rules provide some guidance as to the level of management and the type of locations where one is expected to contact the Postal Service to meet and confer. More useful would be the designation of a contact point by the Postal Service for those persons seriously considering filing a complaint. Is a postmaster, or a district manager, an appropriate level of contact or would it be sufficient for an individual to confer only with a carrier or an operator at the national call center? Is it sufficient to contact the Postal Service through an internet site, by telephone, or by letter? If a letter is sent and no response is received, is that sufficient to certify an attempt to resolve a complaint?

2. The heading of section 3030.13 "Conditions for application of rate or service inquiry procedures" should be clarified to add the word complaint in the heading, such as, "Procedures for Complaints Concerning Isolated Rate or Service Matters" or even "Conditions for Applying Rate or Service Inquiry Procedures to Complaints." Given the section's location in the rules immediately after the procedures for responding to complaints, the proposed heading is confusing as it appears to apply only to rate and service inquiries rather than complaints. Instead, the body of the rule indicates the section applies to documents that are either styled as complaints or were clearly intended to be complaints, but do not rise to that level, and which the Commission may, *sua sponte*, decide to handle as a rate or service inquiry. Without revision, the heading would appear to indicate the section is intended to apply to all rate or service inquiries that are filed, even though the body of the rule indicates otherwise, and even though Part 3031 is to apply to all rate or service inquiries.

Proposed section 3030.14(a)(6), Answer contents, would provide that the answer to a complaint must, “Include a certification that states that prior to the *filing*, the Postal Service attempted to meet or confer with the complainant to resolve or settle the complaint....” (Emphasis supplied). The section-by-section comments indicate this section “mirrors” proposed rule 3030.10 designed to foster settlement whereby the complainant is to certify an attempt to meet or confer with the Postal Service to resolve or settle the complaint. Proposed rule 3030.14(a)(6) is not clear as to which “filing” it is referring: the complaint filing or the answer filing. Given the requirement for a complainant to certify an attempt to meet or confer with the Postal Service prior to filing a complaint, additional certification to the same process would be redundant unless the purpose is to verify and acknowledge the complainant’s attempt to meet and confer, and to insure that the Postal Service, in turn, seriously attempted to meet and confer. On the other hand, the Commission may intend the Postal Service to certify that it attempted to meet and confer with the complainant after the complaint was filed. The better approach would be to require the Postal Service to certify to an attempt to meet and confer *after* the complaint is filed when the extent of the complaint is committed to writing and the facts and circumstances are set out in detail.

3. Section 3030.21--Investigator. Potential issues not addressed in the section are the intended extent of an investigator’s authority: whether the Commission would authorize an investigator to call conferences, accept written documents or pleadings, take testimony, issue subpoenas, or conduct on-site visits, if necessary.

Part 3031 Rules for Rate of Service Inquiries

1. **Part 3031 Rules for Rate of Service Inquiries.** The heading of this part refers only to inquiries, but the body of the rules suggests it is intended to apply, instead, to situations involving something more than mere inquiries. The rules in this Part appear intended to apply to situations that involve *problems or comments* regarding rates or services which do not rise to the level of a complaint. (If a complaint regarding rates or services is filed, it would be filed pursuant to the rules in Part 3030.) For this reason, the styling of the heading in Part 3031 relating to inquiries might be modified to include problems and/or comments.

2. Part 3031, and in particular section 3031.11, provides for forwarding inquiries to the Postal Service and for a response in writing, but it does not indicate what action, or even whether, the Commission intends to handle individual Postal Service responses received from the Postal Service that do not resolve a problem claimed in an inquiry.

The rule notes that in cases where the “inquiry has been resolved” the Commission may not respond to the inquiring party. (Section 3031.11(c)). The rule also recognizes that the Postal Service may not resolve an inquiry or problem raised or may refuse to do so. (Section 3031.11(a)). Finally, the proposed rule indicates the Commission will monitor all inquires to determine if inquiries upon the same or similar issue warrants their collective treatment as a complaint. (Section 3031.11(b)). In other words, it seems monitoring of the Postal Service’s responses inquiries will not be on a case-by-case basis, although the Commission will track each inquiry to ensure the Postal Service responds to each inquiry.

However, by establishing this desirable inquiry process as proposed in the rules, the Commission implies it will exert its influence to obtain a resolution of customer problems and it builds an expectation that the Commission will seek to work with the Postal Service to resolve each of the rate or service inquiries when, in fact, the Commission has noted in the discussion of the proposed rules that it will focus less of its resources on “issues that can more easily be remedied by postal management on a local level.” (Notice at 5).

Therefore, for clarity and to avoid an appearance that inquiries, problems, or comments are merely passed on to the Postal Service and tracked only for purposes of monitoring to determine if a group of similar inquiries, problems, or comments warrant investigation or the filing of a Commission initiated complaint, the rule ought to include language that the Postal Service’s response will be deemed resolution of each individual inquiry although the inquiry and the response will be monitored as indicated in section 3031.22(b). Hopefully, the Postal Service’s responses do not become merely routine boilerplate without any, or limited, Postal Service investigation or attempt to resolve problems cited in inquiries.

A more desirable approach would be the inclusion of an additional provision in the rules indicating the Commission’s intention to follow-up on each Postal Service response to determine if a resolution of an “inquiry” is feasible, reasonable, and obtainable. Such a procedure would also encourage careful review of each inquiry by the Postal Service.

3. As a general point, it is assumed that each formal complaint, unless treated as an inquiry, would be docketed and publicly available on the internet as is the current practice for complaints. However, there is no indication whether inquiries filed via the internet, together with Postal Service responses will be available on the internet or whether the receipt of inquiries received by mail will be made available or noted on the internet. In either case, establishing a tracking identifier by subject for each inquiry and public disclosure of the identifier, as well as the tally of inquiries by subject matter, would be useful to the general public and to persons who may be considering preparing an inquiry or complaint.

If the general public has internet access to previous inquiries and a compilation of the issues previously addressed by inquiries, together with the Postal Service's responses to specific inquiries, there could be a greater understanding of the extent of the questions and problems experienced by other mailers as well as a knowledge of the Postal Service responses and the potential for resolution of problems. A systematic classification of inquiries, by type, which may already be planned by the Commission, would also assist the Commission in monitoring the inquiries. Periodically placing on the internet a tabulation of the types of inquiries and the issues raised by inquiries would be useful as a ready source of reference for the public and even the Postal Service. The number of inquiries may be significantly reduced if the public understands the Postal Service's policies and reasons for its policies.

Conclusion

The Public Representative respectfully submits the foregoing Comments for the Commission's consideration.

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