

ORDER NO. 1742

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

Before Commissioners:

Ruth Y. Goldway, Chairman;
Robert G. Taub, Vice Chairman;
Mark Acton;
Tony Hammond; and
Nanci E. Langley

Amendments to Rules of Practice and Procedure

Docket No. RM2013-1

ORDER ADOPTING MINOR AMENDMENTS
TO THE RULES OF PRACTICE AND PROCEDURE

(Issued June 10, 2013)

I. INTRODUCTION

On March 19, 2013, the Commission issued a notice of proposed rulemaking concerning minor clarifying amendments to the Commission's rules of practice and procedure in 39 CFR part 3001.¹ The proposed amendments suggested minor changes that would remove obsolete references, adopt new terminology, and make technical edits. Interested persons were provided an opportunity to comment on the proposed amendments. *Id.* at 6. After consideration of the comments submitted, the Commission adopts the proposed amendments with several minor modifications.

¹ Order No. 1677, Notice of Proposed Rulemaking Concerning Minor Amendments to the Rules of Practice, March 19, 2013 (Order No. 1677).

II. COMMENTS

The Public Representative and the Postal Service filed comments on May 17, 2013. No other interested person submitted comments. The Postal Service's comments offer no substantive suggestions and commend "the Commission for undertaking to prepare these clarifications and improvements..."²

The Public Representative states that the "minor amendments are a step in the right direction" but "suggests that the Commission undertake a more comprehensive review of its Rules of Practice and Procedure to address inconsistencies, remove outdated rules, and assure that rules conform with current practice before the Commission."³ Suggestions for "a more comprehensive update of the rules" include:

- moving all general definitions to part 3001 and removing duplicative definitions and definitions contained in other parts. *Id.* at 1-2.
- clarifying the definitions of the classes of persons that appear before the Commission (*i.e.*, party, participant, complainant) and ensuring that the terms are used as intended. *Id.* at 2-3.
- distinguishing commenters as described in rule 3001.20b with interested persons who file comments at the Commission's invitation. *Id.* at 3, 5.
- proposing a revised definition of "hearing". *Id.* at 4.
- clarifying that the Public Representatives are not classified as "decision-making Commission personnel" for the purposes of rule 3001.7. *Id.*
- using consistent terminology to describe the filing and acceptance of documents filed online. *Id.*
- removing the requirement that the Postal Service file requests for changes in rate and classifications both online and in hard copy. *Id.* at 4-5.
- allowing the presiding officer to grant late filed motions to intervene. *Id.* at 5.
- removing references to intermediate decisions. *Id.* at 5, 7.

² United States Postal Service Comments on Notice of Proposed Rulemaking Regarding Minor Amendments to the Rules of Practice, May 17, 2013, at 1.

³ Comments of the Public Representative, May 17, 2013, at 1 (PR Comments).

- clarifying the rights of limited participators in discovery matters in rules 3001.26, 3001.27, and 3001.28. *Id.* at 7.
- clarifying the person(s) responsible for prehearing conferences and ruling on motions in cases where a presiding officer is not appointed. *Id.* at 6, 7.
- eliminating the requirement in rule 3001.31(g) that eight copies of all prepared testimony and exhibits be filed. *Id.* at 7.
- revising rule 3001.33 to be consistent with online filings. *Id.* at 8.
- revising rule 3001.39(c) to conform with current Commission practice. *Id.*
- allowing requests to open and close public meetings to be filed electronically. *Id.* at 9.
- removing rule 3001.75. *Id.*

III. SUMMARY OF CHANGES TO THE PROPOSED RULES

As discussed below, the Commission is making the following changes to the rules proposed in Order No. 1677:

In paragraph (j) of rule 3001.5, the proposed rules contained the phrase “§§ 3001.17 and 3001.18(a) of this section”. “[O]f this section” is unnecessary and has been removed from the final rule. In paragraph (o), the phrase “of this chapter” has been added following the reference to part 3025 for clarification.

