

## § 966.10

hearing may proceed without the participation of the absent party.

[77 FR 65106, Oct. 25, 2012]

### § 966.10 Initial decision.

(a) After the receipt of written submissions or after the conclusion of the hearing and the receipt of any post-hearing briefs, the Hearing Official shall issue a written initial decision, including findings of fact and conclusions of law, which the Hearing Official relied upon in determining whether the former employee is indebted to the Postal Service, or in upholding or revising the administrative offset schedule proposed by the Postal Service for collecting a former employee's debt. When the Judicial Officer presides at a hearing he or she shall issue a final or a tentative decision.

(b) The Hearing Official shall promptly send to each party a copy of the initial or tentative decision, and a statement describing the right of appeal to the Judicial Officer in accordance with § 966.11.

### § 966.11 Appeal.

The initial or tentative decision will become the final agency decision thirty (30) days after its issuance unless, before the expiration of that time, a party files an appeal with the Judicial Officer, or the Judicial Officer, in his or her sole discretion, elects to conduct a review of the decision on his or her own initiative. During such review or appeal consideration, the Judicial Officer will accept all findings of fact in the original decision unless clearly erroneous. If following appeal or review, the Judicial Officer affirms the original decision, that decision becomes the final agency decision with no further right of appeal within the agency.

[77 FR 65106, Oct. 25, 2012]

### § 966.12 Waiver of rights.

(a) The Hearing Official may determine that the former employee has waived the right to a hearing, and that administrative offset may be initiated if the former employee files a petition for hearing after the period prescribed in these Rules and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay; or has

## 39 CFR Ch. I (7–1–16 Edition)

filed a withdrawal of the former employee's previous petition for a hearing.

(b) The Hearing Official may determine that the Postal Service has waived the alleged debt at issue, and that the administrative offset may not be initiated if the Postal Service fails to file the answer within the period prescribed by the Rules and fails to demonstrate to the satisfaction of the Hearing Official good cause for the delay; or has filed a withdrawal of the debt determination at issue.

(c) In addition, whenever a record discloses the failure of either party to file documents required by these rules, respond to notices or correspondence from the Hearing Official, comply with orders of the Hearing Official, participate in conferences, fail to treat the proceedings with the proper decorum, or otherwise indicate an intention not to continue the prosecution or defense of a petition, the Hearing Official may issue an order requiring the offending party to show cause why the petition should not be dismissed or granted, as appropriate. If the offending party shall fail to show cause, the Hearing Official may take such action as he or she deems reasonable and proper under the circumstances, including dismissal or granting of the petition as appropriate.

[77 FR 65106, Oct. 25, 2012]

### § 966.13 Ex parte communications.

Ex parte communications are not allowed between a party and the Hearing Official or the Official's staff. For these purposes, ex parte communication means an oral or written communication, not on the public record, with one party only with respect to which reasonable prior notice to all parties is not given, but it shall not include requests for status reports or procedural matters. A memorandum of any communication between the Hearing Official and a party will be transmitted to both parties.

[77 FR 65106, Oct. 25, 2012]

## PARTS 967–999 [RESERVED]

## CHAPTER III—POSTAL REGULATORY COMMISSION

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### SUBCHAPTER A—PERSONNEL

<i>Part</i>		<i>Page</i>
3000	Standards of conduct .....	357
3001	Rules of practice and procedure .....	359
3002	Organization .....	405
3003	Privacy Act rules .....	409
3004	Public records and Freedom of Information Act .....	411
3005	Procedures for compelling production of information by the Postal Service .....	419
3007	Treatment of non-public materials provided by the Postal Service .....	425
3008	Ex parte communications .....	435
3010	Regulation of rates for market dominant products .....	438
3015	Regulation of rates for competitive products .....	452
3017	Procedures related to Commission views .....	453
3020	Product lists .....	454
3025	Rules for appeals of Postal Service determinations to close or consolidate post offices .....	471
3030	Rules for complaints .....	474
3031	Rules for rate or service inquiries .....	477
3032	Special rules for complaints alleging violations of 39 U.S.C. 404a .....	478
3035	Rules for market tests of experimental products .....	479
3050	Periodic reporting .....	483
3055	Service performance and customer satisfaction reporting .....	493
3060	Accounting practices and tax rules for the theoretical competitive products enterprise .....	499
3061–3099	[Reserved]	



## SUBCHAPTER A—PERSONNEL

### PART 3000—STANDARDS OF CONDUCT

#### Subpart A—General Provisions

Sec.

3000.735-101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

3000.735-102 Counseling and advisory services.

3000.735-103 Financial interests.

3000.735-104 Outside employment.

#### Subpart B—Ex Parte Communications

3000.735-501 Ex parte communications prohibited.

3000.735-502 Public record of ex parte communications.

#### APPENDIX A TO PART 3000—CODE OF ETHICS FOR GOVERNMENT SERVICE

AUTHORITY: 39 U.S.C. 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.

EFFECTIVE DATE NOTE: At 81 FR 42540, June 30, 2016, the authority citation to part 3000 was revised, effective Aug. 1, 2016. For the convenience of the user, the revised text is set forth 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.

SOURCE: 36 FR 5412, Mar. 23, 1971, unless otherwise noted.

#### Subpart A—General Provisions

SOURCE: 58 FR 42874, Aug. 12, 1993, unless otherwise noted.

#### § 3000.735-101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

Employees of the Postal Regulatory Commission (Commission) are subject and should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Commission regulation at 5 CFR part 5601 which supplements the executive branch-wide standards, and the execu-

tive branch-wide financial disclosure regulation at 5 CFR part 2634.

[58 FR 42874, Aug. 12, 1993, as amended at 72 FR 33165, June 15, 2007]

EFFECTIVE DATE NOTE: At 81 FR 42540, June 30, 2016, § 3000.735-101 was redesignated as § 3000.5, effective Aug. 1, 2016.

#### § 3000.735-102 Counseling and advisory services.

(a) The Chairman of the Commission shall appoint the Designated Agency Ethics Official (DAEO) for the Commission. The DAEO may appoint deputy ethics officials to assist in carrying out the responsibilities of the designated agency ethics official. The DAEO shall advise employees as to the applicability and interpretation of laws and regulations involving the standards of conduct for employees of the Commission. The DAEO shall furnish advice to employees for the purpose of aiding employees in avoiding conflicts of interest, situations, actions or conduct that may reflect adversely on the Commission.

(b) The DAEO shall develop and execute an ethics agency training plan providing for an initial orientation for new employees and annual ethics training.

EFFECTIVE DATE NOTE: At 81 FR 42540, June 30, 2016, § 3000.735-102 was redesignated as § 3000.10, effective Aug. 1, 2016.

#### § 3000.735-103 Financial interests.

An employee shall not, either directly or indirectly, have any financial interest (whether by ownership of any stock, bond, security, or otherwise) in any entity or person whose interests may be significantly affected by rates of postage, fees for postage services, the classification of mail, or the operation of the Postal Service. This paragraph does not proscribe interests in an entity or person whose use of the mail is merely an incidental or a minor factor in the general conduct of its business.

[66 FR 32545, June 15, 2001]

EFFECTIVE DATE NOTE: At 81 FR 42540, June 30, 2016, § 3000.735-103 was redesignated as § 3000.15, effective Aug. 1, 2016.

**§ 3000.735–104 Outside employment.**

(a) An employee shall not engage in outside employment or professional practice, either on a paid or unpaid basis, with or for a company or other person whose interests are significantly affected by rates of postage, fees for postal services, the classification of mail or the operations of Postal Service.

(b) An employee who wishes to engage in outside employment either on a paid or unpaid basis shall obtain the prior written approval of the DAEO. A request for such approval shall be submitted in writing with sufficient description of the employment to enable the DAEO to make an informed determination that the outside employment is not prohibited by law or regulation, including 5 CFR part 2635 or 5 CFR part 5601.

(c) An employee who has been assigned to a particular matter which affects the financial interests of a prospective employer and who is required, in accordance with 5 CFR 2635.604(a), to disqualify himself from participation in that matter shall, notwithstanding the guidance in 5 CFR 2635.604 (b) and (c), provide notice of disqualification to his supervisor upon determining that he will not participate in the matter.

EFFECTIVE DATE NOTE: At 81 FR 42540, June 30, 2016, §3000.735–104 was redesignated as § 3000.20, effective Aug. 1, 2016.

**Subpart B—Ex Parte Communications**

EFFECTIVE DATE NOTE: At 81 FR 42540, June 30, 2016, subpart B to part 3000 was revised, effective Aug. 1, 2016. For the convenience of the user, the revised text follows this subpart.

**§ 3000.735–501 Ex parte communications prohibited.**

Decision-making Commission personnel, as defined in §3001.7(a), shall not, either in an official or unofficial capacity, participate in any ex parte communication—either oral or written—with any person regarding (1) a particular matter (substantive or procedural) at issue in contested proceedings before the Commission or (2)

the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission. A particular matter is at issue in contested proceedings before the Commission when it is a subject of controversy in a hearing held under 39 U.S.C. 3624 or 3661(c). However, this section does not prohibit participation in off-the-record proceedings conducted under regulations adopted by the Commission for hearings held under 39 U.S.C. 3624 or 3661(c).

[45 FR 65581, Oct. 3, 1980]

**§ 3000.735–502 Public record of ex parte communications.**

As ex parte communications (either oral or written) may occur inadvertently notwithstanding §3000.735–501, the employee who receives such a communication, shall—within 2 workdays after the receipt of such a communication—prepare a written report concerning the communication. The report shall identify the employee and the person or persons who participated in the ex parte communication; the circumstances which resulted in the communication; the substance of the communication; and the relationship of the communication to a particular matter at issue or likely to become at issue in contested proceedings before the Commission. When the ex parte communication concerns a particular matter at issue in a proceeding before the Commission, a copy of the report shall be submitted to each party to the proceeding. The report is a public record of the Commission and a copy thereof shall be available to any member of the public on request. This section does not apply to ex parte communications under paragraph 3000.735–501(b).

[36 FR 5412, Mar. 23, 1971, as amended at 38 FR 24899, Sept. 11, 1973]

EFFECTIVE DATE NOTE: At 81 FR 42540, June 30, 2016, subpart B to part 3000 was revised, effective Aug. 1, 2016. For the convenience of the user, the revised text is set forth as follows:

**Subpart B—Ex Parte Communications**

**§ 3000.50 Ex parte communications prohibited.**

(a) The Commission maintains a written employee policy regarding ex parte communications applicable to all interactions, oral

or in writing (including electronic), between Commission decision-making personnel, and the United States Postal Service or public stakeholders in matters before the Commission. It is the responsibility of all Commission personnel to comply with this policy, including the responsibility to inform persons not employed by the Commission of this policy when required. The policy is available for review on the Commission's Web site at *www.prc.gov*.

(b) Additional ex parte communications requirements, applicable to specific docket types, are described in part 3008 of this chapter.

**§ 3000.55 [Reserved]**

**APPENDIX A TO PART 3000—CODE OF ETHICS FOR GOVERNMENT SERVICE**

Resolved by the House of Representatives (the Senate concurring), That it is the sense of the Congress that the following Code of Ethics should be adhered to by all Government employees, including office-holders:

**CODE OF ETHICS FOR GOVERNMENT SERVICE**

Any person in Government service should:

1. Put loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.
2. Uphold the Constitution, laws, and legal regulations of the United States and of all governments therein and never be a party to their evasion.
3. Give a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.
4. Seek to find and employ more efficient and economical ways of getting tasks accomplished.
5. Never discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept, for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.
6. Make no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.
7. Engage in no business with the Government, either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.
8. Never use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.
9. Expose corruption wherever discovered.
10. Uphold these principles, ever conscious that public office is a public trust.

Passed July 11, 1958.

**PART 3001—RULES OF PRACTICE AND PROCEDURE**

**Subpart A—Rules of General Applicability**

Sec.

- 3001.1 Construction of rules.
- 3001.2 [Reserved]
- 3001.3 Scope of rules.
- 3001.4 Method of citing rules.
- 3001.5 Definitions.
- 3001.6 Appearances.
- 3001.7 Ex parte communications.
- 3001.8 No participation by investigative or prosecuting officers.
- 3001.9 Filing of documents.
- 3001.10 Form and number of copies of documents.
- 3001.11 General contents of documents.
- 3001.12 Service of documents.
- 3001.13 Docket and hearing calendar.
- 3001.14 Consolidation and separation of proceedings.
- 3001.15 Computation of time.
- 3001.16 Continuances and extensions of time.
- 3001.17 Notice of proceeding.
- 3001.18 Nature of proceedings.
- 3001.19 Notice of prehearing conference or hearing.
- 3001.20 Formal intervention.
- 3001.20a Limited participation by persons not parties.
- 3001.20b Informal expression of views by persons not parties or limited participants (commenters).
- 3001.21 Motions.
- 3001.22 Requests for waiver.
- 3001.23 Presiding officers.
- 3001.24 Prehearing conferences.
- 3001.25 Discovery—general policy.
- 3001.26 Interrogatories for purpose of discovery.
- 3001.27 Requests for production of documents or things for purpose of discovery.
- 3001.28 Requests for admissions for purpose of discovery.
- 3001.29 Settlement conferences.
- 3001.30 Hearings.
- 3001.31 Evidence.
- 3001.31a In camera orders.
- 3001.32 Appeals from rulings of the presiding officer.
- 3001.33 Depositions.
- 3001.34 Briefs.
- 3001.35 Proposed findings and conclusions.
- 3001.36 Oral argument before the presiding officer.
- 3001.37 Oral argument before the Commission.
- 3001.38 Omission of intermediate decisions.
- 3001.39 Intermediate decisions.
- 3001.40 Exceptions to intermediate decisions.
- 3001.41 Rulemaking proceedings.
- 3001.42 [Reserved]

## § 3001.1

- 3001.43 Public attendance at Commission meetings.
- 3001.44 Automatic Closure of Inactive Docket.
- 3001.45 Motions to Stay Automatic Closure or Reopen Automatically Closed Dockets.

### Subparts B–C [Reserved]

### Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

- 3001.71 Applicability.
- 3001.72 Advisory opinion and special studies.
- 3001.73 Computation of time.
- 3001.74 Service by the Postal Service.
- 3001.75 Motions.
- 3001.76–3001.79 [Reserved]
- 3001.80 Procedural schedule.
- 3001.81 Pre-filing requirements.
- 3001.82 Filing of formal requests.
- 3001.83 Contents of formal requests.
- 3001.84 Filing of prepared direct evidence.
- 3001.85 Mandatory technical conference.
- 3001.86 Discovery—in general.
- 3001.87 Interrogatories.
- 3001.88 Production of documents.
- 3001.89 Admissions.
- 3001.90 Rebuttal testimony.
- 3001.91 Surrebuttal testimony.
- 3001.92 Hearings.
- 3001.93 Initial and reply briefs.

APPENDIX A TO SUBPART D OF PART 3001—  
PRO-FORMA N-CASE PROCEDURAL SCHEDULE

### Subparts E–L [Reserved]

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

SOURCE: 36 FR 396, Jan. 12, 1971, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3001 appear at 70 FR 48277, Aug. 17, 2005, and 72 FR 33165, June 15, 2007.

### Subpart A—Rules of General Applicability

#### § 3001.1 Construction of rules.

The rules in this part shall be liberally construed to secure just and speedy determination of issues.

[38 FR 4327, Feb. 13, 1973]

#### § 3001.2 [Reserved]

#### § 3001.3 Scope of rules.

Except as otherwise provided in § 3001.71, the rules of practice in this part are applicable to proceedings be-

## 39 CFR Ch. III (7–1–16 Edition)

fore the Postal Regulatory Commission under the Act, including those which involve a hearing on the record before the Commission or its designated presiding officer and, as specified in part 3005 of this chapter to the procedures for compelling the production of information by the Postal Service. They do not preclude the informal disposition of any matters coming before the Commission not required by statute to be determined upon notice and hearing.

[79 FR 33406, June 10, 2014]

#### § 3001.4 Method of citing rules.

This part shall be referred to as the “rules of practice.” Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, “3001.24 *Prehearing conferences*” shall be referred to as “section 24” or “rule 24.”

[65 FR 6539, Feb. 10, 2000]

#### § 3001.5 Definitions.

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

(b) *Postal Service* means the U.S. Postal Service established by the Act.

(c) *Commission* or *Commissioner* means, respectively, the Postal Regulatory Commission established by the Act or a member thereof.

(d) *Secretary* means the Secretary or the Acting Secretary of the Commission.

(e) *Presiding officer* means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

(f) *Person* means an individual, a partnership, corporation, trust, unincorporated association, public or private organization, or governmental agency.

(g) *Party* means the Postal Service, a complainant, an appellant, or a person who has intervened in a proceeding before the Commission.

(h) *Participant* means any party to the proceeding, including formal intervenors as described in § 3001.20, and the Public Representative. In a proceeding that is not conducted under subpart D of this part, for purposes of §§ 3001.11(e),

## Postal Regulatory Commission

## § 3001.6

3001.12, 3001.21, 3001.23, 3001.24, 3001.29, 3001.30, 3001.31, and 3001.32 only, the term *participant* includes persons who are limited participators.

(i) *Complainant* means a person or interested party who as permitted by section 3662 of the Act files a complaint with the Commission in the form and manner hereinafter prescribed.

(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).

(k) *Record* means the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, which constitutes the exclusive record for decision.

(l) *Effective date* of an order or notice issued by the Commission or an officer thereof means the date of issuance unless otherwise specifically provided.

(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.

(n) *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, but does not include deliberations required or permitted by § 3001.43(d) or § 3001.43(e).

(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 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.

(r) *Negotiated service agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that 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.

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

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

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

(v) *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.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4327, Feb. 13, 1973; 42 FR 8142, Feb. 2, 1977; 42 FR 10992, Feb. 25, 1977; 42 FR 13290, Mar. 10, 1977; 44 FR 26075, May 4, 1979; 58 FR 38976, July 21, 1993; 65 FR 6539, Feb. 10, 2000; 69 FR 7593, Feb. 18, 2004; 71 FR 2472, Jan. 17, 2006; 72 FR 63691, Nov. 9, 2007; 77 FR 6679, Feb. 9, 2012; 78 FR 36436, June 18, 2013; 79 FR 33406, June 10, 2014; 79 FR 54562, Sept. 11, 2014]

EFFECTIVE DATE NOTE: At 81 FR 42541, June 30, 2016, § 3001.5 was amended by removing and reserving paragraph (o), effective Aug. 1, 2016.

