



POSTAL REGULATORY COMMISSION  
Washington, DC 20268-0001

October 27, 2010

Catherine M. Fahey  
Council Member, 7<sup>th</sup> Ward  
32 Lawnridge Avenue  
Albany, NY 12208

Re: Appeal of the Postal Service Closure of the Delaware Station, Albany, NY

Dear Ms. Fahey:

On October 25, 2010, the Postal Regulatory Commission received your petition concerning the closure of the Delaware Station Post Office. Prior to receiving your petition, the Commission received a petition for review from a patron of the Delaware Station. In response to the latter, the Commission established Docket No. A2011-1 to review this matter. Your appeal has been consolidated with the prior appeal and will be considered in Docket No. A2011-1.

The procedural schedule adopted in Docket No. A2011-1 established filing deadlines for all parties in this proceeding. The Participant Statement (Form 61) is due by November 26, 2010. You may either file a brief or Form 61. Form 61 is designed to help participants make a concise statement in support of their petitions or requests. For your convenience, please find enclosed Form 61 and a copy of the order establishing the procedural schedule.

Catherine M. Fahey  
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Under the Commission's rules, all documents must be filed electronically unless a waiver is granted. See 39 CFR 3001.9(a). Instructions for Filing Online are available on the Commission website, [www.prc.gov](http://www.prc.gov). If you need assistance, you can also contact the docket section at [prc-docket@prc.gov](mailto:prc-docket@prc.gov) or via telephone at 202-789-6846.

Sincerely,



Shoshana M. Grove  
Secretary

Enclosures

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

Before Commissioners:

Ruth Y. Goldway, Chairman;  
Tony L. Hammond, Vice Chairman;  
Mark Acton;  
Dan G. Blair; and  
Nanci E. Langley

Delaware Station Post Office  
Albany, New York 12209

Docket No. A2011-1

NOTICE AND ORDER ACCEPTING APPEAL AND  
ESTABLISHING PROCEDURAL SCHEDULE

(Issued October 22, 2010)

Notice is hereby given that pursuant to 39 U.S.C. 404(d), the Commission has received an appeal of the closing of the Delaware Station, Albany, New York 12209. The appeal, is postmarked October 19, 2010, and was posted on the Commission's website October 21, 2010. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and designates the case as Docket No. A2011-1 to consider the petitioner's appeal. If the petitioner would like to further explain her position with supplemental information or facts, she may either file a Participant Statement on PRC Form 61 or file a brief with the Commission by no later than November 26, 2010.

*Categories of issues apparently raised.* The categories of issues raised include:  
Failure to follow the post office closure requirements See 39 U.S.C. 404(d)(1) and  
Failure to consider effect on the community See 39 U.S.C. 404(d)(2)(A)(i).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the administrative record with the Commission is November 5, 2010. 39 CFR 3001.113.

*Availability; website posting.* The Commission has posted the appeal and supporting material on its website at <http://www.prc.gov>. Additional filings in this case and participants' submissions also will be posted on the website, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's website is available online or by contacting the Commission's webmaster via telephone at 202-789-6873 or via electronic mail at [prc-webmaster@prc.gov](mailto:prc-webmaster@prc.gov).

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov) or via telephone at 202-789-6846.

*Filing of documents.* All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's website, <http://www.prc.gov>, unless a waiver is obtained. 39 CFR 3001.9(a) and 10(a). Instructions for obtaining an account to file documents online may be found on the Commission's website, <http://www.prc.gov>, or by contacting the Commission's docket section at [prc-dockets@prc.gov](mailto:prc-dockets@prc.gov) or via telephone at 202-789-6846.

*Intervention.* Those, other than the petitioner and respondent, wishing to be heard in this matter are directed to file a notice of intervention. See 39 CFR 3001.111. Notices of intervention in this case are to be filed on or before November 16, 2010. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's

website, <http://www.prc.gov>, unless a waiver is obtained for hardcopy filing. See 39 CFR 3001.9(a) and 10(a).

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

*It is ordered:*

1. The Postal Service shall file the administrative record in this appeal, or otherwise file a responsive pleading to the appeal, by November 5, 2010.
2. The procedural schedule listed below is hereby adopted.
3. Pursuant to 39 U.S.C. 505, Robert Sidman is designated officer of the Commission (Public Representative) to represent the interests of the general public.
4. The Secretary shall arrange for publication of this Notice and Order and Procedural Schedule in the *Federal Register*.

By the Commission.

Shoshana M. Grove  
Secretary

## PROCEDURAL SCHEDULE

|                   |  |
|-------------------|--|
| October 19, 2010  | Filing of Appeal   |
| November 5, 2010  | Deadline for Postal Service to file administrative record in this appeal or responsive pleading  |
| November 16, 2010 | Deadline for petitions to intervene (see 39 CFR 3001.111(b))   |
| November 26, 2010 | Deadline for Petitioner's Form 61 or initial brief in support of petition (see 39 CFR 3001.115(a) and (b))   |
| December 16, 2010 | Deadline for answering brief in support of Postal Service (see 39 CFR 3001.115(c))   |
| December 31, 2010 | Deadline for reply briefs in response to answering briefs (see 39 CFR 3001.115(d))   |
| January 7, 2011   | Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116) |
| February 16, 2011 | Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(d)(5))   |

**PLEASE READ THIS ENTIRELY BEFORE  
FILLING OUT THE ENCLOSED  
"PARTICIPANT STATEMENT"**

**APPEALS OF POSTAL SERVICE DETERMINATIONS  
TO CLOSE OR CONSOLIDATE POST OFFICES**

**INTRODUCTION**

Congress statutorily requires the Postal Service to follow specific procedures and consider certain factors before making a Final Determination to close or consolidate a post office. The law gives any patron the right to appeal the Postal Service's final determination to the Postal Regulatory Commission, ("PRC" or "Commission"), an independent agency which is not affiliated with the Postal Service. When a patron appeals a Postal Service Final Determination, the PRC must decide whether the Postal Service's closure or consolidation of a post office is consistent with the law.