In rule 3001.7, the Commission adopts the Public Representative’s suggestion to clarify that individuals assigned to represent the interests of the general public in a particular docket are excluded from the definition of “decision-making Commission personnel” for purposes of applying ex parte restrictions. Therefore, a new paragraph 3001.7(a)(2)(iii) is added to read, “The Public Representative and other Commission personnel assigned to represent the interests of the general public pursuant to 39 U.S.C. 505 in the specific case or controversy at issue.” In addition, Order No. 1677 inadvertently proposed that paragraphs (b)(1) through (b)(5) be deleted from the rule. The final rules leave those paragraphs intact.

In rule 3001.10, the Commission agrees with the Public Representative’s suggestion that requests for changes in rates and classifications no longer need to be

filed in hard copy. Therefore, paragraph (a)(4) is removed; paragraph (a)(5) is redesignated as paragraph (a)(4); and paragraph (a)(6) is redesignated as paragraph (a)(5).

In rule 3001.12, paragraph (a)(1) is removed to reflect the elimination of current rule 3001.10(a)(4). Paragraph (a)(2) is redesignated as paragraph (a)(1), and paragraph (a)(3) is redesignated as paragraph (a)(2).

In rule 3001.17, paragraph (a)(2) is revised to read, "The Commission determines that a complaint filed under part 3030 of this chapter raises one or more material issues of fact or law in accordance with § 3030.30 of this chapter."

In rule 3001.25(a), language has been added to clarify that discovery may occur in cases set for hearing pursuant to part 3030.

In paragraph (j) of rule 3001.31, the Public Representative suggests replacing "Provided, That" with "Provided, that". The Commission instead revises the paragraph to form two sentences and removes the phrase "Provided, That" and the word "general".

The proposed rules inadvertently suggested deletion of paragraph (a)(2) in rule 3001.43. The final rules leave that paragraph intact.

The Public Representative suggests deleting rule 3001.75 in its entirety because as proposed, it is unnecessary in light of rule 3001.71. The Commission agrees that rule 3001.75 is unnecessary and removes it.

In all other respects, the Commission adopts the rules as proposed in Order No. 1677.

IV. DISCUSSION

The final rules adopted by this Order make minor clarifications and corrections to the Commission's rules of practice and procedure in 39 CFR part 3001. The amendments largely remove obsolete references, adopt new terminology, and make technical edits to ensure the rules reflect the changes brought on by the Postal Accountability and Enhancement Act (PAEA), Public Law No. 109-435, 120 Stat. 3198

(2006), and subsequent rulemakings. This docket was not established to consider substantive changes.

In rule 3001.25(a), language has been added to clarify that discovery may occur in cases set for hearing pursuant to part 3030.

The commenters do not object to any of the proposed changes, but the Public Representative appears concerned that the references to 39 U.S.C. 3662 complaint cases were removed from rules 3001.5(j) and 3001.25(a). PR Comments at 4, 6. The references to complaint cases were removed from rules 3001.5(j) and 3001.25(a) because the PAEA removed the requirement that complaint proceedings be adjudicated as formal, on the record hearings pursuant to the Administrative Procedure Act. Thus, there is no longer a statutory obligation to adjudicate 39 U.S.C. 3662 cases formally. Nonetheless, the Commission has decided to adjudicate complaint cases formally if the complaint raises one or more material issues of fact or law. See 39 CFR 3030.30(a). The Commission's part 3030 rules clarify when the part 3001 rules are applicable to a complaint proceeding filed under part 3030, as the part 3001 rules are applicable by regulation rather than statute. Therefore, the references to 39 U.S.C. 3662 complaint cases were properly removed from rules 3001.5(j) and 3001.25(a). However, a reference to part 3030 has been added to rule 3001.25(a). In addition, a clarification to rule 3001.17 is necessary to clarify when a complaint filed pursuant to part 3030 is noticed and adjudicated in a formal, on the record proceeding. The change made in this Order to rule 3001.17(a)(2) should clear up any residual confusion.