### § 3001.6 Appearances.

(a) *By whom*. An individual may appear in his/her own behalf; a member of a partnership may represent the partnership; and an officer may represent a corporation, trust, unincorporated association, or governmental agency. A



### § 3001.7

### 39 CFR Ch. III (7–1–16 Edition)

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 of any participant or an attorney acting in a representative capacity appears in person, submits a document to the Commission online as a Principal Account Holder, or signs a paper filed with the Commission, his/her personal appearance, online submission, or signature, shall constitute a representation to the Commission that he/she is authorized to represent the particular participant in whose behalf he/she acts. Any person 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 his/her 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 for a participant in a proceeding 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 participant whom he/she represents as a person to whom communications from the Commission in regard to the filing are to be addressed. A person whose authority to represent a participant 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 in the courts of the United States.

(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 im-

proper professional conduct. Contumacious conduct at any hearing before the Commission or its presiding officer shall be ground 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.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4327, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986; 58 FR 38976, July 21, 1993; 67 FR 67559, Nov. 6, 2002]

#### § 3001.7 Ex parte communications.

(a) *Definitions.* (1) *Decision-making personnel.* Subject to the exception stated in paragraph (a)(2)(ii) of this section, the following categories of persons are designated “decision-making personnel”:

(i) The Commissioners and their personal office staffs;

(ii) The General Counsel and his/her staff;

(iii) The Director of the Office of Accountability and Compliance and his/her staff;

(iv) Any other employee who may reasonably be expected to be involved in the decisional process.

(2) *Non-decision-making Commission personnel.* The following categories of person are designated “non-decision-making personnel”:

(i) All Commission personnel other than decision-making personnel;

(ii) Decision-making Commission personnel not participating in the decisional process owing to the prohibitions of § 3001.8 or § 3000.735–501 of this chapter.

(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 except to the extent required for the disposition of ex parte matters as authorized by law:

(1) Interested persons outside the Commission and non-decision-making Commission personnel shall not make

## Postal Regulatory Commission

## § 3001.8

or knowingly cause to be made to any Commission decision-making personnel ex parte communications relevant to the merits of the proceeding;

(2) Commission decision-making personnel shall not make or knowingly cause to be made to any interested person outside the Commission or to non-decision-making Commission personnel ex parte communications relevant to the merits of the proceeding;

(3) Commission decision-making personnel who receive ex parte communications relevant to the merits of the proceeding shall decline to listen to such communications and explain that the matter is pending for determination. Any recipient thereof shall advise the communicator that he/she will not consider the communication and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action.

(4) Commission decision-making personnel who receive, or who make or knowingly cause to be made, communications prohibited by this paragraph shall place on the public record of the proceeding:

- (i) All such written communications;
- (ii) Memoranda stating the substance of all such oral communications; and
- (iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(4)(i) and (b)(4)(ii) of this section.

(5) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which have been placed on the public record of the proceeding pursuant to paragraph (b)(4) of this section may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. Generally, in lieu of actually receiving rebuttal material, the Commission will direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

(c) *Applicability.* (1) The prohibitions of paragraph (b) of this section shall apply beginning at the time at which a proceeding is noticed for hearing or appeal unless the person responsible for

the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his/her acquisition of such knowledge.

(2) Paragraph (b) of this section does not constitute authority to withhold information from Congress.

(d) *Violations of ex parte rules.* (1) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of paragraph (b) of this section, the Commission or presiding officer at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) 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 paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

[45 FR 65580, Oct. 3, 1980, as amended at 58 FR 38976, July 21, 1993; 62 FR 45530, Aug. 28, 1997; 65 FR 6539, Feb. 10, 2000; 77 FR 6679, Feb. 9, 2012; 78 FR 36436, June 18, 2013; 79 FR 23916, Apr. 29, 2014]

EFFECTIVE DATE NOTE: At 81 FR 42541, June 30, 2016, § 3001.7 was removed and reserved, effective Aug. 1, 2016.

### § 3001.8 No participation by investigative or prosecuting officers.

In any proceeding noticed pursuant to § 3001.17, no officer, employee or agent of the Commission who appears in the hearing 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 except as a witness or counsel in public proceedings.

## § 3001.9

## 39 CFR Ch. III (7–1–16 Edition)

### § 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.

(b) *Account holder.* In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a principal account holder or an agent account holder (Filing Online account holder). The authority of the principal account holder to represent the participant on whose behalf the document is filed must be valid and current, in conformance with § 3001.6. 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 his/her authority to represent participants in a proceeding or any change in the authority delegated to an agent account holder to submit documents on his/her behalf.

(c) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule or order authorized by the Commission shall be accepted for filing. In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a Filing Online account holder.

(1) Subject to § 3001.9(d):

(i) A document submitted through Filing Online is filed on the date indicated on the receipt issued by the Secretary. It is accepted when the Secretary, after review, has posted it on

the Daily Listing page of the Commission's Web site.

(ii) A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's Web site.

(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.

(d) *Rejected filings.* Any filing that does not comply with any applicable rule or order authorized by the Commission 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 or the Secretary's designee will 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.

(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.

[67 FR 67559, Nov. 6, 2002, as amended at 68 FR 47, Jan. 2, 2003; 77 FR 6679, Feb. 9, 2012; 78 FR 36437, June 18, 2013]

### § 3001.10 Form and number of copies of documents.

(a) *Documents.* Each document filed with the Commission must be submitted through Filing Online by an account holder, unless a waiver is obtained.

(1) The text of documents filed with the Commission shall be formatted in not less than one and one-half spaced lines except that footnotes and quotations may be single spaced. Documents must be submitted in Arial 12 point font, or such program, format, or

font as the presiding officer may designate.

(2) The Secretary may prescribe additional format requirements for documents submitted through Filing Online.

(3) The form of documents filed as library references is governed by §3001.31(b)(2)(iv).

(4) Documents filed online must satisfy Filing Online system compatibility requirements specified by the Secretary in the Filing Online User Guide, which may be accessed from the Filing Online page on the Commission's Web site, <http://www.prc.gov>.

(5) Documents requiring privileged or protected treatment shall not be filed online.

(6) Documents requiring privileged or protected treatment shall not be filed online.

(b) *Hard copies.* Each document filed in paper form must 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 .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. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service must be printed from a text-based pdf version of the document, where possible. Otherwise, they may be reproduced by any duplicating process that produces clear and legible copies. Each person filing a hardcopy document with the Commission must provide an original and two fully conformed copies of the document required or permitted to be filed under this part, except for a document filed under seal, for which only the original and two (2) copies need be filed. The copies need not be signed but shall show the full name of the individual signing the original document and the certificate of service attached thereto.

(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).

(d) *Exception for appeals of post office closings and consolidations.* 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.

[67 FR 67559, Nov. 6, 2002, as amended at 77 FR 6679, Feb. 9, 2012; 78 FR 36437, June 18, 2013]

#### §3001.11 General contents of documents.

(a) *Caption and title.* 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).

(b) *Designation of individuals to receive service.* Each notice of intervention filed pursuant to §3001.20 or §3001.20a must state the name, full mailing address, telephone number, and e-mail address of up to two individuals designated to receive service of hardcopy documents relating to the proceeding.

(c) *Contents.* In the event there is no rule, regulation, or order of the Commission which specifically prescribes the contents of any document to be filed, such document shall contain a proper identification of the parties concerned and a concise but complete statement of the relief sought and of the facts and citations of authority and precedent relied upon.

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

(e) *Subscription.* Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that he/she has read the document being subscribed and filed; that he/she knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity

## § 3001.12

## 39 CFR Ch. III (7–1–16 Edition)

specified in the document with full power and authority so to do; that to the best of his/her 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.

(1) For a document filed via the Internet by an account holder, the subscription requirement is met when the document is filed with the Commission.

(2) For a hardcopy document filed under either § 3001.10(b) or (c), the original shall be signed in ink by the individual filing the same or by an authorized officer, employee, attorney, or other representative and all other copies of such document filed with the Commission and served on the participants in any proceeding shall be fully conformed thereto.

(f) *Table of contents.* Each document filed with the Commission consisting of 20 or more pages shall include a table of contents with page references. For briefs see § 3001.34.

(g) *Certificate of service.* A certificate of service signed in ink must be attached to the original of each hardcopy document filed with the Commission showing service on all participants in a proceeding as prescribed by § 3001.12. All copies filed and served shall be fully conformed thereto.

[67 FR 67559, Nov. 6, 2002]

### § 3001.12 Service of documents.

(a) *Service by account holders.* Each document filed in a proceeding via the Internet by an Account Holder shall be deemed served on all participants when it is accepted by the Secretary and posted on the Commission's Web site, except that:

(1) A document that must be served on a participant that the Commission or presiding officer has determined is unable to receive service through the Commission's Web site shall be served on such participant by the Secretary by First-Class Mail.

(2) In proceedings conducted pursuant to part 3025 of this chapter, the Secretary will serve documents (except an administrative record) on participants who do not use Filing Online. Service will be by First-Class Mail.

(b) *Service by others.* If the Commission or presiding officer has determined that a participant is unable to file documents online, documents filed by that participant must be delivered to the Secretary by hand or First-Class Mail. Such documents will be deemed served upon all participants when they are accepted by the Secretary and posted on the Commission's Web site. If such documents cannot be posted on the Commission's website, they will be deemed served on all participants when the Secretary posts them as First-Class Mail.

(c) *Service by the Commission.* Except as provided in this section, each document issued by the Commission or presiding officer shall be deemed served upon the participants in the proceeding upon its posting by the Commission on its website. Service of Commission documents on any participant that the Commission or presiding officer has determined is unable to receive service through the Commission Web site shall be by First-Class Mail.

(d) *Hardcopy documents.* Each participant filing a hardcopy document in a proceeding shall serve such document upon each person on the proceeding's service list, unless that person is subject to paragraph (b) of this section, or the Commission or presiding officer otherwise directs.

(e) *Limitation on extent of hardcopy service.* To avoid the imposition of an unreasonable burden upon participants, the Commission or the presiding officer may, by appropriate order, limit service of hardcopy documents to service upon participants intending to actively participate in the hearing, or upon a person or persons designated for properly representative groups, or by requiring the making of documents available for convenient public inspection, or by any combination of such methods.

(f) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participant. The service list for each current proceeding will be available on the Commission's Web site <http://www.prc.gov>. Each participant is responsible for ensuring

that its listing on the Commission's Web site is accurate, and should promptly notify the Commission of any errors.

(g) *Method of hardcopy service.* Service of hardcopy documents may be made by First-Class Mail or personal delivery, to the address shown for the individuals designated on the Secretary's service list. Service of any hardcopy document upon the Postal Service shall be made by delivering or mailing six copies thereof to the address shown for the individual designated in the Secretary's service list.

(h) *Date of hardcopy service.* Whenever service is made by mail, the date of the postmark shall be the date of service. Whenever service is made by personal delivery, the date of such delivery shall be the date of service.

(i) *Form of hardcopy certificate of service.* The certificate of service of hardcopy documents shall show the name of the participant or his/her counsel making service, the date and place of service, and include the statement that "I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with section 12 of the rules of practice.

[67 FR 67559, Nov. 6, 2002, as amended at 77 FR 6679, Feb. 9, 2012; 78 FR 36437, June 18, 2013]

#### § 3001.13 Docket and hearing calendar.

The Secretary shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The Secretary shall maintain a hearing calendar of all proceedings that have been set for hearing. Proceedings shall be heard on the date set in the hearing order, except that the Commission may for cause, with or without motion, at any time with due notice to the parties advance or postpone the date of hearing. All documents filed in a docket, other than matter filed under seal, and the hearing calendar may be accessed remotely via the Commission's Web site, or viewed at the Commission's docket section during regular business hours.

[67 FR 67559, Nov. 6, 2002]

#### § 3001.14 Consolidation and separation of proceedings.

The Commission, with or without motion, may order proceedings involving related issues or facts to be consolidated for hearing of any or all matters in 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.

#### § 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. Except in proceedings conducted under subpart D of this part, in computing a period of time which is 5 days or less, all Saturdays, Sundays and Federal holidays are to be excluded.

[79 FR 33406, June 10, 2014]

#### § 3001.16 Continuances and extensions of time.

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time or by a specified date may be granted by the Commission or the presiding officer upon motion for good cause shown unless the time for performance or filing is limited by statute. Requests for extension of time shall be by written motion timely filed with the Commission stating the facts on which the application rests, except that after a hearing has convened, such requests shall be made by written or oral motion to the presiding officer. Requests for continuances or extensions of time may as a

### § 3001.17

matter of discretion be acted upon without waiting for answers thereto.

#### § 3001.17 Notice of proceeding.

(a) *When issued.* The Commission shall issue a notice of a proceeding to be determined on the record with an opportunity for any interested person to request a hearing whenever:

(1) The Postal Service files a request with the Commission to issue an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis;

(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; or

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

(b) *Publication and service of notice.* Each notice of proceeding shall be published in the FEDERAL REGISTER and served on the Postal Service, and the complainant in a complaint proceeding.

(c) *Contents of notice.* The notice of a proceeding shall include the following:

(1) The general nature of the proceeding involved in terms of categories listed in paragraph (a) of this section;

(2) A reference to the legal authority under which the proceeding is to be conducted;

(3) A concise description of proposals for changes in rates or fees, proposals for the establishment of or changes in the mail classification schedule, proposals for changes in the nature of postal services and, in the case of a complaint, an identification of the complainant and a concise description of the subject matter of the complaint;

(4) The date by which notices of intervention and requests for hearing must be filed;

(5) In proceedings under subpart D of this part involving Postal Service requests for issuance of an advisory opinion, the notice issued under this section shall include the procedural schedule provided for under § 3001.80; and

(6) Such other information as the Commission may desire to include.

[77 FR 6679, Feb. 9, 2012, as amended at 78 FR 36437, June 18, 2013; 79 FR 33406, June 10, 2014]

### 39 CFR Ch. III (7–1–16 Edition)

#### § 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* Except as otherwise provided in these rules, in any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

(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.

[36 FR 396, Jan. 12, 1971, as amended at 65 FR 6540, Feb. 10, 2000; 78 FR 36437, June 18, 2013]

#### § 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.

[78 FR 36437, June 18, 2013]

**§ 3001.20 Formal intervention.**

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17(a) from any person claiming an interest of such nature that intervention is allowed by the Act, or appropriate to its administration.

(b) *Contents.* 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 classifications of postal service utilized by the intervenor giving rise to his/her 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 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 in any notice or order with respect to the proceeding issued by the Commission

or its Secretary, unless in extraordinary circumstances for good cause shown, the Commission authorizes a late filing. Notices of intervention shall conform to the requirements of §§ 3001.9 through 3001.12.

(d) *Oppositions.* (1) Except as otherwise provided in paragraph (d)(2) of this section, oppositions to notices of intervention may be filed by any participant in the proceeding no later than 10 days after the notice of intervention is filed.

(2) Oppositions to notices of interventions in proceedings conducted under subpart D of this part may be filed by any participant in the proceeding no later than 3 days after the notice of intervention is filed.

(3) Pending Commission action, an opposition to intervention shall, in all proceedings except those conducted under subpart D of this part, 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 § 3001.24 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.

[48 FR 15627, Apr. 12, 1983, as amended at 58 FR 38976, July 21, 1993; 58 FR 38976, July 21, 1993; 65 FR 6540, Feb. 10, 2000; 67 FR 67561, Nov. 6, 2002; 79 FR 33407, June 10, 2014]

**§ 3001.20a Limited participation by persons not parties.**

Except for cases noticed for a proceeding under subpart D of this part,



## § 3001.20b

any person may, notwithstanding the provisions of § 3001.20, appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a) in accordance with the following provisions:

(a) *Form of intervention.* Notices of intervention as a limited participator shall be in writing, shall set forth the nature and extent of the intervenor's interest in the proceeding, and shall conform to the requirements of §§ 3001.9 through 3001.12.

(b) *Oppositions.* Oppositions to notices to intervene as a limited participator may be filed by any participant in the proceeding no later than 10 days after the notice of intervention as a limited participator is filed.

(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.

[48 FR 15627, Apr. 12, 1983, as amended at 58 FR 38976, July 21, 1993; 60 FR 12115, Mar. 6, 1995; 65 FR 6540, Feb. 10, 2000; 67 FR 67561, Nov. 6, 2002; 78 FR 36438, June 18, 2013; 79 FR 33407, June 10, 2014]

## 39 CFR Ch. III (7–1–16 Edition)

### § 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) *Form of statement.* A statement filed pursuant to this section may be submitted as a hardcopy letter mailed to the Secretary or an electronic message entered under the “Contact Us” link on the Commission's Web site, <http://www.prc.gov>.

(b) *Contents of statement.* A statement filed pursuant to this section shall set forth the name and full mailing address of the person by whom or on whose behalf it is filed, a concise statement of the issue or issues to which the comments contained therein apply, and a clear statement of any views, opinions, or suggestions which the person filing the statement wishes to lay before the Commission.

(c) *Disposition by the Commission or presiding officer.* Statements filed pursuant to this section shall be made a part of the Commission's files in the proceeding. The Secretary shall maintain a file of such statements which shall be segregated from the evidentiary record in the proceeding, and shall be open to public inspection during the Commission's office hours. A statement or exhibit thereto filed pursuant to this section shall not be accepted in the “record,” as defined by § 3001.5(k) except to the extent that it is (1) otherwise formally introduced in evidence, or (2) a proper subject of official notice, pursuant to § 3001.31(j).

(d) *Ex parte communications—exception.* A statement filed pursuant to this section shall not be considered an ex parte communication within the meaning of § 3001.7.

[42 FR 8142, Feb. 9, 1977. Redesignated at 48 FR 15627, Apr. 12, 1983, as amended at 58 FR 38976, July 21, 1993; 68 FR 47, Jan. 2, 2003; 78 FR 36438, June 18, 2013]

### § 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.

(b) *Answers.* Within seven days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§3001.9 to 3001.12. Such answers shall state with particularity 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.

(c) *Motions to strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within seven days.

[38 FR 4327, Feb. 13, 1973, as amended at 51 FR 8827, Mar. 14, 1986; 58 FR 38976, July 21, 1993; 65 FR 6540, Feb. 10, 2000; 78 FR 36438, June 18, 2013]

#### § 3001.22 Requests for waiver.

Upon request by motion, any requirement of any subpart of this Part 3001 may be waived in whole or in part to the extent permitted by law upon a showing that such waiver will not unduly prejudice the interests of other

participants and is consistent with the public interest and the Commission's expeditious discharge of its responsibilities under the Act. A request for waiver shall not be entertained unless it is timely filed so as to permit Commission disposition of the request prior to the date specified for the requirement for which waiver is requested. The pendency of a request for waiver does not justify or excuse any person from timely meeting the requirements of this part.