To assist the Commission in its consideration of an appeal of the Postal Service's decision to close or consolidate your post office, you may want to send a written statement explaining why you believe the Commission should reverse the Final Determination and return the entire matter for further consideration. Enclosed, please find a *Participant Statement* form that you may use to present your written argument.

**POSTAL REGULATORY COMMISSION AUTHORITY**

With respect to appeals of Postal Service Final Determinations to close or consolidate a post office, the Commission is limited to "appellate jurisdiction." As a result, the Commission cannot conduct its own fact-finding investigation and must consider appeals based solely upon the record which consists of the Proposal, Final Determination and other documents the Postal Service collected during closure or consolidation consideration. Postal Service regulations require that a copy of the record be available at the affected post office for thirty (30) days after the Final Determination is posted. After the initial posting period, Postal Service employees will have information on how a copy of the record may be obtained.

Limitations on the Commission's authority prohibits it from returning a Final Determination to the Postal Service simply because the Commission believes a different result might be better. Rather, the PRC may only examine the Postal Service's decision and record in order to determine whether the Postal Service abided by the statutory guidelines. Specifically, the law requires that the Commission affirm the Postal Service's Final Determination unless the determination is:

- (A) arbitrary, capricious, an abuse of discretion or otherwise not in accordance with the law;

- (B) without observance of procedure required by law; or
- (C) unsupported by substantial evidence on the record.

Furthermore, the Commission may not change the Postal Service's Final Determination. It may only (1) affirm the decision or (2) remand the entire matter to the Postal Service for further consideration.

#### AUTHORITY OF POSTAL SERVICE

In keeping with its responsibility to operate the nation's mail system, the Postal Service has been given considerable authority over the operations of post offices; this authority includes the power to decide whether an office should be closed or consolidated. However, before reaching a decision to close or consolidate a post office, the Postal Service must follow a procedure set up by law as well as consider specific factors involved in such an action.

#### PROCEDURE

The law sets out the steps the Postal Service must take before it closes or consolidates a post office. Specifically, the Postal Service, prior to making a determination . . . as to the necessity of the closing and consolidation of any post office, shall provide adequate notice of its intention to close or consolidate such post office *at least sixty (60) days prior to the proposed date of such closing or consolidation* to persons served by such post office to insure that such persons will have an opportunity to present their views.

The Postal Service calls its "notice of its intention to close or consolidate" the "Proposal." As noted above, the proposal must be posted for sixty (60) days. During the sixty (60) days, patrons are invited to give the Postal Service their comments on the proposed closing or consolidation. The Postal Service calls its determination to close or consolidate the "Final Determination." Any determination of the Postal Service to close or consolidate a post office shall be in writing and shall include the findings of the Postal Service with respect to the considerations required to be made. Such determination and findings shall be made available to persons served by such post office. The Postal Service shall take no action to close or consolidate a post office *until sixty (60) days after its written determination is made available to persons served by such post office.*

#### FACTORS TO BE CONSIDERED

In addition to following the required procedure, the Postal Service must also consider certain factors.

The Postal Service, in making a determination whether or not to close or consolidate a post office, shall consider:

- (A) the effect of such closing or consolidation on the community served by such post office;

- (B) the effect of such closing or consolidation on employees of the Postal Service employed at such office;
- (C) whether such closing or consolidation is consistent with the policy of the Government . . . that the Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities and small towns where post offices are not self-sustaining;
- (D) the economic savings to the Postal Service resulting from such closing or consolidation; and
- (E) such other factors as the Postal Service determines are necessary.

PARTICIPANT STATEMENT

We have included a form that you may use for your written argument. The purpose of the Participant Statement is the same a formal brief which is to point out issues that you believe that Commission should consider in its review of the Postal Service's actions. You may file a Participant Statement as a formal brief. General examples of some issues that would be proper to include would be:

1. That the Postal Service did not consider certain issues it is required to consider;
2. The facts relied on by the Postal Service have not been established;
3. The Postal Service did not follow the procedure required by law; or
4. The facts in the Postal Service's final determination are true, but they do not prove what the Postal Service says they prove.

The Participant Statement should be as specific as possible.

In reviewing Postal Service determinations to close or consolidate post offices, Commission proceedings can be much less formal than is customary in courts. The Commission does not require patrons appealing Postal Service decisions to meet the usual format requirements for filed documents. No technical formalities are required. However, it is important that papers sent to the PRC are legible. It is also important for statements to be clear and as specific as possible.

The due date for a Participant Statement or brief can be found in the schedule which is attached as an Appendix to the "Notice and Order of Filing of Appeal." You should have a copy of the Notice and Order. If you do not, you should be able to find a copy posted at the post office. Under its rules, the Commission expects to receive briefs on the day specified in the schedule, rather than receiving briefs that are simply postmarked by that day.

FILING THE PARTICIPANT STATEMENT OR BRIEF

Address the Participant Statement or brief to:

Office of the Secretary  
Postal Regulatory Commission  
901 New York Avenue, NW, Suite 200  
Washington, DC 20268

Please include the PRC Docket Number on your Statement and any other papers you send to the Commission concerning the case.