Since this rulemaking endeavored to make minor corrective amendments to the rules of practice and procedure, many of the Public Representative's suggestions were, as he acknowledged, "suggestions for a more comprehensive update of the rules." PR Comments at 1. To the extent the Public Representative's suggestions fell within the narrow scope of this rulemaking, they have been incorporated into the final rules. Other suggestions call for more comprehensive changes that are outside the scope of this rulemaking. In addition, the Public Representative's suggestions include many substantive changes on which interested persons should have the opportunity to

comment. Therefore, the Commission will review the Public Representative's suggestions, and if warranted, open a subsequent rulemaking and allow for additional comment on any further changes.

V. SECTION-BY-SECTION ANALYSIS

Rule 3001.5. The amendments make changes to paragraphs (a), (h), (j), (m), (o), (p), and (q). The changes largely address changes in Commission terminology. For example, "officer of the Commission who is designated to represent the interests of the general public" in paragraph (h) and "Office of the Consumer Advocate" in paragraph (q) have been replaced with "Public Representative." In paragraphs (a), (j), (m), and (o), statutory and regulatory references that have been changed or repealed are replaced with accurate references. The obsolete definition in paragraph (p) is removed, and the paragraph is reserved for future use.

Rule 3001.7. The amendments address changes in Commission terminology and replace obsolete statutory and regulatory references. For example, in paragraph (a)(1)(iii), "Office of Rates, Analysis and Planning" is replaced with "Office of Accountability and Compliance." In paragraph (a)(2)(ii), "Subpart C" is replaced with "Subpart B." The introductory language of paragraph (b) is amended to encompass proceedings under section 3661 of title 39; any proceeding noticed and set for hearing by the Commission pursuant to §§ 3001.17 and 3001.18; or any proceeding conducted pursuant to part 3025. In addition, a new paragraph (a)(2)(iii) is added to clarify the status of Commission personnel assigned to represent the interests of the general public in specific cases.

Rule 3001.9. The amendments to rule 3001.9 address changes in Commission terminology, standardize the Commission's address and internal citation method, and add minor clarifying language. For example, in paragraph (a), "Office of the Secretary" is replaced with "Office of Secretary and Administration," and in paragraph (c)(2), "federal" is added before "holiday".

Rule 3001.10. Paragraph (a)(4) is removed; paragraph (a)(5) is redesignated as paragraph (a)(4); and paragraph (a)(6) is redesignated as paragraph (a)(5). Paragraph (c) is amended by deleting the excess “or” that follows “Word.”

Rule 3001.12. Paragraph (a)(1) is removed; paragraph (a)(2) is redesignated as paragraph (a)(1); and paragraph (a)(3) is redesignated as paragraph (a)(2).

Rule 3001.15. The amendments to rule 3001.15 clarify that the rule applies to federal holidays, make grammatical corrections, and remove the reference to part-day holidays.

Rule 3001.17. The amendment to paragraph (a)(2) clarifies language, resolving possible confusion and clarifying that the rule is intended to be read in conjunction with the Commission’s rules in part 3030.

Rule 3001.18. The amendments to paragraphs (b) and (c) of rule 3001.18 remove obsolete regulatory references and revise the types of decisions issued by the Commission to reflect statutory changes.

Rule 3001.19. Rule 3001.19 is amended by removing the word “involved” in the third sentence.

Rule 3001.20a. Paragraph (c) of rule 3001.20a is amended by removing the obsolete statutory reference to 39 U.S.C. 3622(b)(4) and by replacing “Limited participants” with “Limited participators”.

Rule 3001.20b. The amendments to the introductory paragraph of rule 3001.20b correct obsolete and imprecise regulatory references.

Rule 3001.21. In paragraph (a), “initial decision” is replaced with “intermediate decision”.