#### § 3001.23 Presiding officers.

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

(1) To regulate the course of the hearing, including the recessing, reconvening, and adjournment thereof, unless otherwise directed by the Commission, as provided in §3001.16;

(2) To administer oaths and affirmations;

(3) To issue subpoenas authorized by law;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or authorize that depositions be taken as provided in §3001.33;

(6) To hold appropriate conferences before or during hearings and to rule on matters raised at such conferences including those specified in paragraph (d) of §3001.24;

(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;

(8) Within their discretion, or upon direction of the Commission, to certify any question to the Commission for its consideration and disposition;

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

(10) To 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.

(b) *Conduct of hearings.* It is the duty of the presiding officer to conduct a fair and impartial hearing and to maintain order. Any disregard by participants or counsel of his/her rulings on matters of order and procedure shall be noted on the record, and where he/she 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 immediately may submit to the Commission his/her report thereon, together with his/her recommendations, and in his/her discretion, suspend the hearing.

(c) *Ex parte communication.* Except to the extent required for the disposition of ex parte matters as authorized by law and by the rules of the Commission, no presiding officer shall, in any proceeding in which the Commission may so direct, or in any proceeding required by statute to be determined on the record after opportunity for hearing, consult any person on any matter in issue unless upon notice and opportunity for all participants to be heard.

(d) *Disqualification.* A presiding officer may withdraw from a proceeding when he/she deems himself disqualified, or may be withdrawn by the Commission for good cause found after timely affidavits alleging personal bias or other disqualifications have been filed.

[36 FR 396, Jan. 12, 1971, as amended at 49 FR 6490, Feb. 22, 1984; 51 FR 8827, Mar. 14, 1986; 58 FR 38976, July 21, 1993; 78 FR 36438, June 18, 2013]

#### § 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.

(b) *Informal off-the-record procedures.* In order to make the prehearing conference as effective as possible, the presiding officer may, in his/her discretion, direct that conferences be held off the record at the beginning of a prehearing conference or at other appropriate times, without the presiding officer being present. Such informal off-the-record conferences shall be presided over by the Commission's officer designated to represent the interests of the general public or such other person as the participants may select. At such off-the-record conferences the participants 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 (d) of this section. A report on the results of such off-the-record conference shall be made to the presiding officer on the record at a time specified by the presiding officer and he/she shall then determine the further prehearing procedures to be followed.

(c) *Required preparation and cooperation of all parties.* All participants in any proceeding before the Commission are required and expected to come to the prehearing conference fully prepared to discuss in detail and resolve all matters specified in paragraph (d) of this section, and notice of the prehearing conference, and such other notice or agenda as may have been issued by the Commission or the presiding officer. All participants 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 participants, 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 participant 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 participant with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.

(d) *Matters to be pursued.* At the prehearing conference in any proceeding, the presiding officer and the participants shall consider and resolve the following matters:

(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 participant;

(2) Arrangement for timely completion of discovery from the Postal Service or any other participant concerning information desired by any participant with regard to any issues in the proceeding or prior filings, evidence or pleadings of any participant;

(3) Agreement as to procedures for timely discovery with regard to any future evidentiary filings of any participant;

(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) Grouping 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 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 re-

quired for oral cross-examination of witnesses;

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

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

(11) 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 participants to the conduct of the entire proceedings off the record.

(e) *Rulings by presiding officer.* The presiding officer at such prehearing conference, irrespective of the consent of the participants, shall dispose of by ruling (1) any of the procedural matters itemized in paragraph (d) of this section and (2) such other procedural matters on which he/she is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding. 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 participants, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38976, July 21, 1993; 78 FR 36438, June 18, 2013]

#### § 3001.25 Discovery—general policy.

(a) Sections 3001.26 to 3001.28 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

**§ 3001.26**

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.

(b) The discovery procedures set forth in rules 26 through 28 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, 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 participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§3001.26 to 3001.28, 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 participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

[65 FR 6543, Feb. 10, 2000, as amended at 78 FR 36438, June 18, 2013]

**§ 3001.26 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 participant may propound to any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the par-

ticipant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant propounding the interrogatories shall file them with the Commission in conformance with §§3001.9 through 3001.12. 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 participant 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 participant responding to the interrogatories shall file the answers in conformance with §§3001.9 through 3001.12 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 bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant 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 in conformance with §§3001.9 through 3001.12 within 10 days of the filing of the interrogatories.

(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. Participants 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 participant 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 found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be filed in conformance with §§3001.9 through 3001.12 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 participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. Participants 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. Participants 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 participant 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 participant or person from undue annoyance, embarrassment, oppression, or expense.

[65 FR 6541, Feb. 10, 2000, as amended at 67 FR 67561, Nov. 6, 2002]

**§3001.27 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 participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, 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 participant 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 participant requesting the production of documents or things shall file its request with the Commission in conformance with §§3001.9 through 3001.12.

(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

### § 3001.28

### 39 CFR Ch. III (7–1–16 Edition)

the request is objected to pursuant to paragraph (c) of this section.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state with particularity the reasons for its applicability. A participant 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 in conformance with §§3001.9 through 3001.12 within 10 days of the request for production.

(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. Participants 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 participant 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 found not to be valid. Such compelled documents or things shall be made available to the participant 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. When complying with orders to produce documents or things, notice shall be filed in conformance with §§3001.9 through 3001.12. The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall re-

spond to a request for inspection, and may make any protective order of the nature provided in §3001.26(g) as may be appropriate.

[65 FR 6541, Feb. 10, 2000, as amended at 67 FR 67562, Nov. 6, 2002; 78 FR 36438, June 18, 2013]

#### § 3001.28 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant 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. The participant requesting the admission shall file its request with the Commission in conformance with §§3001.9 through 3001.12.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer, the participant to whom the request is directed files a written answer or objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file its answer with the Commission in conformance with §§3001.9 through 3001.12.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant 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 in conformance with §§3001.9 through 3001.12, within 10 days of the request for admissions.

(d) *Motions to compel responses to requests for admissions.* 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

## Postal Regulatory Commission

## § 3001.30

request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Participants who have objected to requests for admissions 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 participant to the proceeding 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 found not to be valid. Such compelled answers shall be filed with the Commission in conformance with §§3001.9 through 3001.12 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.

[65 FR 6542, Feb. 10, 2000, as amended at 67 FR 67562, Nov. 6, 2002]

### § 3001.29 Settlement conferences.

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

### § 3001.30 Hearings.

(a) *How initiated.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice by the Commission as provided in §3001.19.

(b) *Presiding officer.* All hearings shall be held before the Commission sitting en banc, or 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 in whose behalf each such appearance has been made.

(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)(1) *Presentations by participants.* Any participant shall have the right in public hearings of presentation of evidence, cross-examination (limited to testimony adverse to the participant conducting the cross-examination), objection, motion, and argument. 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. It 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.) There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another participant'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 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.

(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 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. 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 should be filed at least two calendar 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 should be delivered to counsel for that participant and served three or more working days before the announced appearance of the witness, and cross-examination exhibits should be delivered to counsel for the witness at least two calendar 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 the disposition of the proceeding and to avoid irrelevant, immaterial, or unduly repetitious testimony.

(g) *Motions during hearing.* 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 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 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 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.

(i) *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.

[36 FR 396, Jan. 12, 1971, as amended at 60 FR 12116, Mar. 6, 1995; 65 FR 6543, Feb. 10, 2000; 67 FR 67563, Nov. 6, 2002; 78 FR 36439, June 18, 2013]

#### § 3001.31 Evidence.

(a) *Form and admissibility.* In any public hearing before the Commission, or a presiding officer, 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 participant 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 participant offering the same to the other participants 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) *Library references.* (i) The term “library reference” is a generic term or label that participants and others may use to identify or designate certain documents or things (“material”) filed with the Commission’s docket section. To the extent possible, material filed as a library reference shall be identified and referred to by participants in terms of the following categories: Category 1—Reporting Systems Material (consisting of library references relating to the Service’s statistical cost and revenue reporting systems, and their primary outputs); 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); 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; Category 4—Material Provided in Response to Discovery (consisting of material provided in response to discovery requests); 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); Category 6—All Other Material (consisting of library references not fitting any of the other categories).

(ii) The practice of filing a library reference is authorized primarily as a convenience to filing participants and the Commission under certain circumstances. These include when the physical characteristics of the material, such as number of pages, bulk, or format, are reasonably likely to render compliance with the service requirements unduly burdensome; and one of the following considerations apply:

(A) Interest in the material or things so labeled is likely to be so limited that service on the entire list would be unreasonably burdensome, and the participant agrees to serve the material on individual participants upon request within three days of a request, or to provide, within the same period, an explanation of why the material cannot be provided within three days, and to undertake reasonable efforts to promptly provide the material; or

(B) The participant satisfactorily demonstrates that designation of material as a library reference is appropriate because the material constitutes a secondary source. A secondary source is one that provides background for a position or matter referred to elsewhere in a participant's case or filing, but does not constitute essential support and is unlikely to be a material factor in a decision on the merits of issues in the proceeding; or

(C) Reference to, identification of, or use of the material would be facilitated if it is filed as a library reference; or

(D) The material is filed in compliance with a discovery request for production of documents or things.

(iii) *Other circumstances.* If a participant considers it appropriate to file material as a library reference because its physical characteristics render service unduly burdensome, but cannot satisfy the terms set out in paragraphs (b)(2)(ii)(A) through (D) of this section, the material may be filed (by means of a notice) subject to the following conditions:

(A) Inclusion in the accompanying notice of a detailed explanation of the reason for filing the material under this provision;

(B) Satisfaction of all other applicable requirements relating to library references; and

(C) The Commission's right to refuse acceptance of the material in its docket room and its right to take other action to ensure participants' ability to obtain access to the material.

(iv) *Filing procedure.* Participants filing material as a library reference shall file contemporaneous written notice of this action in conformance with §§3001.9 through 3001.12. The notice shall:

(A) Set forth the reason(s) why the material is being designated as a library reference, with specific reference to paragraphs (b)(2)(ii) and (iii) of this section;

(B) 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;

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

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

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

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

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

(H) To the extent feasible, 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).

(v) *Labeling*. Material filed as a library reference shall be labeled in a manner consistent with standard Commission notation and any other conditions the presiding officer or Commission establishes.

(vi) *Optional preface or summary*. Inclusion of a preface or summary in a library reference addressing the matters set out in paragraphs (b)(2)(iv)(A) through (H) of this section is encouraged but optional.

(vii) *Electronic version*. Material filed as a library reference shall also be made available in an electronic version, absent a showing of why an electronic version cannot be supplied or should not be required to be supplied. Participants are encouraged to include in the electronic version the information and disclosures required to be included in the accompanying notice.

(viii) *Number of copies*. Except for good cause shown, two hard copies of each library reference shall be filed.

(ix) *Special requests and motions seeking service*. In situations other than that covered in paragraph (b)(2)(ii)(A) of this section, special requests for service of material contained in a library reference may be made by the participant that filed the interrogatory or inquiry that generated a response in the form of a library reference. Service shall be made within a reasonable time. Others seeking service of the material contained in a library reference shall file a detailed motion setting forth the reasons why service is necessary or appropriate.

(x) *Waiver*. Upon the filing of a motion showing good cause, the Commission may waive one or more of the provisions relating to library references. Motions seeking waiver may request expedited consideration and may seek waiver for categories of library references.

(xi) *Status of library references*. Designation of material as a library ref-

erence and acceptance in the Commission's docket section do not confer evidentiary status. The evidentiary status of the material is governed by this section.

(c) *Commission's files*. Except as otherwise provided in §3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

(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) Participants 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 conducted under subpart D of this part, these requests must be made at least 6 days before the date for filing the participant's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 3 days. Oppositions to requests for counter-designations are due within 2 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 participant'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 7 days.

(4) In all proceedings subject to this section, the moving participant 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 §3001.10(a) and (b).

(g) *Copies to participants.* Except as otherwise provided in these rules, copies of prepared testimony and exhibits shall be furnished to the presiding officer and to the participants or counsel, unless the presiding officer otherwise directs. In addition, unless otherwise directed by the presiding officer, eight copies of all prepared testimony and exhibits shall be furnished for the use of the Commission.

(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 participant shall, on

timely request, be afforded an opportunity to show the contrary.

(k) *Introduction and reliance upon studies and analyses*—(1) *General.* 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 (k) (2) and (3) 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. Tabulations of input data shall be made available upon request at the offices of the Commission.

(2) *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 and the procedures undertaken. Where a computer analysis is employed to obtain the result of a statistical study, all of the submissions required by §3001.31(k)(3) shall be furnished, upon request. In addition, for each of the following types of statistical studies, the indicated information should be furnished:

(i) *Market research.* (a) The following data and information shall be provided: (1) A clear and detailed description of the sample, observational, and data preparation designs, including definitions of the target population, sampling frame, units of analysis, and survey variables;

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

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

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

(5) An assessment of the effects of editing and imputation;

(6) Identification of applicable statistical models, when model-based procedures are employed; and

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

(ii) *Other sample surveys.* (a) 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 than can be placed on major estimates; and

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

(iii) *Experimental analyses.* (a) A complete description of the experimental design, including a specification of the controlled conditions and how the controls were realized;

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

(iv) *Econometric Studies.* (a) A presentation of the economic theory underlying the study;

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

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

(d) 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;

(e) 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;

(f) Summary descriptions and source citations for all input data and, upon request, a complete listing of the data.

Complete descriptions of any alterations or transformations made to the data as received from the original sources, and the reasons for making the alterations;

(g) A complete report of the econometric results including, where applicable:

(1) coefficient estimates

(2) standard errors and t-values,

(3) goodness-of-fit statistics,

(4) other appropriate test statistics,

(5) the variance/covariance matrix of the estimates,

(6) computed residuals for results computed from samples composed of fewer than 250 observations, and, upon request, other computed residuals;

(h) Descriptions of all statistical tests of hypotheses and the results of such tests;

(v) *All other studies involving statistical methodology.* (a) The formula used for statistical estimates;

(b) The standard errors of each component estimated;

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

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

(3) *Computer analyses.* (i) 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 (k)(3)(iii) 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 participant, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing.

§ 3001.31

39 CFR Ch. III (7-1-16 Edition)

(a) 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;

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

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

(d) A hard copy of all data bases;

(e) 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;

(f) The source code in hardcopy form;

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

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

(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.

(j) Computer simulation models offered in evidence or relied upon as support for other evidence, shall be bound by all applicable provisions of paragraph (k)(3) of this section and the separate requirements of paragraph (k)(2) 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.

(ii) Upon timely and otherwise proper request of a participant, or sua sponte, the Commission or the Presiding Officer may rule that matters other than those listed in paragraphs (k)(3)(i) (a) through (h) of this section are necessary to establish the foundation for reception of the evidence concerned and must be furnished.

(iii) When the requestor is other than the Commission or the Presiding Officer, the cost of producing the material required in paragraph (k)(3)(i) (d), (f), and (g) 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 requestee.

(iv) If the recipient of a request for materials pursuant to this paragraph (k)(3) of this section 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 (k)(3) of this

section. 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 (k)(3)(iii) 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 (k)(3) of this section cannot be provided, the Presiding Officer shall determine, in his/her discretion, whether evidence that relies upon the materials not provided shall be admissible or afforded limited weight.

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12 no later than 3 days after a request is made under paragraph (e)(2) of this section or no later than 14 days after a request is made under paragraph (e)(3) of this section.

[36 FR 396, Jan. 12, 1971, as amended at 45 FR 65580, Oct. 3, 1980; 47 FR 12796, Mar. 25, 1982; 50 FR 43392, Oct. 25, 1985; 51 FR 8827, Mar. 14, 1986; 51 FR 14992, Apr. 22, 1986; 54 FR 35494, Aug. 28, 1989; 58 FR 38976, July 21, 1993; 62 FR 45729, Aug. 29, 1997; 64 FR 67490, Dec. 2, 1999; 65 FR 6543, Feb. 10, 2000; 67 FR 67563, Nov. 6, 2002; 78 FR 36439, June 18, 2013; 79 FR 33407, June 10, 2014]

#### § 3001.31a 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.* 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: (1) A description of the documents and testimony; (2) a full statement of the reasons for granting *in camera* treatment; and (3) a full statement of the reasons for the date on which *in camera* treatment expires. 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 § 3001.31a," 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



### § 3001.32

### 39 CFR Ch. III (7-1-16 Edition)

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.

[44 FR 33880, June 13, 1979, as amended at 48 FR 15901, Apr. 13, 1983; 58 FR 38976, July 21, 1993; 78 FR 36439, June 18, 2013]

#### § 3001.32 Appeals from rulings of the presiding officer.

(a) *General policy.* The Commission will not review a ruling of the presiding officer prior to its consideration of the entire proceeding except in extraordinary circumstances. This section specifies the showing which participants must make in order to appeal interlocutory rulings.

(b) *Appeals certified by the presiding officer.* (1) Before the issuance of an initial decision pursuant to § 3001.39(a) or the certification of the record to the Commission pursuant to § 3001.38(a), rulings of the presiding officer may be appealed 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 within 5 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.

(c) *Appeals not certified by the presiding officer.* If the presiding officer declines to certify an appeal, a participant who has requested certification may apply to the Commission for review within 10 days. Unless the Commission directs otherwise, its review of the application 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) Where the presiding officer has declined to certify an appeal, the Commission will not allow an application for review 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) The Commission may issue an order accepting an interlocutory appeal within 15 days after the presiding officer certifies the appeal or a participant files an application for review. If the Commission fails to issue such an order, leave to appeal from the presiding officer’s interlocutory ruling shall be deemed to be denied. If the Commission issues an order accepting 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 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.

(g) *Form, filing, and service of documents.* Requests for certification, applications for review, and any responses shall be in writing and shall be in conformity with §§ 3001.10 and 3001.11. They shall be filed and served pursuant to §§ 3001.9 and 3001.12.

[38 FR 4328, Feb. 13, 1973, as amended at 42 FR 8143, Feb. 9, 1977; 51 FR 8827, Mar. 14, 1986; 78 FR 36439, June 18, 2013]

### § 3001.33 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition upon authorization by the Commission or the presiding officer on application of any participant 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, or (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 participant and will not result in undue delay or an undue burden to other participants.

(b) *Application.* An application for authorization to take testimony by deposition shall be filed in duplicate 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 participants 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, and 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 participant 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 some one acting under his/her direction and in his/her presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3001.10(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 participant 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. Participants shall have the right of cross-examination and objection. In lieu of participation in the oral examination, participants 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

### § 3001.34

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 participant, any other participant may require him/her to introduce all of it which is relevant to the part introduced, and any participant 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 participant or participants on whose application the deposition was taken.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38976, July 21, 1993; 58 FR 38976, July 21, 1993]

### § 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) *Contents.* Each brief filed with the Commission shall be as concise as pos-

### 39 CFR Ch. III (7-1-16 Edition)

sible, 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 participant;

(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;

(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 in the form and manner and served as required by §§3001.9 to 3001.12.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4328, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986; 78 FR 36439, June 18, 2013]

### § 3001.35 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.

[38 FR 4329, Feb. 13, 1973; 51 FR 8827, Mar. 14, 1986]

### § 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.

[78 FR 36440, June 18, 2013]

**§ 3001.37 Oral argument before the Commission.**

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any participant 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 participant in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion pursuant to § 3001.21. 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. Motions requesting oral argument may be included in briefs or briefs on exceptions or in a separate document.

(c) *Notice of oral argument.* The Commission shall rule on requests for oral argument, and if argument is allowed, the Commission shall notify the participants of the time and place set for argument, the amount of time allowed each participant, 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 7 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.

**§ 3001.38 Omission of intermediate decisions.**

(a) *Basis of omission.* In any proceeding noticed pursuant to § 3001.17, the Commission, on the motion of any participant or on its own initiative, may direct the certification of the record to the Commission and omit any intermediate decision upon a finding on the record that due and timely execution of its functions imperatively and unavoidably so requires. In proceedings in which all participants concur in a request by any participant that any intermediate decision be omitted, the Commission shall direct the certification of the record to the Commission and forthwith render a final decision unless the Commission denies such request within 10 days next following its filing or referral by the presiding officer.

(b) *Requests for omission.* Requests for omission of the intermediate decision in any proceeding shall be made by motion pursuant to § 3001.21 or made orally on the record before the presiding officer who shall promptly refer the same to the Commission. Such requests shall specify (1) the concurrence of other parties and (2) whether opportunity for filing briefs or presenting oral argument to the Commission is desired or waived. Failure of any party to object to such request shall constitute a waiver of any objections.

**§ 3001.39 Intermediate decisions.**

(a) *Initial decision by presiding officer.* In any proceedings in which a Commissioner or hearing officer has presided at the reception of evidence, such presiding officer, as soon as practicable after the conclusion of the hearing and the filing of briefs, shall certify and file with the Secretary, a copy of the record of the hearing and his/her initial

## § 3001.40

decision on the matters and issues presented for decision in such proceeding.

(b) *Tentative decision.* Prior to the issuance of an initial decision by the presiding officer, the Commission, with notice to the participants or by order in specific cases or by general rule for a class of cases, may direct the certification of the record to the Commission for the purpose of the issuance of a tentative decision. In such cases, the Commission may issue a tentative decision or require that the presiding officer or any designated responsible officer of the Commission recommend a decision.

(c) *Contents.* All intermediate decisions shall include findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and 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.

(d) *Service and Commission review.* All intermediate decisions shall be part of the record, shall be served on the participants to the proceeding by the Secretary pursuant to § 3001.12 and shall be subject to review by the Commission on its own initiative, or the filing of exceptions by the participants pursuant to § 3001.40.

(e) *Unavailability of presiding officer.* In any proceeding in which the intermediate decision is not omitted pursuant to § 3001.38, if a presiding officer becomes unavailable to issue an intermediate decision on a timely basis, the Commission shall, by a notice served on the participants require the record to be certified to it and it shall either designate a qualified responsible officer of the Commission to issue a recommended decision or will itself issued a tentative decision, as the Commission may deem appropriate.

(f) *Effect of intermediate decision.* Unless briefs on exceptions are filed to an intermediate decision pursuant to § 3001.40 or unless the Commission issues an order to review an intermediate decision on its own initiative, the intermediate decision shall become

## 39 CFR Ch. III (7–1–16 Edition)

the final action of the Commission after 30 days from the date of issuance thereof. If briefs on exceptions are timely filed or the Commission initiates review on its own motion, the intermediate decision is stayed until further order of the Commission.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38976, July 21, 1993; 78 FR 36440, June 18, 2013]

### § 3001.40 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any participant in a proceeding may file exceptions to any intermediate decision by filing a brief on exceptions 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 participant 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 § 3001.34. 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 participant to which reference is made.

(c) *Failure to except results in waiver.* Any participant 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.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4329, Feb. 13, 1973; 78 FR 36440, June 18, 2013]

**§ 3001.41 Rulemaking proceedings.**

(a) *General notice.* Before the adoption of any rule of general applicability, or the commencement of any hearing on any such proposed rulemaking, the Commission will cause general notice to be given by publication in the FEDERAL REGISTER, such notice to be published therein not less than 30 days prior to the date fixed for the consideration of the adoption of a proposed rule or rules or for the commencement of the hearing, if any, on the proposed rulemaking, except where a shorter period is reasonable and good cause exists therefor. However, where the Commission, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may proceed with the adoption of rules without notice by incorporating therein a finding to such effect and a concise statement of the reasons therefor. Advance notice shall not be required for rules subject to 5 U.S.C. 553(d).

(b) *Contents of notice.* The notice shall include (1) a statement of the time, place and nature of the public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.

(c) *Participation.* After notice given as provided in paragraph (a) of this section, the Commission shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.

(d) *General statement as to basis and purpose.* After consideration of the relevant matter presented, the Commission shall incorporate in the rules adopted a concise general statement of their basis and purpose.

(e) *Exceptions.* Except when notice or hearing is required by statute, the Commission may issue at any time rules of organization, procedure or practice, or interpretive rules, or statements of policy, without notice or public procedure, and this section is not to be construed as applicable to the extent that there may be involved any military, naval or foreign affairs function of the United States, or any mat-

ter relating to the Commission's management or personnel, or to U.S. property, loans, grants, benefits, or contracts.

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4329, Feb. 13, 1973; 78 FR 36440, June 18, 2013]

**§ 3001.42 [Reserved]****§ 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.

(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.

(b) *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.

(c) *Closed Commission meetings.* Except in a case where the Commission finds that the public interest requires otherwise, the second sentence of paragraph (a) shall not apply to any portion of a Commission meeting, and the requirements of paragraphs (d) and (e) 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 are (i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national

**§ 3001.43**

**39 CFR Ch. III (7-1-16 Edition)**

defense or foreign policy and (ii) 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 section 552 of title 5), provided that such statute (i) requires that the matter 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 imple-

mentation of a proposed Commission action, except that paragraph (c)(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 section 554 of title 5 or otherwise involving a determination on the record after opportunity for a hearing.

(d) *Procedures for closing meetings.* (1) Action under paragraph (c) 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 (c) of this section, or with respect to any information which is proposed to be withheld under paragraph (c) 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 (c) (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 1 day of any vote taken pursuant to paragraph (d)(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 1 day of the vote taken pursuant to paragraph (d)(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 (d)(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 (c)(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 (c)(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 (d) (1), (2), (3), and (e) of this section shall not apply to any portion of a meeting to which paragraph (d)(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 (c) 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.

(e) *Scheduling and public announcement.* (1) In the case of each meeting, the Commission shall make public announcement, at least 1 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 (e)(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 (e)(1) 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 paragraph (e) of this section, 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:



§ 3001.43

39 CFR Ch. III (7-1-16 Edition)

(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.

(f) *Certification of closed meetings; transcripts, electronic recordings, and minutes.* (1) Before any meeting to be closed pursuant to paragraphs (c) (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 his/her 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 (c)(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 (f)(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 (i) contains information which may be withheld under paragraph (c) of this section, and (ii) 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 2 years after such meeting, or until 1 year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) *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 10 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 (d)(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 (d) and (e) 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 Sec-

tion, 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.

[42 FR 13290, Mar. 10, 1977, as amended at 42 FR 25729, May 19, 1977; 58 FR 38976, July 21, 1993; 62 FR 45530, Aug. 28, 1997; 65 FR 6544, Feb. 10, 2000; 78 FR 36440, June 18, 2013]

#### §3001.44 Automatic Closure of Inactive Docket.

(a) The Commission shall automatically close a docket in which there has been no activity of record by any interested person for 12 consecutive months, except those dockets in which the Commission must issue a final determination by rule or statute, or if the Commission has otherwise indicated a final order is forthcoming in the docket and has yet to do so.

(b) Each month the Commission shall post on the Web site a list of dockets that will be subject to automatic closure in the following month and will include the date on which the docket will automatically close.

[80 FR 43019, July 21, 2015]

#### §3001.45 Motions to Stay Automatic Closure or Reopen Automatically Closed Dockets.

(a) *Motion to stay automatic closure.* (1) Interested persons, including the Postal Service or a Public Representative, may file a motion to stay automatic closure, pursuant to §3001.21, 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.

(b) *Motion to reopen automatically closed docket.* (1) If, at any time after a docket has been automatically closed, interested persons, including the Postal Service or a Public Representative, may file a motion to reopen an automatically closed docket, pursuant to §3001.21, and must set forth with particularity good cause for reopening the docket.

## § 3001.71

(2) The Commission may order an automatically closed docket to be reopened, and must set forth with particularity good cause for reopening the docket.

[80 FR 43019, July 21, 2015]

### Subparts B–C [Reserved]

## Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services

SOURCE: 79 FR 33407, June 10, 2014, unless otherwise noted.

### § 3001.71 Applicability.

The rules in this subpart 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 subpart A of this part are also applicable to proceedings conducted pursuant to this subpart except that § 3001.21 (Motions); § 3001.25 (Discovery—general policy); § 3001.26 (Interrogatories for purposes of discovery); § 3001.27 (Requests for production of documents or things for the purpose of discovery); § 3001.30 (Hearings); § 3001.33 (Depositions) and § 3001.34 (Briefs) do not apply in proceedings conducted under this subpart.

### § 3001.72 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

## 39 CFR Ch. III (7–1–16 Edition)

studies, public inquiry proceedings, or other appropriate means.

### § 3001.73 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.

### § 3001.74 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 § 3001.81. 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 Web site.

### § 3001.75 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 §§ 3001.9 through 3001.12. A motion to dismiss proceedings or any other motion that involves a final determination of the proceeding, any motion under § 3001.91, 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 3007 of this chapter, shall be addressed to the presiding officer.

(2) Within 5 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 §§3001.9 through 3001.12. 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 3 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 2 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 §§3001.9 through 3001.12 within 3 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 3 days before the scheduled appearance of a witness, unless good cause is shown. Responses to motions to strike are due within 2 days.

(d) *Motions for leave to file surrebuttal testimony.* Motions for leave to file surrebuttal testimony submitted pursuant to §3001.91 and any answers thereto must be filed on or before the dates provided in the procedural schedule established by the Commission.

#### §§ 3001.76–3001.79 [Reserved]

#### § 3001.80 Procedural schedule.

(a) *Notice.* Subject to paragraph (b) of this section, the Commission shall include in the notice of proceeding issued under §3001.17 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 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;

### § 3001.81

### 39 CFR Ch. III (7-1-16 Edition)

(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.

#### § 3001.81 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 10 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 § 3001.83(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.

#### § 3001.82 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 through 3001.11 and § 3001.83. 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 5 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.

#### § 3001.83 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

## Postal Regulatory Commission

## § 3001.85

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 §3001.81, 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 §3001.84;

(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 §3001.85.

(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.

### § 3001.84 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 §3001.31.

### § 3001.85 Mandatory technical conference.

(a) *Date.* A date for a mandatory technical conference shall be included in the procedural schedule required by §3001.80. The date for this technical conference shall be set based upon the pro forma schedule set forth in Appendix A to this subpart. 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 §3001.84. 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

## § 3001.86

mechanisms provided for in §§3001.86 through 3001.89.

(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 §3001.31(a).

### § 3001.86 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 §3001.80 shall provide that discovery will be scheduled to end at least 3 days prior to the commencement of hearings.

(b) *Informal discovery.* The discovery procedures in §3001.86 and §§3001.87 through 3001.89 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 §§3001.86 through 3001.89, 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.

### § 3001.87 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

## 39 CFR Ch. III (7–1–16 Edition)

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 §§3001.9 through 3001.12. Follow-up interrogatories to 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 7 days of receipt of the answer to the previous interrogatory. In extraordinary circumstances, follow-up interrogatories may be filed not less than 6 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 §§3001.9 through 3001.12 within 7 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 §3001.75(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.

#### § 3001.88 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 §§3001.9 through 3001.12.

(b) *Answers.* (1) The respondent shall file an answer to a request under paragraph (a) of this section with the Commission in conformance with §§3001.9 through 3001.12 within 7 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 §3001.75(b) to be excused from answering.

#### § 3001.89 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 §§3001.9 through 3001.12.

(b) *Answers.* (1) A matter for which admission is requested shall be separately set forth in the request and is deemed admitted unless, within 7 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 §§3001.9 through 3001.12.

(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



### § 3001.90

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 § 3001.75(b) to be excused from answering.

### § 3001.90 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 § 3001.80. 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 § 3001.80, the Commission may adjust other dates in the procedural schedule as it deems to be necessary and appropriate.

### § 3001.91 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

### 39 CFR Ch. III (7-1-16 Edition)

prior approval by filing with the Commission a motion for leave to file surrebuttal pursuant to § 3001.75(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 § 3001.75(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 § 3001.80.

(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.

### § 3001.92 Hearings.

(a) *Initiation.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice and scheduling order pursuant to § 3001.80.

(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)(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 §§3001.9 through 3001.12 no later than 3 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) 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 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 3 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 2 days (including 1 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 3 or more working days before the announced appearance of the witness. Cross-examination exhibits shall be delivered to counsel for the witness at least 2 days (including 1 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.

**§ 3001.93**

**39 CFR Ch. III (7-1-16 Edition)**

(g) *Motions during hearing.* Except as provided in §3001.75(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 §3001.75(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.

**§ 3001.93 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 §3001.80. 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 §§3001.9 through 3001.12.

(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.

**Postal Regulatory Commission**

**§ 3002.2**

APPENDIX A TO SUBPART D OF PART 3001—PRO FORMA N-CASE PROCEDURAL SCHEDULE

Line	Action	Day number
1	Pre-Filing Consultations <sup>1</sup>	n/a.
2	Commission Order <sup>2</sup>	n/a.
3	Filing of Postal Service Request	0.
4	Commission Notice and Order <sup>3</sup>	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. <sup>4</sup>
9	Filing of Rebuttal Cases (if submitted)	42.
10	Deadline for Motions to Leave to File Surrebuttal.	44. <sup>5</sup>
11	Deadline for Answers to Motions for Surrebuttal.	46.
12	Filing of Surrebuttal Cases (if authorized)	49. <sup>6</sup>
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.

<sup>1</sup> The Postal Service would initiate pre-filing consultations and would file a notice with the Commission of such consultations prior to their commencement.

<sup>2</sup> This order would appoint a Public Representative.

<sup>3</sup> 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.

<sup>4</sup> If no participant elects to file a rebuttal case, hearings begin on Day 42.

<sup>5</sup> If no surrebuttal cases are requested, hearings begin on Day 49.

<sup>6</sup> If one or more surrebuttal cases are requested (whether or not authorized by the Commission), hearings begin on Day 54.

**Subparts E–L [Reserved]**

general description of the Postal Regulatory Commission.

**PART 3002—ORGANIZATION**

**§ 3002.2 Statutory functions.**

- Sec.
- 3002.1 Purpose.
- 3002.2 Statutory functions.
- 3002.3 Official seal.
- 3002.4–3002.9 [Reserved]
- 3002.10 The Commission and its offices.
- 3002.11 Office of Secretary and Administration.
- 3002.12 Office of Accountability and Compliance.
- 3002.13 Office of the General Counsel.
- 3002.14 The Public Representative.
- 3002.15 Office of Public Affairs and Government Relations.
- 3002.16 Office of Inspector General.

(a) *Areas of jurisdiction.* The Commission develops and maintains regulations for a modern system of rate regulation, including maintaining the market dominant and competitive product lists in the Mail Classification Schedule and ensuring that rates meet the requirements of 39 U.S.C. 3622 and 3633. The Commission consults with the Postal Service on delivery service standards and performance measures and with the Department of State on international postal policies. The Commission adjudicates rate and service complaints filed pursuant to 39 U.S.C. 3662 and offers advisory opinions on proposed changes to postal services pursuant to 39 U.S.C. 3661. Pursuant to 39 U.S.C. 3651, the Commission provides an annual report to the President and Congress, and pursuant to 39 U.S.C. 3653, the Commission issues an annual

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

SOURCE: 78 FR 27045, May 9, 2013, unless otherwise noted.

**§ 3002.1 Purpose.**

This part is published in compliance with 5 U.S.C. 552(a)(1) and constitutes a

**§ 3002.3**

**39 CFR Ch. III (7-1-16 Edition)**

compliance determination to assess whether the Postal Service's rates, fees, and services comport with the requirements of title 39. Pursuant to 39 U.S.C. 404(d)(5), the Commission acts on postal patrons' appeals concerning Postal Service decisions to close or consolidate post offices.

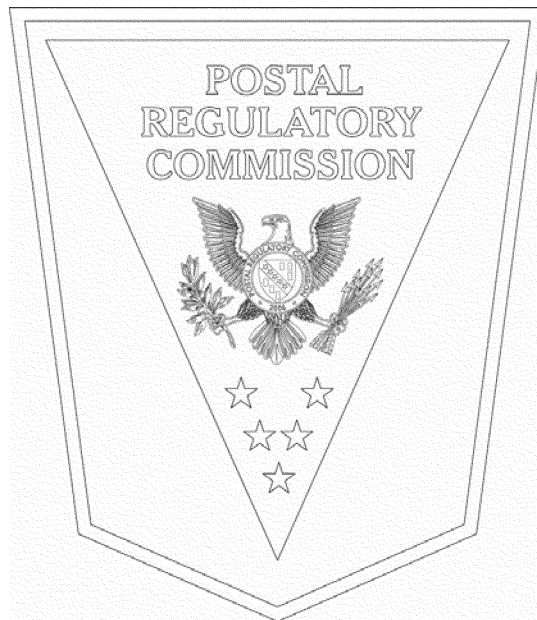
(b) *Public participation.* Interested persons may participate in formal proceedings described in §§3001.17 and 3001.18 of this chapter as formal intervenors (§3001.20 of this chapter), limited participators (§3001.20a of this chapter), or commenters (§3001.20b of this chapter). Pursuant to 39 U.S.C. 3662(a) and part 3030 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 3025 of this chapter.

**§ 3002.3 Official seal.**

(a) *Authority.* The Seal described in this section is hereby established as the official seal of the Postal Regulatory Commission.

(b) *Description.* (1) On a gold color (yellow) pentagon device, the base-line formed as a "V," edged with a black border, a black triangle point down and between the inscription at top "Postal Regulatory Commission" in white letters and in base at the point of the triangle three Celeste mullets two, two and one, the American Eagle with branch and arrows derived from the Great Seal of the United States charged on the breast with the Commission's earlier round seal inscribed "Postal Regulatory Commission" and the date "2006", all in gold (yellow).