Rule 3001.23. In paragraphs (a)(7) and (a)(9), “initial or recommended decision” is replaced with “intermediate decision”.

Rule 3001.24. Amendments to paragraphs (a) and (d)(6) remove obsolete statutory references. In addition, “recommended decision or” is deleted from paragraph (a).

Rule 3001.25. Paragraph (a) is amended by removing obsolete statutory references.

Rule 3001.27. Paragraph (b) is amended by replacing the reference to “.12” with “3001.12”.

Rule 3001.30. Paragraph (d) is amended by removing obsolete statutory references and by adding clarifying language at the end of the first sentence. Paragraph (e)(2) is amended by replacing the obsolete reference to “OCA-T1-17” with “PR-T1-17”. Paragraph (h) is amended by replacing references to “his” with “his/her”.

Rule 3001.31. Paragraph (j) is revised to improve readability as follows: “*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 participant shall, on timely request, be afforded an opportunity to show the contrary.” Paragraph (k)(3)(i)(i) is amended by replacing “Administrative Office” with “Office of Secretary and Administration”.

Rule 3001.31a. Paragraph (c) is amended by removing “and shall be subject to the provisions of § 3001.42 of this chapter”.

Rule 3001.32. Paragraph (f) is amended by replacing “allowed or requested” with “certified pursuant to paragraph (b)(1) of this section”; by replacing both references to “initial decision” with “intermediate decision”; and by replacing “at the conclusion of the proceeding” with “in the participants’ briefs in accordance with § 3001.34”.

Rule 3001.34. Paragraph (a) is amended by replacing “issuance of recommended decision or advisory opinion to the Postal Service within the contemplation of sections 3641(a) and 3661 of the Act” with “issuance of the decision or advisory opinion”. Paragraph (b)(3) is amended by replacing “the subject matter of the complaint, or recommended decision, advisory opinion, or public report to be issued” with “and the advisory opinion or decision to be issued”.

Rule 3001.36. Rule 3001.36 is amended by removing references to “other designated officers” (including in the rule title) and by replacing references to “initial or

recommended decisions” with “intermediate decisions”. It is also amended by replacing “shall determine the time and place for oral argument. He may specify the issue or issues on which oral argument” with “shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument”.

Rule 3001.39. Paragraph (c) is amended by removing “(initial, recommended or tentative)” and obsolete statutory references, and by updating the terminology used for the various types of decisions issued.

Rule 3001.40. Rule 3001.40 is amended by removing the authority citation that follows the rule.

Rule 3001.41. Rule 3001.41 is amended by removing the authority citation that follows the rule.

Rule 3001.43. Paragraph (a)(1) is amended by removing “Access to documents being considered at Commission meetings shall be obtained in the manner set forth in § 3001.42”. Paragraph (c)(10) is amended by removing “as provided by section 3624(a) of title 39” and by replacing “a civil action or proceeding” with “a civil action or appellate proceeding”. Paragraph (e)(4)(i) is amended by replacing “office of the Secretary of the Commission” with “reception area of the Postal Regulatory Commission located”. Paragraphs (g)(1)(iii) and (g)(2)(iii) are amended by replacing references to the “office of the Secretary” with the “Office of Secretary and Administration”.

Rule 3001.72. Rule 3001.72 is amended by replacing “a recommended decision” with “an advisory opinion”.

Rule 3001.75. Rule 3001.75 is removed.

VI. EFFECTIVE DATE

Generally, substantive rules become effective not less than 30 days after publication in the *Federal Register*. 5 U.S.C. 553(d). A rule may become effective sooner if it is an interpretative rule, a statement of policy, or if the agency finds good cause to make it effective sooner. *Id.* Since the amendments promulgated by this order are not substantive in nature and are being adopted after public notice and opportunity

for comment, the Commission finds that good cause exists to make the amendments promulgated by this Order effective on June 28, 2013.