(2) The official seal of the Postal Regulatory Commission is modified when reproduced in black and white and when embossed, as it appears in this section.



(c) *Custody and authorization to affix.* its use is permitted only as provided in (1) The seal is the official emblem of the Postal Regulatory Commission and this part.

## Postal Regulatory Commission

## § 3002.11

(2) The seal shall be kept in the custody of the Secretary and is to be used to authenticate records of the Postal Regulatory Commission and for other official purposes.

(3) Use by any person or organization outside of the Commission may be made only with the Commission's prior written approval. Such request must be made in writing to the Secretary.

### §§ 3002.4-3002.9 [Reserved]

#### § 3002.10 The Commission and its offices.

(a) *The Commissioners.* The Postal Regulatory Commission is an independent establishment of the executive branch of the federal government created by the Postal Accountability and Enhancement Act (39 U.S.C. 501).

(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. He/She 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 § 3001.9 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 pro-

ceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the Internet, on its Web site at <http://www.prc.gov>.

#### § 3002.11 Office of Secretary and Administration.

(a) The incumbent head of the office utilizes the title of "Secretary".

(b) The Office of Secretary and Administration is responsible for the Commission's budget and accounting. In this role, the Office of Secretary and Administration develops, implements, and administers the Commission's financial management system and accounting activities including those relating to the budget and the payroll; is responsible for the Commission's strategic planning; and serves as the point of contact for all Commission contracts and audits.

(c) The Office of Secretary and Administration is responsible for the Commission's human resources and personnel. In this role, the Office of Secretary and Administration is responsible for Commission employee hiring, training, travel, personnel policy and compliance, and human capital planning. In addition, the Office of Secretary and Administration serves as an Equal Employment Opportunity Officer for the Commission and manages the Commission's continuity of operations planning.

(d) The Office of Secretary and Administration manages the Commission's records, including the Commission's seal, administrative policies, orders, reports, and official correspondence. In this role, the Office of Secretary and Administration manages the Commission's dockets and docket room, Web site, reference materials, inter-agency reporting, and Freedom of Information Act responsibilities. All orders and other actions of the Commission shall be authenticated or signed by the Secretary or any such other person as may be authorized by the Commission.

(e) The Office of Secretary and Administration is responsible for the Commission's facilities and infrastructure. In this role, the Office of Secretary and Administration manages facility security; provides information

## § 3002.12

technology and other support services essential to the efficient and effective conduct of operations; acquires and assigns office space; and manages procurement and supply.

### § 3002.12 Office of Accountability and Compliance.

(a) The Office of Accountability and Compliance is responsible for technical analysis and the formulation of policy recommendations for the Commission in both domestic and international matters, including those governed by the Universal Postal Union.

(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:

(1) The economic analysis of the market for postal services including the alternative sources for such services and the users of the service;

(2) The analysis of the operational characteristics of the postal system and its interface with various segments of the economy; and

(3) The analysis of the costs of operating the Postal Service and how such costs are influenced by operational characteristics, changes in volume, and changes in other relevant factors.

(c) These functional activities are combined in the evaluation of the Postal Service's proposed rates, proposed service changes, proposed changes to the Mail Classification Schedule, and product list designations, as well as formal complaints, the Annual Compliance Determination, and all other proceedings, reports, and filings before the Commission requiring such analysis.

(d) The Office of Accountability and Compliance also collects, analyzes, and periodically summarizes financial and various other statistical information for use in its ongoing activities and for the development of future methods, techniques, and systems of analysis and reporting.

## 39 CFR Ch. III (7-1-16 Edition)

### § 3002.13 Office of the General Counsel.

(a) The General Counsel directs and coordinates the functions of the Office of the General Counsel. The General Counsel does not appear as an attorney in any proceeding before the Commission and takes no part in the preparation of evidence or argument presented in such hearings.

(b) The Office of the General Counsel provides legal assistance on matters involving the Commission's responsibilities; defends Commission decisions before the courts; and advises the Commission on the legal aspects of proposed legislation, rulemaking, and policies on procurement, contracting, personnel matters, ethics, and other internal legal matters.

### § 3002.14 The Public Representative.

(a) Pursuant to 39 U.S.C. 505, the Commission appoints a staff member, on a case-by-case basis, to serve as a representative of the general public's interests in public proceedings before the Commission. This appointee is called the Public Representative.

(b) Individuals appointed to represent the general public are subject to the same ex parte prohibitions as apply to all other interested persons in the cases to which they are assigned to the role of the Public Representative.

### § 3002.15 Office of Public Affairs and Government Relations.

(a) The Office of Public Affairs and Government Relations facilitates prompt and responsive communications for the Commission with the public, members of Congress, the Postal Service, state and local governments, and the media.

(b) The Office of Public Affairs and Government Relations has three primary areas of responsibility: Government Relations, Consumer Affairs, and Communications.

(1) *Government Relations.* The Office of Public Affairs and Government Relations is the principal liaison between the Commission and Members of Congress. It develops and maintains effective working relationships with Congressional staff; monitors legislative activity; and advises the Commission and its staff on legislative actions and

policies related to the Commission and its mission. The Office of Public Affairs and Government Relations works in conjunction with all Commission offices to ensure that lawmakers are informed of regulatory decisions and policies and that the Commission is responsive to Congressional inquiries for technical information. The Office of Public Affairs and Government Relations also prepares Commissioners and Commission staff when called upon to provide Congressional testimony.

(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 3031 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 Web site.

(3) *Communication.* The Office of Public Affairs and Government Relations also develops public outreach strategies for the Commission, responds to media inquiries, and disseminates information concerning Commission decisions and activities to the public.

#### **§ 3002.16 Office of Inspector General.**

(a) The Office of Inspector General has the duty and responsibility to:

(1) Provide policy direction and conduct, supervise, and coordinate audits and investigations relating to the programs and operations of the Commission;

(2) Review existing and proposed legislation and regulations relating to programs and operations of the Commission;

(3) Make recommendations in semi-annual reports concerning the impact of such legislation or regulations on

the economy and efficiency of programs and operations administered or financed by the Commission or on the prevention and detection of fraud and abuse in the Commission's programs and operations;

(4) Recommend policies and conduct, supervise, or coordinate other activities carried out or financed by the Commission for the purpose of preventing and detecting fraud and abuse in its programs and operations;

(5) Recommend policies and coordinate communications between the Commission and other federal agencies, state and local government agencies, and nongovernment entities for:

(i) All matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection of fraud and abuse in, programs and operations administered or financed by the Commission; or

(ii) The identification and prosecution of participants in such fraud and abuse;

(6) Keep the Commission and Congress fully and currently informed through reports concerning fraud and other serious problems, abuses, and deficiencies relating to programs and operations administered or financed by the Commission; recommend corrective action concerning such problems, abuses, and deficiencies; and report on the progress made in implementing such corrective action.

(b) [Reserved]

### **PART 3003—PRIVACY ACT RULES**

Sec.

3003.1 Purpose and scope.

3003.2 Definitions.

3003.3 Procedures for requesting inspection, copying, or correction.

3003.4 Response to a request.

3003.5 Appeals of denials of access or amendment.

3003.6 Fees.

3003.7 Exemptions.

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

SOURCE: 64 FR 57982, Oct. 28, 1999, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 3003 appear at 70 FR 48277, Aug. 17, 2005.



## § 3003.1

## 39 CFR Ch. III (7–1–16 Edition)

### § 3003.1 Purpose and scope.

This part implements the Privacy Act of 1974 (5 U.S.C. 552a) by establishing Commission policies and procedures that permit individuals to obtain access to and request amendment of information about themselves that is maintained in systems of records. This part does not expand or restrict any rights granted under the Privacy Act of 1974.

### § 3003.2 Definitions.

For purposes of this part:

(a) *Commission* means the Postal Regulatory Commission.

(b) *Individual, record, and system of records* have the meanings specified in 5 U.S.C. 552a(a).

(c) *Day* means a calendar day and does not include Saturdays, Sundays, and legal holidays.

[64 FR 57982, Oct. 28, 1999, as amended at 72 FR 33165, June 15, 2007]

### § 3003.3 Procedures for requesting inspection, copying, or correction.

(a) An individual who—

(1) Wishes to know whether a Commission system of records contains a record about him or her,

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

(3) Seeks to amend a record about him or her 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.

(b) A request for amendment must describe the information sought to be amended and the specific reasons for the amendment.

(c) A requester—

(1) May request an appointment to inspect records at the Commission's offices between the hours of 8 a.m. and 4:30 p.m. on any day;

(2) Must present suitable identification, such as a driver's license, em-

ployee identification card, or Medicare card;

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

(4) Who files a request by mail must include his or her 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

(5) Must, if requested by the chief administrative officer, provide additional proof of identification.

### § 3003.4 Response to a request.

(a) In the case of a request for notice of the existence of a record, the chief administrative officer shall respond within 10 days of receipt of a request and shall inform the individual whether a system of records maintained by the Commission contains such a record.

(b) In the case of a request for access to a record or for a copy of a record, the chief administrative officer shall acknowledge the request within 10 days and shall promptly thereafter—

(1) Fulfill the request by mail or arrange for an inspection by the requester in the Commission's offices; or

(2) If the request is denied, notify the requester of the denial, the reasons for the denial, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

(c) In the case of a request for amendment, the chief administrative officer shall:

(1) Acknowledge the request in writing within 10 days;

(2) Promptly review the record; and

(3)(i) Make any requested amendment of a record found to be not accurate, relevant, timely, or complete; notify the requester of the change and provide a copy of the corrected record; and notify any previous recipient of the record (excluding Commission staff who obtained the record in the performance of their duties and recipients under the Freedom of Information Act) of any change; or

## Postal Regulatory Commission

## § 3004.2

(ii) Inform the requester of a refusal to amend the record, the reasons for the refusal, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

### § 3003.5 Appeals of denials of access or amendment.

(a) If a request for access to or amendment of a record is denied, the requester may file a written appeal with the Chairman of the Commission. The Chairman will decide each appeal within 30 days of receipt unless the Chairman has, for good cause, extended the period for another 30 days.

(b) If an appeal is denied, the requester will be notified of the decision, the reasons for the denial, the right to file a concise statement of disagreement, the procedures for filing a statement of disagreement, the subsequent uses of a statement of disagreement, and of the right to seek judicial review in accordance with subsection (g) of the Privacy Act.

### § 3003.6 Fees.

The first copy of any record furnished under the Privacy Act of 1974 will be provided without charge. Additional copies will be charged at the cost of reproduction.

### § 3003.7 Exemptions.

The Postal Regulatory Commission has not established any exempt system of records.

[64 FR 57982, Oct. 28, 1999, as amended at 72 FR 33165, June 15, 2007]

## PART 3004—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

Sec.

- 3004.1 Purpose.
- 3004.2 Presumption of openness.
- 3004.10 Public records.
- 3004.11 Use of exemptions.
- 3004.12 Reading room.
- 3004.13 Notice and publication of public information.
- 3004.20 Commission procedure when served a subpoena.
- 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for accord-ing appropriate confidentiality.

- 3004.40 Hard copy requests for records and for expedited processing.
- 3004.41 Electronic requests for records and for expedited processing.
- 3004.42 Tracking of requests.
- 3004.43 Response to requests.
- 3004.44 Appeals.
- 3004.45 Extension of response time limit.
- 3004.50 Fees—definitions as used in this part.
- 3004.51 Fees—request category.
- 3004.52 Fees—general provisions.
- 3004.53 Fee schedule.
- 3004.54 Procedure for assessing and collecting fees.
- 3004.60 Chief Freedom of Information Act Officer.
- 3004.61 Freedom of Information Act Public Liaison.
- 3004.70 Third-party submission of non-public materials.

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

SOURCE: 74 FR 57256, Nov. 5, 2009, unless otherwise noted.

### § 3004.1 Purpose.

(a) This part implements the Freedom of Information Act (FOIA), 5 U.S.C. 552, and describes the procedures by which a person may request copies of Commission records pursuant to FOIA. It contains the rules that the Commission follows in handling requests, such as the amount of time it has to make a determination regarding release of records and what fees to charge. It also describes how a submitter of trade secrets or confidential business information can identify information that the submitter believes to be exempt from disclosure under 5 U.S.C. 552(b).

(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 39 CFR part 3002, and on the Commission's Web site 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 Web site.

(c) Section 3004.10 identifies records that the Commission has determined to be public.

### § 3004.2 Presumption of openness.

(a) The Commission shall be proactive, and systematically, in a timely manner, post public records online in advance of any public request.

### § 3004.10

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness.

#### § 3004.10 Public records.

(a) Except as provided in § 3004.11 and in § 3007.10 of this chapter, the public records of the Commission include all submissions and filings as follows:

(1) Requests of the Postal Service for decisions or advisory opinions, notices, public reports, complaints (both formal and informal), and other papers seeking Commission action;

(2) Financial, statistical and other reports to the Commission, and other filings and submittals to the Commission in compliance with the requirements of any statute, executive order, or Commission rule, regulation or order;

(3) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts and briefs in any matter or proceeding;

(4) Exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of any of the foregoing; and

(5) Commission correspondence related to the foregoing.

(b) All other parts of the formal record in any matter or proceeding before the Commission and correspondence related thereto, including:

(1) Notices or Commission orders initiating the matter or proceeding;

(2) Designation of the presiding officer;

(3) Transcript of hearings;

(4) Offers of proof, motions and stipulations made during a hearing;

(5) Exhibits received in evidence during a hearing;

(6) Certifications to the Commission; and

(7) Anything else upon which action of a presiding officer or the Commission may be based.

(c) Proposed testimony or exhibits filed with the Commission but not yet offered or received in evidence.

(d) Presiding officer actions and all presiding officer correspondence and memoranda to or from anyone other

### 39 CFR Ch. III (7-1-16 Edition)

than staff assigned to provide assistance to the presiding officer.

(e) Commission decisions, reports, opinions, orders, notices, findings, determinations and other actions in any matter or proceeding and all Commission minutes which have been approved.

(f) Commission correspondence relating to any data or information request directed to the Postal Service.

(g) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department, or agency.

(h) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress, but only if and after authorized for release or publication by that office, the Commission, or the Member of Congress involved.

(i) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, decision, advisory opinion, or public report issued by the Commission and letters of opinion on that subject signed by the General Counsel and sent to persons other than the Commission, a Commissioner, or any of the staff.

(j) Copies of all filings by the Commission, and all orders, judgments, decrees, and mandates directed to the Commission in court proceedings involving Commission action and all correspondence with the courts, or clerks of court.

(k) The Commission's administrative and operating manuals as issued.

#### § 3004.11 Use of exemptions.

(a) Under FOIA, there are nine exemptions which may be used to protect information from disclosure. The Commission has paraphrased the exemptions in paragraphs (b) through (j) of this section. These paraphrases are not intended to be interpretations of the exemptions.

(b) National security information concerning national defense or foreign policy, provided that such information

## Postal Regulatory Commission

## § 3004.12

has been properly classified, in accordance with an Executive Order.

(c) Information related solely to the internal personnel rules and practices of an agency.

(d) Information specifically exempted from disclosure by statute, for example, 39 U.S.C. 410(c):

(1) The name or address, past or present, of any postal patron;

(2) Information of a commercial nature, including trade secrets, whether or not obtained from a person outside the Postal Service, which under good business practice would not be publicly disclosed;

(3) Information prepared for use in connection with the negotiation of collective bargaining agreements under 39 U.S.C. chapter 12, or minutes of, or notes kept during negotiating sessions conducted under such chapter;

(4) Information prepared for use in connection with proceedings under 39 U.S.C. chapter 36; and

(5) The reports and memoranda of consultants or independent contractors except to the extent that they would be required to be disclosed if prepared within the agency.

(e) Trade secrets and commercial or financial information which is obtained from a person and is privileged or confidential.

(f) Inter-agency or intra-agency memoranda or letters, which would not be available by law to a party other than an agency in litigation with the agency.

(g) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(h) Records or information compiled for law enforcement purposes, the release of which:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person of a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source and investigations or prosecutions if such disclosure could reason-

ably be expected to risk circumvention of the law; or

(5) Could reasonably be expected to endanger the life or physical safety of any individual.

(i) Information contained in or related to examination, operating, or condition reports, prepared by, or on behalf of, or for the use of an agency responsible for regulating or supervising financial institutions.

(j) Geological and geophysical information and data, including maps, concerning wells.

(k) It is Commission policy to make records publicly available upon request, unless the record qualifies for exemption under one or more of the nine exemptions. It is Commission policy to make discretionary releases; however, a discretionary release is not normally appropriate for records exempt under exemptions identified in paragraphs (b), (d), (e), (g), (h)(3) and (h)(5) of this section. The remainder of the exemptions are discretionary.

(1) The following are examples of information that is not part of the public records of the Commission:

(1) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated staff members while particularly assigned, in accordance with all applicable legal requirements, to aid the Commission in the drafting of any decision, notice, order, advisory opinion, or public report and findings, with or without opinion, or report in any matter or proceeding;

(2) Reports and records compiled or created by the Inspector General of the Commission designated as confidential; and

(3) Unaccepted offers of settlement in any matter or proceeding unless or until made public by act of the offeror.

### § 3004.12 Reading room.

(a) The Commission maintains a public reading room at its offices (901 New York Avenue, NW., Suite 200, Washington, DC 20268-0001) and an electronic reading room at <http://www.prc.gov>. The public reading room at its offices is open during business hours.

### § 3004.13

(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 §3004.10 relating to any matter or proceeding before the Commission.

(c) The Commission shall make available, in the electronic and physical reading rooms, records previously released under FOIA and which the Commission determines are or are likely to become of significant public interest.

#### **§ 3004.13 Notice and publication of public information.**

(a) Decisions, advisory opinions, orders, and public reports will be made available to the public by posting on the Commission's Web site at <http://www.prc.gov>.

(b) Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, and procedural and substantive rules, are published in the FEDERAL REGISTER publication system, and are available on the Commission's Web site, <http://www.prc.gov>.

#### **§ 3004.20 Commission procedure when served a subpoena.**

If an officer or employee of the Commission is served with a subpoena duces tecum, material that is not part of the public files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

#### **§ 3004.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for according appropriate confidentiality.**

(a) *Coverage.* FOIA applies to all Commission records and provides the public with access to government records.

(b) *Requesting records subject to the Privacy Act.* A request by an individual for his or her own records contained in

### 39 CFR Ch. III (7-1-16 Edition)

a system of records is governed by the Privacy Act. Release will first be considered under the Privacy Act pursuant to part 3003 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.

(c) *Requesting another individual's record.* Request for records of individuals which may not be granted under the Privacy Act shall be considered under FOIA.

(1) If the Commission makes a disclosure in response to a request and the disclosure is permitted by the Privacy Act's disclosure provision, 5 U.S.C. 552a(b), the Commission will rely on the Privacy Act to govern the disclosure.

(2) In some circumstances, the Privacy Act may prohibit the Commission's ability to release records which may be released under FOIA.

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records.

(1) A request made pursuant to FOIA for records designated as non-public by the Postal Service shall be referred to the Postal Service; and

(2) A request made pursuant to part 3007 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) *Requesting a third-party record submitted under seal.* The Commission maintains records of a confidential nature submitted by third parties as non-public materials.

(1) A request made pursuant to FOIA for records designated as non-public by a third party shall be considered in light of all applicable exemptions; and

(2) A request made pursuant to part 3007 of this chapter for records designated as non-public by a third party shall be considered under the applicable standards set forth in that part.

#### **§ 3004.40 Hard copy requests for records and for expedited processing.**

(a) A hard copy request for records must:

## Postal Regulatory Commission

## § 3004.43

- (1) Be in writing;
- (2) Include the name and address of the requester;
- (3) Reasonably describe the records sought;
- (4) Include a daytime telephone number;
- (5) Be clearly identified as “Freedom of Information Act Request” both in the text of the request and on the envelope;
- (6) Identify the request category under §3004.51; and
- (7) Be submitted to the Secretary of the Commission at the offices of the Commission (901 New York Avenue, NW., Suite 200, Washington, DC 20268-0001).

(b) *Expedited processing.* A person demonstrating a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v) may request expedited processing at the time of an initial request (or appeal) or at a later time. In addition to the requirements in paragraph (a) of this section, an expedited request for records must:

- (1) Demonstrate a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v);
- (2) Be clearly identified as “Expedited Freedom of Information Act Request” both in the text of the request and on the envelope; and
- (3) Certify the statement of compelling need to be true and correct to the best of the requester’s knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

### §3004.41 Electronic requests for records and for expedited processing.

(a) An electronic request for records must:

- (1) Be submitted using the Commission’s online FOIA request form at <http://www.prc.gov>;
- (2) Reasonably describe the records sought;
- (3) Include a daytime telephone number and valid e-mail address; and
- (4) Identify the request category under §3004.51.

(b) *Expedited processing.* A person satisfying the requirements of paragraph (a) of this section may request expedited processing at the time of the initial request or at a later time by:

- (1) Demonstrating a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v);
- (2) Clearly identifying the request as an “Expedited Freedom of Information Act Request” in the body of the submission; and
- (3) Certifying the statement of compelling need to be true and correct to the best of the requester’s knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

### § 3004.42 Tracking of requests.

(a) Upon receipt of a request, the Commission shall assign a unique tracking number to the request and within 3 days (excluding Saturdays, Sundays and legal holidays) provide that number to the person making the request.

(b) Any person with a tracking number may call or e-mail the Commission’s Office of Public Affairs and Government Relations (PAGR) to check the status of a request. PAGR may be e-mailed at [PRC-PAGR@prc.gov](mailto:PRC-PAGR@prc.gov) or called at 202-789-6800.

### § 3004.43 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for a Commission record, the Secretary or Assistant Secretary will notify the requester of its determination to grant or deny the request.

(b) *Granting request.* If granting the request, the Secretary, or Assistant Secretary will notify the requester of any fees that must be paid.

(c) *Partial granting of request.* If the Commission is unable to grant the request in its entirety, any reasonably segregable portion of the request shall be provided, with deleted portions treated as specified in paragraph (d) of this section, and the Secretary or Assistant Secretary will notify the requester of any fees that must be paid.

(d) *Denying request.* If denying the request, in whole or in part, the Secretary or Assistant Secretary will inform the requester in writing of:

- (1) The reason for the denial, including each exemption used as a basis for withholding of the records sought and, if applicable, the harm to an interest protected by a statutory exemption;

#### § 3004.44

(2) An estimate of the volume of requested matter that was denied:

(i) If disclosure of a record has been partially denied, the amount of information deleted will be indicated on the released portion if technically feasible; and

(ii) If revealing the amount or location of a denied record will harm an interest protected by an exemption, then the description of the amount or location of deleted information shall be withheld.

(3) The right to appeal the denial to the Commission within 1 year.

(e) *Expedited processing.* Within 10 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for expedited processing, the Secretary or Assistant Secretary will:

(1) Grant the request for expedited processing and process the request for records as soon as practicable; or

(2) Deny the request for expedited processing by informing the individual of:

(i) The denial in writing;

(ii) The right to appeal the denial to the Commission in writing; and

(iii) The procedures for appealing the denial.

(3) Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing.

(f) Where a compelling need is not shown in an expedited request as specified in §3004.41(b)(1), the Commission may grant requests for expedited processing at its discretion.

#### § 3004.44 Appeals.

(a) The Commission may review any decision of the Secretary or Assistant Secretary on its own initiative.

(b) A requester who seeks to appeal any denial must file an appeal with the Commission.

(c)(1) The Commission will grant or deny the appeal in writing within 20 days (excluding Saturdays, Sundays and legal holidays) of the date the appeal is received. If on appeal the denial of the request for records is upheld, the Commission will notify the requester of the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c).

#### 39 CFR Ch. III (7-1-16 Edition)

(2) The Commission will expeditiously consider an appeal of a denial of expedited processing.

#### § 3004.45 Extension of response time limit.

(a) The Commission may extend the time limit for a response at the request stage and at the appeal stage up to 10 working days due to unusual circumstances as specified in 5 U.S.C. 552(a)(6)(B)(iii).

(b) The Commission will:

(1) Notify the requester of any extension and the reason for the extension in writing; and

(2) Provide the requester with an opportunity to limit the scope of the request or to arrange an alternative timeframe for processing the request or a modified request. The applicable time limits are not tolled while the Commission waits for a response from the requester under this subsection.

#### § 3004.50 Fees—definitions as used in this part.

*Commercial use* means a request from or on behalf of a person seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

*Direct costs* means the expenditures the Commission incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee(s) performing work (the basic pay rate of such employee(s) plus 16 percent to cover benefits).

*Duplication* means copying the documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

*Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional

education, and an institution of vocational education, which operates a program or programs of scholarly research.

*Noncommercial scientific institution* means an institution, not operated on a commercial basis (as referenced above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

*Representative of the news media* means any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. The term “news” means information that is about current events or that would be of current interest to the public. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase or by subscription or by free distribution to the general public. These examples are not all inclusive and may include alternate media to disseminate news. A freelance journalist shall be regarded as working for a news media entity if the journalist can demonstrate a solid basis for expecting publication through that entity (e.g., by a publication contract or prior publication record), whether or not the journalist is actually employed by the entity.

*Review* means examining documents located in response to a request to determine whether any portion is exempt from disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

*Search* includes all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

#### § 3004.51 Fees—request category.

(a) The level of fee charged depends on the request category.

(1) *Commercial use*. A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(2) *Educational and noncommercial scientific institutions*. A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(3) *News media*. A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(4) *Other requesters*. A request from any other person will be charged the full direct cost of searching for, reviewing, and duplicating records responsive to the request, except that the first 100 pages of duplication and the first 2 hours of search/review will be furnished without charge.

(b) *Privacy Act*. A request by an individual for his or her own records in a system of records will be charged fees as provided under the Commission’s Privacy Act regulations in part 3003 of this chapter.

#### § 3004.52 Fees—general provisions.

(a) The Commission may charge search fees even if no records are found or if the records found are exempt from disclosure.

(b) Except in the case of commercial use requesters, the first 100 pages of duplication and the first 2 hours of search time are provided without charge.

(1) A page for these purposes is a letter- or legal-size sheet, or the equivalent amount of information in a medium other than paper copy.

(2) Search time for these purposes refers to manual searching; if the search is performed by computer, the 2 hours provided without charge will be equal to 2 hours’ salary of the person performing the search.



### § 3004.53

### 39 CFR Ch. III (7-1-16 Edition)

(c) No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for 2 hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(d) Records will be provided without charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§3004.43 and 3004.44, so long as there are no unusual or exceptional circumstances, such as those used to justify an extension of the time limit as described in §3004.45. The Commission may, however, charge fees for a partial grant of a request while it reviews records that may be exempt and may be responsive to the request, if it is made within the applicable time limits.

#### § 3004.53 Fee schedule.

(a) Fees will be calculated as follows:

(1) *Manual search.* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time may be charged for even if the Commission fails to locate records or if records located are exempt from disclosure.

(2) *Computer search.* At the direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request runs and employee salary apportionable to the search.

(3) *Review (commercial use).* At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Charges are imposed only for the review necessary at the initial administrative level to determine the applicability of any exemption, and not for review at the administrative appeal level of an exemption already applied.

(4) *Duplication.* At 10 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer the direct cost of production, including employee time, will be charged.

(5) *Additional services.* Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actually incurred cost.

(b) In addition to the fee waiver provisions of §3004.52(d), fees may be waived at the discretion of the Commission.

#### § 3004.54 Procedure for assessing and collecting fees.

(a) Advance payment may be required if the requester failed to pay previous bills in a timely fashion or when the fees are likely to exceed \$250.

(1) Where the requester has previously failed to pay within 30 days of the billing date, the Commission may require the requester to pay an advance payment of the estimated fee together with either the past due fees (plus applicable interest) or proof that the past fees were paid.

(2) When advance payment is required, the administrative time limits prescribed in 5 U.S.C. 552(a)(6) (§3004.43) begin only after such payment has been received.

(b) Interest at the rate published by the Secretary of the Treasury as prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

#### § 3004.60 Chief Freedom of Information Act Officer.

The Commission designates the Secretary of the Commission as the Chief FOIA Officer. The Chief FOIA Officer shall be responsible for the administration of and reporting on the Commission's Freedom of Information Act program.

#### § 3004.61 Freedom of Information Act Public Liaison.

The Commission designates the Director of the Office of Public Affairs

## Postal Regulatory Commission

## § 3005.2

and Government Relations or his or her 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.

### § 3004.70 Third-party submission of non-public materials.

(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 may submit materials under seal and lodge an application for non-public treatment as described in § 3007.10 of this chapter.

(b) *Notice of request.* Except as provided in § 3004.30(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 third-party materials possibly exempt from disclosure 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 7 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 nonpublic treatment pursuant to § 3007.10 of this chapter, to the disclosure of the information.

(d) *Notice of decision.* If, after considering the submitter's objections to disclosure the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter's objections. The actual disclosure will not be made before 3 days after publication of the Commission's decision.

## PART 3005—PROCEDURES FOR COMPELLING PRODUCTION OF INFORMATION BY THE POSTAL SERVICE

### Subpart A—General

Sec.

3005.1 Scope and applicability of other parts of this title.

3005.2 Terms defined for purposes of this part.

### Subpart B—Subpoenas

3005.11 General rule—subpoenas.

3005.12 Subpoenas issued without receipt of a third-party request.

3005.13 Subpoenas issued in response to a third-party request.

3005.14 Service of subpoenas.

3005.15 Duties in responding to a subpoena.

3005.16 Enforcement of subpoenas.

### Subpart C—Depositions and Written Interrogatories

3005.21 Authority to order depositions and responses to written interrogatories.

APPENDIX A TO PART 3005—SUBPOENA FORM

AUTHORITY: 39 U.S.C. 503; 504; 3651(c); 3652(d).

SOURCE: 75 FR 22107, Apr. 27, 2010, unless otherwise noted.

### Subpart A—General

#### § 3005.1 Scope and applicability of other parts of this title.

(a) The rules in this part govern the procedures for compelling the production of information by the Postal Service pursuant to 39 U.S.C. 504(f).

(b) Part 3001, subpart A, of this chapter applies unless otherwise stated in this part or otherwise ordered by the Commission.

#### § 3005.2 Terms defined for purposes of this part.

(a) *Administrative law judge* means an administrative law judge appointed by the Commission under 5 U.S.C. 3105.

(b) *Chairman* means the Chairman of the Commission.

(c) *Covered person* means an officer, employee, agent, or contractor of the Postal Service.

**§ 3005.11**

(d) *Designated Commissioner* means any Commissioner who has been designated by the Chairman to act under this part.

**Subpart B—Subpoenas**

**§ 3005.11 General rule—subpoenas.**

(a) Subject to the provisions of this part, the Chairman, any designated Commissioner, and any administrative law judge may issue a subpoena to any covered person.

(b) The written concurrence of a majority of the Commissioners then holding office shall be required before any subpoena may be issued under this subpart. When duly authorized by a majority of the Commissioners then holding office, a subpoena shall be issued by the Chairman, a designated Commissioner, or an administrative law judge.

(c) Subpoenas issued pursuant to this subpart may require the attendance and presentation of testimony or the production of documentary or other evidence with respect to any proceeding conducted by the Commission under title 39 of the United States Code or to obtain information for preparation of a report under that title.

(d) Subpoenas issued pursuant to this subpart shall include such conditions as may be necessary or appropriate to protect a covered person from oppression, or undue burden or expense, including the following:

(1) That disclosure may be had only on specified terms and conditions, including the designation of the time or place;

(2) That certain matters not be inquired into, or that the scope of disclosure be limited to certain matters;

(3) That disclosure occur with no one present except persons designated by the Commission;

(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 3007 of this chapter; and

(5) Such other conditions deemed necessary and appropriate under the circumstances presented.

(e) Subpoenas shall be served in the manner provided by § 3005.14.

**39 CFR Ch. III (7–1–16 Edition)**

**§ 3005.12 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 § 3005.11 without a request having been made by a third party under § 3005.13.

(b) Except as provided in paragraph (c) of this section, a subpoena shall not be issued until after the covered person has been provided an opportunity to produce the requested information voluntarily.

(c) A subpoena may be issued summarily without first providing an opportunity to produce the requested information voluntarily if a delay in the issuance of the subpoena could unreasonably limit or prevent production of the information being sought.

(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 § 3001.21(a) of this chapter to quash the subpoena, to limit the scope of the subpoena, or to condition the subpoena as provided in § 3005.11(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 § 3001.21(b) of this chapter. Pending the resolution of any such motion, the covered person shall secure and maintain the requested information.

**§ 3005.13 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 § 3005.11.

(1) Subpoenas may be requested to enforce an order to compel previously issued pursuant to the rules of practice with which the Postal Service has failed to comply.

(2) Requests for subpoenas under this section shall be made by written motion filed with the presiding officer in the manner provided in §3001.21 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 §3001.21(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 §3001.12 of this chapter.

(5) Following receipt of the materials forwarded by the presiding officer, the Commissioners shall determine whether the requested subpoena should be issued and, if so, whether any conditions should be placed on the scope or content of the subpoena or on the responses to the subpoena. The Commissioners may, but are not required, to entertain further oral or written submissions from the Postal Service or the participants before acting on the request. In making their determination, the Commissioners are not bound by any recommendation of a presiding officer.

(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 §3005.11 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 §3001.21 of this chapter. A copy of the request shall be served upon the Postal Service as provided by §3001.12 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 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 §3001.21(b) of this chapter.

(3) Following receipt of the request and any answers to the request, the Commissioners shall determine whether the requested subpoena should be issued and, if so, whether any conditions should be placed on the scope or content of the subpoena or on the responses to the subpoena. The Commissioners may, but are not required, to entertain further oral or written submissions before acting. A majority of the Commissioners then holding office must concur in writing before a subpoena may be issued.

(c) *Contents of requests for subpoenas.* Each motion requesting the issuance of a subpoena shall include the following:

(1) A demonstration that the subpoena is being requested with respect to a proceeding conducted by the Commission under title 39 of the United States Code or that the purpose of the subpoena is to obtain information to be

### § 3005.14

### 39 CFR Ch. III (7–1–16 Edition)

used by the Commission to prepare a report under title 39 of the United States Code;

(2) A showing of the relevance and materiality of the testimony, documentary or other evidence being sought;

(3) Specification with particularity of any books, papers, documents, writings, drawings, graphs, charts, photographs, sound recordings, images, or other data or data compilations stored in any medium from which information can be obtained, including, without limitation, electronically stored information which is being sought from the covered person;

(4) In situations in which a hearing has been ordered, the request must include in addition to the information required by paragraphs (c)(1), (2) and (3) of this section, a certification that the covered person has failed to comply with an order compelling discovery previously issued pursuant to the Commission's rules of practice; and

(5) In situations in which a hearing has not been ordered, the request must include in addition to the information required by paragraphs (c)(1), (2) and (3) of this section, an explanation of the reason for the request and the purposes for which the appearance, testimony, documentary or other evidence is being sought, and a certification that the Postal Service has failed to comply with a previously issued Commission order or information request.

#### § 3005.14 Service of subpoenas.

(a) *Manner of service*—(1) *Existing Postal Service officers and employees.* In addition to electronic service as provided by § 3001.12(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 § 3001.12(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.

(3) *Prior Postal Service officers, employees, agents, and contractors.* Subpoenas directed to Postal Service officers, employees, agents, and contractors who, at the time the subpoena is issued, are no longer officers or employees of the Postal Service or are no longer agents or contractors in an existing agency or contract relationship with the Postal Service, must be served by personal service. Service upon such officers, employees, agents, or 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 §§ 3001.14(a)(1) or 14(a)(2) of this chapter or upon former Postal Service officers, employees, agents, or contractors under § 3001.14(a)(3) of this chapter shall be arranged either by the Commission or by the third party who requested issuance of the subpoena.

(b) *Return of service and proof of transmission*— (1) *Return of service.* Proof of service under § 3001.14(a) of this chapter must be filed with the Secretary within 2 business days following service, unless a shorter or longer period is ordered by the Commission, and must be accompanied by certifications of:

(i) The manner, date, and time of delivery of the subpoena;

(ii) The name, business address, telephone number, and e-mail address of the person upon whom the subpoena was served; and

(iii) The return date of the subpoena.

## Postal Regulatory Commission

## § 3005.21

(2) *Proof of transmission.* The Postal Service shall within 2 business days of transmission of a subpoena by the Postal Service to an existing Postal Service officer, employee, agent, or contractor pursuant to §§3001.14(a)(i) or (ii) of this chapter, or such shorter or longer period ordered by the Commission, file with the Secretary a certification of:

(i) The manner, date, and time of delivery of the subpoena;

(ii) The name, business address, telephone number, and e-mail address of the person to whom the subpoena was transmitted; and

(iii) The return date of the subpoena.

(c) *Notice of service, proof of transmission, and return date.* The Secretary shall post a notice of service and proof of transmission upon the Commission's Web site which specifies the return date of the subpoena.