VII. ORDERING PARAGRAPHS

It is ordered:

1. The Commission hereby adopts the amendments to part 3001 of title 39, Code of Federal Regulations that follow the Secretary's signature.
2. These rules shall take effect on June 28, 2013.
3. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Shoshana M. Grove
Secretary

The following amendments are being made to part 3001 of title 39, Code of Federal Regulations.⁴

Amend § 3001.5 by revising paragraphs (a), (h), (j), (m), (o), (p), and (q) to read as follows:

§ 3001.5 Definitions.

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

(h) *Participant* means any party to the proceeding, including formal intervenors as described in § 3001.20, and the Public Representative and, for the purposes of §§ 3001.11(e), 3001.12, 3001.21, 3001.23, 3001.24, 3001.29, 3001.30, 3001.31, and 3001.32 only, it also means persons who are limited participators.

(j) *Hearing* means a hearing 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 under §§ 3001.17 and 3001.18(a).

(m) *Petitioner* means a person who is permitted by 39 U.S.C. 404(d)(5) to appeal to the Commission a determination of the Postal Service to close or consolidate a post office.

(o) *Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all participants and limited participators is not given, but it shall not include requests for status reports on any

⁴ The version published in the *Federal Register* may reflect minor editorial revisions to conform with official publication requirements.

matter or proceeding covered by subchapter II of chapter 5 of title 5 or a proceeding conducted pursuant to part 3025 of this chapter.

(p) *Reserved.*

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

Revise paragraphs (a)(1)(iii), (a)(2)(ii), and the introductory text in paragraph (b) and add a new paragraph (a)(2)(iii) to read as follows:

§ 3001.7 Ex parte communications.

(a)(1)(iii) The Director of the Office of Accountability and Compliance and his/her staff.

(a)(2)(ii) Decision-making Commission personnel not participating in the decisional process owing to the prohibitions of § 3001.8 or 39 CFR 3000.735, Subpart B.

(a)(2)(iii) The Public Representative and other Commission personnel assigned to represent the interests of the general public pursuant to 39 U.S.C. 505 in the specific case or controversy at issue.

(b) *Prohibition.* In any agency proceeding conducted under section 3661 of the Act; noticed and set for hearing by the Commission pursuant to §§ 3001.17 and 3001.18(a); or any proceeding conducted pursuant to part 3025 of this chapter to the extent required for the disposition of ex parte matters as authorized by law:

(1) * * * * *

Amend § 3001.9 by revising paragraphs (a), (c)(2), and (e) to read as follows:

§ 3001.9 Filing of documents.

(a) *Filing with the Commission.* The filing of each written document required or authorized by these rules or any applicable statute, rule, regulation, or order of the Commission, or by direction of the presiding officer, shall be made using the Internet (Filing Online) pursuant to § 3001.10(a) at the Commission's Web site (<http://www.prc.gov>), unless a waiver is obtained. If a waiver is obtained, a hard copy document may be filed either by mailing or by hand delivery to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW., Suite 200, Washington, DC 20268-0001 during regular business hours on a date no later than that specified for such filing. The requirements of this section do not apply to participants other than the Postal Service in proceedings conducted pursuant to part 3025 of this chapter.

(c)(2) Any document 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.

(e) *Account holder exemptions.* Notices of intervention and comments solicited by the Commission may be filed under temporary Filing Online accounts. Temporary Filing Online accounts may be obtained without meeting all of the requirements of paragraphs (b) and (c) of this section, and the subscription requirements of

§ 3001.11(e). Other categories of documents may be filed under temporary Filing Online accounts under extraordinary circumstances, for good cause shown.

Amend § 3001.10 as follows:

- a. Remove paragraph (a)(4);
- b. Redesignate paragraphs (a)(5) and (a)(6) as paragraphs (a)(4) and (a)(5); and
- c. Revise paragraph (c) to read as follows.