### §3005.15 Duties in responding to a subpoena.

(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 copy-

ing 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.

(e) A covered person who fails or refuses to disclose or provide discovery of information on the grounds that the information is privileged or subject to protection as a trade secret or other confidential research, development, or commercial information must expressly support all such claims and shall provide a description of the nature of the information and the potential harm that is sufficient to enable the Commission to evaluate and determine the propriety of the claim.

(f) Request for confidential treatment of information shall be made in accordance with part 3007 of this chapter.

### §3005.16 Enforcement of subpoenas.

In the case of contumacy or failure to obey a subpoena issued under this subpart, the Commission may apply for an order to enforce its subpoena as permitted by 39 U.S.C. 504(f)(3).

## Subpart C—Depositions and Written Interrogatories

### §3005.21 Authority to order depositions and responses to written interrogatories.

The Chairman, any designated Commissioner, or any administrative law judge may order the taking of depositions and responses to written interrogatories by a covered person with respect to any proceeding conducted under title 39 of the United States Code or to obtain information to be used to prepare a report under that title.

APPENDIX A TO PART 3005—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 § 3005.15:

(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.

## PART 3007—TREATMENT OF NON-PUBLIC MATERIALS PROVIDED BY THE POSTAL SERVICE

Sec.

- 3007.1 Definitions for purposes of this part.
- 3007.2 Scope.
- 3007.3 Data or information requests.
- 3007.10 Submission of non-public materials under seal.
- 3007.20 Application for non-public treatment.
- 3007.21 Content of the Postal Service application for non-public treatment.
- 3007.22 Content of third-party application for non-public treatment.
- 3007.23 Treatment of non-public materials.
- 3007.24 Commission access to non-public materials.
- 3007.25 Use of non-public materials.
- 3007.30 Termination of non-public status.
- 3007.31 Request for early termination of non-public status.
- 3007.32 Preliminary determination of non-public status.
- 3007.33 Standard for decision for early termination of non-public status.
- 3007.40 Request for access to non-public materials.
- 3007.41 Termination of access to non-public materials.
- 3007.42 Standard for decision for request for access to non-public materials.
- 3007.50 Request for access to non-public materials relevant to compliance.
- 3007.51 Termination of access to non-public materials relevant to compliance.
- 3007.52 Standard for decision for request for access to non-public materials relevant to compliance.
- 3007.60 Limitations on access to non-public materials.
- 3007.61 Continued effectiveness of protective conditions.
- 3007.62 Sanctions for violations of protective conditions.

APPENDIX A TO PART 3007—STATEMENT OF COMPLIANCE WITH PROTECTIVE CONDITIONS

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

SOURCE: 74 FR 30943, June 29, 2009, unless otherwise noted.

### § 3007.1 Definitions for purposes of this part.

(a) *Authorized representative* means any Commissioner designated by the Chairman, any administrative law judge appointed by the Commission under 5 U.S.C. 3105, and any employee of the Commission designated by the Commission. The authorized representative may administer oaths, examine witnesses, take depositions, and receive evidence with respect to any proceeding before the Commission under title 39 of the U.S. Code or obtain information to assist the Commission in the preparation of a report or performance of a function under title 39 of the U.S. Code.

(b) *Non-public materials* means any information, documents, and things filed with the Commission which are claimed to be exempt from disclosure by the Postal Service pursuant to 39 U.S.C. 504(g), 3652(f) or 3654(f), or claimed to be protectable under Federal Rule of Civil Procedure 26(c) by a third party with a proprietary interest in the materials. Non-public materials cease to be non-public if the status has expired or been terminated by the Commission pursuant to this part.

### § 3007.2 Scope.

The Commission or its authorized representative may require the Postal Service to provide any information, documents, and things in its possession or control, or any information, documents, and things that it can obtain through reasonable effort and expense, that are likely to materially assist the Commission in its conduct of proceedings, in its preparation of reports,



### § 3007.3

or in performance of its functions under title 39 of the U.S. Code. Information, documents, and things the Postal Service may be required to provide, include, but are not limited to, paper hard copy and electronically stored data and materials—including writings, notes, e-mails, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form; or any tangible things.

#### § 3007.3 Data or information requests.

(a) The Commission or its authorized representative may issue data or information requests to the Postal Service seeking information, documents, and things covered by §3007.2. A data or information request shall describe the documents, information, and things sought, briefly explain the reason for the request, and specify a timeframe for receiving the requested information and materials.

(b) The Commission or its authorized representative may issue data or information requests to third parties seeking any information, document or thing. A data information request shall describe the documents, information and things sought, briefly explain the reason for the request, and specify a timeframe for receiving the requested materials.

(c) Any person may request that the Commission issue a data or information request by filing a motion with the Commission, pursuant to §3001.21 of this chapter, which describes the documents, information, and things sought, explains the reasons the Commission should make the request, and includes a statement of how the materials sought are relevant and material to the Commission's duties under title 39 of the U.S. Code.

#### § 3007.10 Submission of non-public materials under seal.

(a) Non-public materials shall not be filed electronically pursuant to §3001.9 of this chapter, but shall be filed in sealed envelopes clearly marked "Confidential. Do Not Post on Web." The

### 39 CFR Ch. III (7–1–16 Edition)

person filing the non-public materials shall submit two copies consisting, where practicable, of two paper hard copies as well as two copies in easily usable electronic form such as compact discs (CDs) or digital video discs (DVDs) of the non-public materials which shall also be clearly marked "Confidential. Do Not Post on Web." Spreadsheets submitted in electronic form shall display the formulas used, their links to related spreadsheets, and shall not be password protected. All workpapers or data shall be submitted in a form, and be accompanied by sufficient explanation and documentation to allow them to be replicated using a publicly available PC application. Each page of any paper hard copy non-public materials submitted shall be clearly marked as non-public.

(b) The person submitting the non-public materials shall also file an electronic public (redacted) copy of the non-public materials pursuant to §3001.9 of this chapter. The electronic public (redacted) copy of the materials which are not spreadsheets, data files, or programs must be submitted in a searchable electronic format, but need not be submitted in its native format. As part of its publicly available electronic filing, the Postal Service must appropriately redact materials that contain both public and non-public information. For example, the Postal Service may not identify a whole page or a whole table as non-public materials if the page or table contains both public and non-public information, but must redact only the information it claims to be non-public. If practicable, the Postal Service shall sequentially number each page of the materials identified as non-public.

(c) The Postal Service or third party shall use the graphical redaction (blackout) method for all redacted materials. Should the Postal Service wish to use any other method, it must state with particularity the competitive harm associated with use of the graphical redaction method to justify the use of any other method, and indicate the number of lines or pages removed at each redaction.

(d) The Postal Service or third party shall mark each page, item, and thing,

## Postal Regulatory Commission

## § 3007.23

or portion thereof, that it seeks to protect from disclosure in a manner reasonably calculated to alert custodians to the confidential nature of the information or materials.

### § 3007.20 Application for non-public treatment.

(a) Whenever the Postal Service files non-public materials with the Commission, it shall at the same time file an application for non-public treatment under § 3007.21.

(b) Before the Postal Service files non-public materials with the Commission which the Postal Service has reason to believe may implicate a third-party proprietary interest, the Postal Service shall inform each such third party:

(1) Of the nature and scope of the filing with the Commission, including the pertinent docket, and

(2) That it may address its confidentiality concerns directly with the Commission.

(c) A third party with a proprietary interest in the materials may, if it deems necessary, independently seek non-public treatment under § 3007.22.

### § 3007.21 Content of the Postal Service application for non-public treatment.

(a) Whenever the Postal Service files non-public materials with the Commission, it must submit 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.

(b) An application for non-public treatment is to fulfill the burden of persuasion that the non-public materials should be withheld from the public.

(c) The application for non-public treatment must include a specific and detailed statement setting forth:

(1) The rationale for claiming that the materials are non-public, including the specific statutory basis for the claim, and a statement justifying application of the provision(s);

(2) Identification, including name, phone number, and e-mail address for any third party who is known to have a proprietary interest in the materials,

or if such an identification is sensitive, contact information for a Postal Service employee who shall provide notice to that third party;

(3) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

(4) Particular identification of the nature and extent of commercial harm alleged and the likelihood of such harm;

(5) At least one specific hypothetical, illustrative example of each alleged harm;

(6) The extent of protection from public disclosure deemed to be necessary;

(7) The length of time deemed necessary for the non-public materials to be protected from public disclosure with justification thereof; and

(8) Any other factors or reasons relevant to support the application.

### § 3007.22 Content of third-party application for non-public treatment.

(a) The application for relief from public disclosure submitted by a party other than the Postal Service must clearly identify all materials believed to be protected from disclosure.

(b) The application for non-public treatment must include a specific and detailed statement setting forth:

(1) A description of the materials claimed to be non-public in a manner that, without revealing the materials at issue, would allow a person to thoroughly evaluate the basis for the claim that they are non-public;

(2) Particular identification of the nature and extent of the harm alleged and the likelihood of such harm; and

(3) Any other factors or reasons relevant to support the application.

### § 3007.23 Treatment of non-public materials.

The Commission or its authorized representative will not publicly disclose or grant access to non-public materials except as provided in the rules of this part.

## § 3007.24

## 39 CFR Ch. III (7-1-16 Edition)

### § 3007.24 Commission and court access to non-public materials.

(a) Non-public materials may be disclosed to the following persons:

- (1) Members of the Commission;
- (2) Commission employees including public representatives carrying out their appropriate responsibilities;
- (3) Contractors, attorneys, or other subject matter experts assisting the Commission in carrying out its statutory duties;
- (4) Reviewing courts and their staffs; or
- (5) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.

(b) Access to non-public materials for all persons not covered by this section is pursuant to §§ 3007.40 and 3007.50.

### § 3007.25 Use of non-public materials.

Except as pursuant to this part, persons with access to non-public materials under § 3007.24 may not:

- (a) Use such materials for purposes other than the purposes for which they are supplied.
- (b) Permit anyone who is not allowed access under § 3007.24 to have access to any such materials.

### § 3007.30 Termination of non-public status.

Ten years after the date of filing with the Commission, non-public materials shall lose non-public status unless the Commission or its authorized representative enters an order extending the duration of that status.

### § 3007.31 Request for early termination of non-public status.

(a) Any person may make a request to the Commission that non-public materials be publicly disclosed. Each such request shall provide a specific and detailed statement justifying why the non-public materials should be made public, giving specific recognition to any pertinent rationale(s) provided in the application for relief submitted pursuant to § 3007.21 or § 3007.22. The request, however, shall not publicly disclose any of the non-public materials. If it is necessary to use the non-public materials to formulate the argument

in favor of public disclosure, the argument utilizing the non-public materials shall be filed under seal.

(b) Any interested person, including the Postal Service, may file a response to the request within 7 days after such a request is filed, unless a longer period is specified by the Commission.

(c) Unless the Commission otherwise provides, no reply to a response filed pursuant to paragraph (a) of this section shall be filed.

(d) Following the filing of responses, if any, the Commission will issue an order determining the appropriate degree of protection, if any, to be accorded to the materials claimed to be non-public by the Postal Service or third party with a proprietary interest in the materials.

### § 3007.32 Preliminary determination of non-public status.

(a) Whenever the Postal Service files non-public materials, the Commission may issue a notice of preliminary determination concerning the appropriate degree of protection, if any, to be accorded to such materials.

(b) Any interested person, including the Postal Service, may file a response to the Commission's notice of preliminary determination within 7 days after such a notice is filed, unless a longer period is specified.

(c) Unless the Commission otherwise provides, no reply to a response filed pursuant to paragraph (b) of this section shall be filed.

(d) Following the filing of responses, if any, the Commission will issue an order determining the appropriate degree of protection, if any, to be accorded to the materials claimed to be non-public by the Postal Service or third party with a proprietary interest in the materials.

### § 3007.33 Standard for decision for early termination of non-public status.

(a) In determining whether to publicly disclose non-public materials filed by the Postal Service, the Commission shall balance the nature and extent of the likely commercial injury identified

## Postal Regulatory Commission

## § 3007.50

by the Postal Service against the public interest in maintaining the financial transparency of a government entity competing in commercial markets.

(b) In determining whether to publicly disclose non-public materials in which the Commission determines a third party has a proprietary interest, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

### § 3007.40 Request for access to non-public materials.

(a) During a Commission proceeding, any person may file a motion pursuant to § 3001.21 of this chapter requesting access to non-public materials. The motion shall include:

(1) A detailed statement providing justification for access; and

(2) A list of relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the party requesting access, and whether that party is affiliated with the delivery services, communications or mailing industries.

(b) To expedite the process, each person seeking access to non-public materials may attach to the motion an executed copy of protective conditions such as those provided in Appendix A of this part.

(1) If an executed copy of protective conditions is attached and if actual notice of the motion has been provided by conversation or e-mail exchange to all persons identified by the Postal Service under § 3007.2(c), answers are due within 3 days after such a motion is filed.

(2) In all other circumstances, answers are due within 7 days after such a motion is filed.

(c) Unless the Commission otherwise provides, no reply to an answer filed pursuant to paragraph (b)(1) or paragraph (b)(2) of this section shall be filed.

(d) Following the filing of answers, if any:

(1) The Commission will issue an order allowing or denying access and setting forth the appropriate protective conditions, if any, to be accorded non-public materials, or

(2) If the Postal Service or third party with a proprietary interest does

not contest a person's access subject to agreed protective conditions, the Commission or its authorized representative may issue an order allowing access subject to the agreed protective conditions.

### § 3007.41 Termination of access to non-public materials.

(a) Except as provided in paragraph (b) of this section, access to non-public materials obtained under § 3007.40 terminates either when the Commission issues a final order or report in the relevant proceeding or the person withdraws or is otherwise no longer involved in the proceeding, whichever occurs first. For purposes of this section, an order or report is not considered final until after the possibility of judicial review expires.

(b) Access to non-public materials shall continue for persons seeking continued access under § 3007.50.

(c) Upon termination of access under paragraph (a) of this section, all non-public materials in a person's possession must be destroyed, and the form attached to the protective conditions certifying destruction must be executed and filed with the Commission.

### § 3007.42 Standard for decision for request for access to non-public materials.

In determining whether to grant a request for access to non-public materials, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

### § 3007.50 Request for access to non-public materials relevant to compliance.

(a) Any person may file a motion pursuant to § 3001.21 of this chapter requesting access to, or continued access to, non-public materials relevant to compliance under 39 U.S.C. 3653. The motion shall include:

(1) A detailed statement providing justification for access, including reference to the materials' relevance to compliance under chapter 36 of title 39 of the U.S. Code; and

(2) A list of relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the party requesting

### § 3007.51

access, and whether that party is affiliated with the delivery services, communications or mailing industries.

(b) To expedite the process, each person seeking access to non-public materials may attach to the motion an executed copy of protective conditions such as those provided in Appendix A of this part.

(1) If an executed copy of protective conditions is attached and if actual notice of the motion has been provided by conversation or e-mail exchange to all persons identified by the Postal Service under §3007.21(c), answers are due within 3 days after such a motion is filed.

(2) In all other circumstances, answers are due within 7 days after such a motion is filed.

(c) Unless the Commission otherwise provides, no reply to an answer filed pursuant to paragraph (b)(1) or paragraph (b)(2) of this section shall be filed.

(d) Following the filing of answers, if any:

(1) The Commission will issue an order allowing or denying access and setting forth the appropriate protective conditions, if any, to be accorded the non-public materials, or

(2) If the Postal Service or third party with a proprietary interest does not contest a person's access subject to agreed protective conditions, the Commission or its authorized representative may issue an order allowing access subject to the agreed protective conditions.

### § 3007.51 Termination of access to non-public materials relevant to compliance.

(a) Access to non-public materials obtained under §3007.50 terminates either when the Commission issues its next Annual Compliance Determination (ACD) or the person withdraws or is otherwise no longer involved in the relevant proceeding, whichever occurs first.

(b) Access to non-public materials shall continue for persons seeking continued access under §3007.50.

(c) Upon termination of access under paragraph (a) of this section, all non-public materials in a person's possession must be destroyed, and the form

### 39 CFR Ch. III (7-1-16 Edition)

attached to the protective conditions certifying destruction must be executed and filed with the Commission.

### § 3007.52 Standard for decision for request for access to non-public materials relevant to compliance.

In determining whether to grant a request for access to non-public materials relevant to compliance, the Commission shall balance the interests of the parties based on Federal Rule of Civil Procedure 26(c).

### § 3007.60 Limitations on access to non-public materials.

To afford appropriate confidentiality to non-public materials during any stage of a proceeding before the Commission, or in connection with any other purpose under title 39 of the U.S. Code, the Commission may, based on Federal Rule of Civil Procedure 26(c):

(a) Prohibit the public disclosure of the non-public materials;

(b) Specify terms for public disclosure of the non-public materials;

(c) Order a specific method for disclosing the non-public materials;

(d) Restrict the scope of the disclosure of the non-public materials as they relate to certain matters;

(e) Restrict who may have access to non-public materials;

(f) Require that a trade secret be revealed only in a specific and limited manner or to limited or specified persons; and

(g) Order other relief as appropriate including, but not limited to, sealing a deposition or part of a proceeding.

### § 3007.61 Continued effectiveness of protective conditions.

(a) If a court or other administrative agency issues a subpoena or orders production of non-public materials which a person has obtained under protective conditions ordered by the Commission, the target of the subpoena or order shall, within 2 days of receipt of the subpoena or order for production, notify the Postal Service of the pendency of the subpoena or order to allow the Postal Service time to object to the production or to seek a protective order or seek such other relief as it deems appropriate.

**Postal Regulatory Commission**

**§ 3007.62**

(b) Any person seeking to disclose non-public materials shall make a good faith effort to obtain protective conditions at least as effective as those set forth in the Commission order establishing the protective conditions.

(c) Protective conditions ordered by the Commission or its authorized representative shall remain in effect throughout any subsequent review unless overridden by the action of the reviewing court.

**§ 3007.62 Sanctions for violations of protective conditions.**

(a) No person who has been granted access to materials subject to protective conditions shall disseminate the materials in whole or in part to any person not authorized to obtain access under the protective conditions imposed by the Commission. If a person who has been granted access to such non-public materials under a protec-

tive order violates the terms of such order, the Commission or its authorized representative shall impose sanctions on the person who violated the protective order or the individuals or entities on whose behalf the person was acting, or both. The sanctions may include:

(1) Dismissing the proceeding in whole or in part;

(2) Ruling by default against the person who violated the protective order; and

(3) Such other sanctions as the Commission or its authorized representative deems appropriate.