§ 3001.10 Form and number of copies of documents.

(c) *Computer media*. A participant that has obtained a waiver of the online filing requirement of § 3001.9(a) may submit a document on standard PC media, simultaneously with the filing of one printed original and two hard copies, provided that the stored document is a file generated in either Acrobat (pdf), Word, WordPerfect, or Rich Text Format (rtf).

Amend § 3001.12 as follows:

- a. Remove paragraph (a)(1); and
- b. Redesignate paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2).

§ 3001.12 Service of documents [Amended].

Revise § 3001.15 to read as follows:

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a federal holiday. In computing a period of time which is 5 days or fewer, all Saturdays, Sundays, and federal holidays are to be excluded.

Amend § 3001.17 by revising paragraph (a)(2) to read as follows:

§ 3001.17 Notice of proceeding.

(a)(2) The Commission determines that a complaint filed under part 3030 of this chapter raises one or more material issues of fact or law in accordance with § 3030.30 of this chapter.

Amend § 3001.18 by revising paragraphs (b) and (c) to read as follows:

§ 3001.18 Nature of the proceedings.

(b) *Procedure in hearing cases.* In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference pursuant to § 3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the

Commission or the presiding officer pursuant to §§ 3001.34 to 3001.37. The Commission shall then issue an advisory opinion or final decision, as appropriate.

(c) *Procedure in non-hearing cases.* In any case noticed for a proceeding to be determined on the record in which a hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument. The Commission shall then issue an advisory opinion or final decision, as appropriate. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to § 3001.19.

Revise § 3001.19 to read as follows:

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a), the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the *Federal Register* and served on all participants in the proceeding. Notice of the time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by

the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

Amend § 3001.20a by revising paragraph (c) to read as follows:

§ 3001.20a Limited participation by persons not parties.

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participators may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Limited participators are not required to respond to discovery requests under §§ 3001.25 through 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participators provided in the proceeding; however, limited participators are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

Revise the introductory text to § 3001.20b to read as follows:

§ 3001.20b Informal expression of views by persons not parties or limited participators (commenters).

Notwithstanding the provisions of §§ 3001.20 and 3001.20a, any person may file with the Commission, in any case that is noticed for a hearing pursuant to § 3001.17(a), an informal statement of views in writing, in accordance with the following provisions:

(a) * * * * *

Amend § 3001.21 by revising paragraph (a) to read as follows:

§ 3001.21 Motions.

(a) *Scope and contents.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Motions 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 §§ 3001.9 to 3001.12. All motions to dismiss proceedings or other motions which involve a final determination of the proceeding shall be addressed to the Commission. After a presiding officer is designated in any proceeding, and before the issuance of an intermediate decision pursuant to § 3001.39 or certification of the record to the Commission pursuant to § 3001.38, all other motions in that proceeding shall be addressed to the presiding officer.

Amend § 3001.23 by revising paragraphs (a)(7) and (a)(9) to read as follows:

§ 3001.23 Presiding officers.

(a)(7) To dispose of procedural requests or similar matters but not, before their intermediate decision, to dispose of motions made during hearings to dismiss proceedings or other motions which involve a final determination of the proceeding;

(a)(9) To submit an intermediate decision in accordance with §§ 3001.38 and 3001.39; and

Amend § 3001.24 by revising paragraphs (a) and (d)(6) to read as follows:

§ 3001.24 Prehearing conferences.

(a) *Initiation and purposes.* In any proceeding the Commission or the presiding officer may, with or without motion, upon due notice as to time and place, direct the participants 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 (d) of this section. It is the intent of the Commission to issue its advisory opinion on requests under section 3661 of the Act with the utmost practicable expedition. The Commission directs that these prehearing procedures shall be rigorously pursued by the presiding officer and all participants to that end.

(d)(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;

Amend § 3001.25 by revising paragraph (a) to read as follows:

§ 3001.25 Discovery—general policy.

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3661, or set for hearing under part 3030 of this chapter, when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature 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.

Amend § 3001.27 by revising paragraph (b) to read as follows:

§ 3001.27 Requests for production of documents or things for purpose of discovery.

(b) *Answers.* The participant responding to the request shall file an answer with the Commission in conformance with §§ 3001.9 through 3001.12 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.

Amend § 3001.30 by revising paragraphs (d), (e)(2), and (h) to read as follows:

§ 3001.30 Hearings.

(d) *Order of procedure.* In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under section 3661 of the Act, and a complainant shall open and close in proceedings on complaints filed under section 3662 of the Act and set for hearing pursuant to § 3001.18(a). With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e)(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 should be served in accordance with §§ 3001.9 through 3001.12 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 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 to be included 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 be stricken from the record.

(h) *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 his/her intermediate decision. This section shall not preclude a presiding officer, within his/her discretion, from referring any motion made in hearing to the Commission for ultimate determination.

Amend § 3001.31 by revising paragraph (j) and (k)(3)(i)(I) to read as follows:

§ 3001.31 Evidence.

(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 participant shall, on timely request, be afforded an opportunity to show the contrary.

(k)(3)(i)(i) 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. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Office of Secretary and Administration of the Postal Regulatory Commission. Any machine-readable data file or program file so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hardcopy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

Amend § 3001.31a by revising paragraph (c) to read as follows:

§ 3001.31a In camera orders.

(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.

Amend § 3001.32 by revising paragraph (f) to read as follows:

§ 3001.32 Appeals from rulings of the presiding officer.

(f) *Review at conclusion of proceeding.* If an interlocutory appeal is not certified pursuant to paragraph (b)(1) of this section, objection to the ruling may be raised on review of the presiding officer's intermediate decision, or, if the intermediate decision is omitted, in the participants' briefs in accordance with § 3001.34.

Amend § 3001.34 by revising paragraphs (a) and (b)(3) to read as follows:

§ 3001.34 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 or advisory opinion. 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 shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants 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 participants may be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission may also order the filing of briefs during the course of the proceeding.

(b)(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service and the advisory opinion or decision to be issued;

Revise § 3001.36 (including the title) to read as follows:

§ 3001.36 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 his/her 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 participant. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

Amend § 3001.39 by revising paragraph (c) to read as follows:

§ 3001.39 Intermediate decisions.

(c) *Contents.* All intermediate decisions shall include (1) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and (2) the appropriate intermediate decision pursuant to the Act. An intermediate decision in a proceeding under section 3661 of the

Act shall include a determination of the question of whether or not the proposed change in the nature of postal service conforms to the policies established under the Act.

Remove the authority reference from § 3001.40 that reads “(84 Stat. 759-761, 764; 39 U.S.C. 3603, 3622-3624, 3661, 3662)”.

Remove the authority reference from § 3001.41 that reads “(84 Stat. 759-761, 764; 39 U.S.C. 3603, 3622-3624, 3661, 3662)”.

Amend § 3001.43 by revising the introductory text to paragraph (a) and paragraphs (a)(1), (c)(10), (e)(4)(i), (g)(1)(iii), and (g)(2)(iii) to read as follows:

§ 3001.43 Public attendance at Commission meetings.

(a) *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 (c) of this section, every portion of every meeting of the Commission shall be open to public observation.

(c)(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 section 554 of title 5 or otherwise involving a determination on the record after opportunity for a hearing.

(e)(4)(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;

(g)(1)(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 10 working days after the meeting.

(g)(2)(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.

Revise § 3001.72 to read as follows:

§ 3001.72 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 §§ 3001.9 to 3001.11 and 3001.74. Such request shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved. Within 5 days after the Postal Service has filed a formal request for an advisory opinion in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the *Federal Register* for publication in the *Federal Register*.

Remove § 3001.75.

§ 3001.75 [Removed].