(b) The Postal Service, in its discretion, may pursue any remedies available to it under the law against the individual who violated the protective order, or the individuals or entities on whose behalf the person was acting, or both.

APPENDIX A TO PART 3007—STATEMENT OF COMPLIANCE WITH PROTECTIVE  
CONDITIONS

## Appendix A to Part 3007—Statement of Compliance with Protective Conditions

The Postal Service (or a third party) has filed non-public materials identified as \_\_\_\_\_ in Commission Docket No. (if any) \_\_\_\_\_. The Postal Service (or a third party) requests confidential treatment of the materials (hereinafter “these materials”).

The following protective conditions limit access to these materials identified as \_\_\_\_\_ by the Postal Service (or third party). Each person seeking to obtain access to these materials must agree to comply with these conditions, complete the attached certifications, and provide the completed certifications to the Commission and counsel for the Postal Service.

1. Access to these materials is limited to a person as defined in rule 5(f), 39 CFR 3001.5(f), or an individual employed by such person, or acting as agent, consultant, contractor, affiliated person, or other representative of such person for purposes related to the matter identified as \_\_\_\_\_. However, no person involved in competitive decision-making for any entity that might gain competitive advantage from use of this information 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 a person or entity having a proprietary interest in the protected material.
2. No person granted access to these materials is permitted to disseminate them in whole or in part to any person not authorized to obtain access under these conditions.
3. Immediately after access has terminated under 39 CFR 3007.41 or 3007.51, a person (and any individual working on behalf of that person) who has obtained a copy of these materials shall certify to the Commission:
  - (a) That the copy was maintained in accordance with these conditions (or others established by the Commission); and

- (b) That the copy (and any duplicates) either have been destroyed or returned to the Commission.
- 4. The duties of each person obtaining access to these materials shall apply to material disclosed or duplicated in writing, orally, electronically, or otherwise, by any means, format, or medium. These duties shall apply to the disclosure of excerpts from or parts of the document, as well as to the entire document.
- 5. All persons who obtain access to these materials are required to protect the document by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of the document 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.
- 6. These conditions shall apply to any revised, amended, or supplemental versions of these materials provided in the matter identified as \_\_\_\_\_.
- 7. The duty of nondisclosure of each person obtaining access to these materials is continuing, terminable only by specific order of the Commission, or as specified in paragraphs 9 and 10, below.
- 8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve.
- 9. Any written materials that quote or contain materials protected under these protective conditions are also covered by the same protective conditions and certification requirements, and shall be filed with the Commission only under seal. Documents submitted to the Commission as confidential shall remain sealed while in the Secretary's office or such other place as the Commission may designate so long as they retain their status as stamped confidential documents.
- 10. If a court or other administrative agency subpoenas or orders production of confidential information which a person has obtained under the terms of this protective order, the target of the subpoena or order shall promptly (within 2 business days) notify the Postal Service of the pendency of the subpoena or order to allow it time to object to that production or seek a protective order.



CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as \_\_\_\_\_ by the Postal Service has been authorized by the Commission. The cover or label of the copy obtained is marked with my name. I agree to use the information only for purposes of analyzing matters at issue in the matter identified as \_\_\_\_\_. I certify that I have read and understand the above protective conditions and am eligible to receive access to materials under paragraph 1 of the protective conditions. I further agree to comply with all protective conditions and will maintain these materials in strict confidence in accordance with all of the protective conditions set out above.

Name \_\_\_\_\_  
Firm \_\_\_\_\_  
Title \_\_\_\_\_  
Representing \_\_\_\_\_  
Signature \_\_\_\_\_  
Date \_\_\_\_\_

CERTIFICATION

The undersigned represents that:

Access to these materials provided in the matter identified as \_\_\_\_\_ by the Postal Service has been terminated.

I certify that I have destroyed or returned to the Commission, all materials subject to protective conditions, relevant to the above matter. I also certify that these materials were maintained in accordance with the established protective conditions.

Name \_\_\_\_\_
Firm \_\_\_\_\_
Title \_\_\_\_\_
Representing \_\_\_\_\_
Signature \_\_\_\_\_
Date \_\_\_\_\_

PART 3008—EX PARTE COMMUNICATIONS

- Sec.
3008.1 Applicability.
3008.2 Definition of ex parte communications.
3008.3 Definition of a matter before the Commission.
3008.4 Definitions of persons subject to ex parte communication rules.
3008.5 Prohibitions.
3008.6 Required action upon ex parte communication.
3008.7 Penalty for violation of ex parte communication rules.

AUTHORITY: 39 U.S.C. 404(d)(5); 503; 504; 3661(c); 3662.

SOURCE: 81 FR 42541, June 30, 2016, unless otherwise noted.

EFFECTIVE DATE NOTE: At 81 FR 42541, June 30, 2016, part 3008 was added, effective Aug. 1, 2016.

§ 3008.1 Applicability.

(a) The rules in this section are applicable to all Commission proceedings

except for the instances identified in paragraphs (b) through (d) of this section.

(b) The rules in this section are not applicable to public inquiry (PI) proceedings, undertaken to gather information and which are not intended to result in a binding Commission decision.

(c) The rules in this section are not applicable to international mail (IM) proceedings undertaken pursuant to part 3017 of this chapter.

(d) The rules in this section are not applicable to specifically identified proceedings upon written directive from the Commission.

§ 3008.2 Definition of ex parte communications.

(a) Subject to the exceptions specified in paragraph (b) of this section, ex parte communications include all communications, oral or written (including electronic), between Commission decision-making personnel, and the Postal

### § 3008.3

Service or public stakeholders regarding matters before the Commission.

(b) Ex parte communications do not include:

(1) Documents filed using the Commission's docketing system;

(2) Communications during the course of Commission meetings or hearings, or other widely publicized events where the Commission provides advance public notice of the event indicating the matter to be discussed, the event is open to all persons participating in the matter before the Commission, and a summary of the event is provided for the record;

(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 §3001.81 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;

(4) Questions concerning Commission procedures, the status of a matter before the Commission, or the procedural schedule of a pending matter, where these issues are not contested matters before the Commission; and

(5) Communications not material to the matter before the Commission.

### § 3008.3 Definition of a matter before the Commission.

(a) A matter is before the Commission at such time as the Commission may designate, but in no event later than the earlier of the filing of a request to initiate a proceeding or the Commission noticing a proceeding.

(b) A matter is also before the Commission at such time as the person responsible for the communication has knowledge that a request to initiate a proceeding is expected to be filed.

(c) Paragraph (b) of this section does not apply to periodic reviews or reports issued by the Commission, or the 10-year review pursuant to 39 U.S.C. 3622(d)(3).

(d) The following explanations apply:

(1) A matter is no longer before the Commission upon the issuance of the final order or decision in the docketed matter;

### 39 CFR Ch. III (7-1-16 Edition)

(2) A matter is again before the Commission upon the filing of a request for reconsideration. The matter remains before the Commission until resolution of the matter under reconsideration;

(3) A matter is again before the Commission upon the remand of a Commission's final decision or order by an appellate court. The matter remains before the Commission until resolution of the matter under remand; and

(4) The mere potential that a request may be filed does not place a matter before the Commission. An affirmative action announcing, or actively preparing, an actual request with the intent to file within a reasonable period of time must be present.

### § 3008.4 Definitions of persons subject to ex parte communication rules.

(a) Commission decision-making personnel include:

(1) The Commissioners and their staffs;

(2) The General Counsel and staff;

(3) The Director of the Office of Accountability and Compliance and staff;

(4) Contractors, consultants, and others hired by the Commission to assist with the Commission's analysis and decision; and

(5) Any other employee who may reasonably be expected to be involved in the decisional process.

(b) The Postal Service includes all Postal Service employees, contractors, consultants, and others with an interest in a matter before the Commission. Any interaction between the Postal Service and Commission decision-making personnel concerning a matter before the Commission expresses an interest in the matter before the Commission.

(c) Public stakeholders include all other persons not previously described, with an interest in a matter before the Commission. This includes the Commission non-decision-making personnel identified in paragraph (d) of this section. Any interaction between a public stakeholder and Commission decision-making personnel concerning a matter before the Commission expresses an interest in the matter before the Commission.

(d) Commission non-decision-making personnel include:

## Postal Regulatory Commission

## § 3008.7

(1) All Commission personnel other than decision-making personnel;

(2) Commission personnel not participating in the decisional process owing to the prohibitions of §3001.8 of this chapter regarding no participation by investigative or prosecuting officers;

(3) 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 (regardless of normally assigned duties); and

(4) Contractors, consultants, and others hired by the Commission to provide an independent analysis of issues before the Commission (and Commission employees assigned thereto).

### § 3008.5 Prohibitions.

(a) Ex parte communications between Commission decision-making personnel, and the Postal Service or public stakeholders is prohibited.

(b) Commission decision-making personnel shall not rely upon any information obtained through ex parte communications unless the communications are made part of the record of the proceeding, where an opportunity for rebuttal has been provided, and reliance on the information will not cause undue delay or prejudice to any party.

(c) Paragraph (a) of this section does not constitute authority to withhold information from Congress.

### § 3008.6 Required action upon ex parte communications.

(a) Commission decision-making personnel who receive ex parte communications relevant to the merits of the proceeding shall decline to listen to such communications and explain that the matter is pending for determination. Any recipient thereof shall advise the communicator that the communication will not be considered, and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action.

(b) Commission decision-making personnel who receive, or who make or knowingly cause to be made, ex parte communications prohibited by this

part shall promptly place, or cause to be placed, on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1) and (2) of this section.

(c) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which have been placed on the public record of the proceeding pursuant to paragraph (b) of this section may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. In lieu of actually receiving rebuttal material, the Commission may in its discretion direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

### § 3008.7 Penalty for violation of ex parte communication rules.

(a) The penalties for violation of ex parte communication rules specified in this section are applicable only to:

(1) Nature of postal service proceedings conducted pursuant to 39 U.S.C. 3661(c);

(2) Appeal of Postal Service decisions to close or consolidate any post office conducted pursuant to 39 U.S.C. 404(d)(5); and

(3) Rate or service complaints conducted pursuant to 39 U.S.C. 3662.

(b) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of §3008.5(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 his/her 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 §3008.5(a)

**Pt. 3010**

**39 CFR Ch. III (7–1–16 Edition)**

sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

**PART 3010—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS**

**Subpart A—General Provisions**

- Sec.
- 3010.1 Definitions.
- 3010.2 Applicability.
- 3010.3 Types of rate adjustments for market dominant products.
- 3010.4 Type 1–A rate adjustment—in general.
- 3010.5 Type 1–B rate adjustment—in general.
- 3010.6 Type 1–C rate adjustment—in general.
- 3010.7 Type 2 rate adjustment—in general.
- 3010.8 Type 3 rate adjustment—in general.
- 3010.9 Schedule for Regular and Predictable Rate Adjustments.

**Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1–A and 1–B Rate Adjustments)**

- 3010.10 Notice.
- 3010.11 Proceedings for Type 1–A, Type 1–B, and Type 1–C rate adjustment filings.
- 3010.12 Contents of notice of rate adjustment.

**Subpart C—Rules for Determining the Maximum Rate Adjustment**

- 3010.20 Calculation of maximum rate adjustment.
- 3010.21 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are 12 or more months apart.
- 3010.22 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are less than 12 months apart.
- 3010.23 Calculation of percentage change in rates.
- 3010.24 Treatment of volume associated with negotiated service agreements and rate incentives that are not rates of general applicability.
- 3010.25 Limitation on application of unused rate adjustment authority.
- 3010.26 Calculation of unused rate adjustment authority for Type 1–A and Type 1–B rate adjustments.
- 3010.27 Calculation of unused rate adjustment authority for Type 1–C rate adjustments.
- 3010.28 Application of unused rate adjustment authority.

- 3010.29 Maximum size of Type 1–B rate adjustments.
- 3010.30 De minimis rate increases.

**Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)**

- 3010.40 Negotiated service agreements.
- 3010.41 Notice.
- 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.
- 3010.43 Data collection plan and report.
- 3010.44 Proceedings for Type 2 rate adjustments.

**Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)**

- 3010.60 Applicability.
- 3010.61 Contents of exigent requests.
- 3010.62 Supplemental information.
- 3010.63 Treatment of unused rate adjustment authority.
- 3010.64 Expedient treatment of exigent requests.
- 3010.65 Special procedures applicable to exigent requests.
- 3010.66 Deadline for Commission decision.

AUTHORITY: 39 U.S.C. 503; 3622.

SOURCE: 78 FR 52704, Aug. 26, 2013, unless otherwise noted.

**Subpart A—General Provisions**

**§ 3010.1 Definitions.**

(a) The definitions in paragraphs (b) through (m) of this section apply in this part.

(b) *Annual limitation* means:

(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 § 3010.21;

(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 § 3010.22; and

(3) In the case of a notice of a Type 1–C rate adjustment, the annual limitation calculated pursuant to § 3010.21 or § 3010.22, as applicable, for the most recent notice of a Type 1–A or Type 1–B rate adjustment.

## Postal Regulatory Commission

## § 3010.4

(c) *Class* means a class of market dominant postal products.

(d) *De minimis rate increase* means a rate adjustment described in § 3010.30.

(e) *Maximum rate adjustment* means the maximum rate adjustment that the Postal Service may make for a class pursuant to a notice of Type 1-A or Type 1-B rate adjustment. The maximum rate adjustment is calculated in accordance with § 3010.20.

(f) *Most recent Type 1-A or Type 1-B notice of rate adjustment*, when used in reference to a notice of rate adjustment for a class, means the most recent Type 1-A or Type 1-B notice of rate adjustment for that class.

(g) *Rate of general applicability* means a rate applicable to all mail meeting standards established by the Mail Classification Schedule, the Domestic Mail Manual, and the International Mail Manual. A rate is not a rate of general applicability if eligibility for the rate is dependent on factors other than the characteristics of the mail to which the rate applies. A rate is not a rate of general applicability if it benefits a single mailer. A rate that is only available upon the written agreement of both the Postal Service and a mailer, a group of mailers, or a foreign postal operator is not a rate of general applicability.

(h) *Type 1-A rate adjustment* means a rate adjustment described in § 3010.4.

(i) *Type 1-B rate adjustment* means a rate adjustment described in § 3010.5.

(j) *Type 1-C rate adjustment* means a rate adjustment described in § 3010.6.

(k) *Type 2 rate adjustment* means a rate adjustment described in § 3010.7.

(l) *Type 3 rate adjustment* means a rate adjustment described in § 3010.8.

(m) *Unused rate adjustment authority* means:

(1) In the case of a Type 1-A or Type 1-B rate adjustment, the percentage calculated pursuant to § 3010.26; and

(2) In the case of a Type 1-C rate adjustment, the percentage calculated pursuant to § 3010.27.

[79 FR 33831, June 12, 2014]

### § 3010.2 Applicability.

The rules in this part implement provisions in 39 U.S.C. chapter 36, subchapter I, establishing rate setting policies and procedures for market

dominant products. With the exception of Type 3 rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service's planned rate adjustments. Type 3 rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33831, June 12, 2014]

### § 3010.3 Types of rate adjustments for market dominant products.

(a) There are five types of rate adjustments for market dominant products. A Type 1-A rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(D). A Type 1-B rate adjustment is authorized under 39 U.S.C. 3622(d)(2)(C). A Type 1-C rate adjustment is authorized under 39 U.S.C. 3622. A Type 2 rate adjustment is authorized under 39 U.S.C. 3622(c)(10). A Type 3 rate adjustment is authorized under 39 U.S.C. 3622(d)(1)(E).

(b)(1) The Postal Service may combine Type 1-A, Type 1-B, and Type 2 rate adjustments for purposes of filing with the Commission.

(2) The Postal Service may not combine a Type 1-C rate adjustment with any other type of rate adjustment. The Postal Service may file a Type 1-C rate adjustment and a *de minimis* rate increase contemporaneously, but the Type 1-C rate adjustment and the *de minimis* rate increase must be contained in separate notices of rate adjustment.

[79 FR 33832, June 12, 2014]

### § 3010.4 Type 1-A rate adjustment—in general.

(a) A Type 1-A rate adjustment is an adjustment based on the annual limitation.

(b) A Type 1-A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(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

### § 3010.5

for that class, subject to the expiration terms in § 3010.26(e).

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33832, June 12, 2014]

#### § 3010.5 Type 1-B rate adjustment—in general.

A Type 1-B rate adjustment is an adjustment that is based on the annual limitation and that uses unused rate adjustment authority in whole or in part.

[79 FR 33832, June 12, 2014]

#### § 3010.6 Type 1-C rate adjustment—in general.

(a) A Type 1-C rate adjustment is an adjustment to a rate of general applicability that contains only a decrease. A rate adjustment that includes both an increase and a decrease in rates of general applicability is a Type 1-A or Type 1-B rate adjustment; it is not a Type 1-C rate adjustment.

(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 § 3010.27.

(2) A Type 1-C rate adjustment filed immediately after a Type 3 rate adjustment (that is, with no intervening Type 1-A or Type 1-B rate adjustment) may not generate unused rate adjustment authority.

(3) The Postal Service may elect not to generate unused rate adjustment authority in a Type 1-C rate adjustment.

[79 FR 33832, June 12, 2014]

#### § 3010.7 Type 2 rate adjustment—in general.

A Type 2 rate adjustment is based on a negotiated service agreement. A negotiated service agreement entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33832, June 12, 2014]

#### § 3010.8 Type 3 rate adjustment—in general.

(a) A Type 3 rate adjustment is a rate adjustment that is authorized only when justified by exceptional or extraordinary circumstances.

### 39 CFR Ch. III (7–1–16 Edition)

(b) A Type 3 rate adjustment is not subject to the annual limitation or the restrictions on the use of unused rate adjustment authority, and does not implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33832, June 12, 2014]

#### § 3010.9 Schedule for Regular and Predictable Rate Adjustments.

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Adjustments. The Commission shall display the Schedule for Regular and Predictable Rate Adjustments on the Commission Web site, <http://www.prc.gov>.

(b) The Schedule for Regular and Predictable Rate Adjustments shall provide mailers with estimated implementation dates for future Type 1-A rate adjustments for each separate class of mail, should such adjustments be necessary and appropriate. Rate adjustments will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Adjustments shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate adjustments.

(d) The Postal Service should balance its financial and operational needs with the convenience of mailers of each class of mail in developing the Schedule for Regular and Predictable Rate Adjustments.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide a succinct explanation for such variation with its Type 1-A filing. No explanation is required

for variations involving smaller than predicted rate adjustments.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33832, June 12, 2014]

**Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1-A and 1-B Rate Adjustments)**

**§ 3010.10 Notice.**

(a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1-A, Type 1-B, or Type 1-C rate adjustment for a class shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 45 days prior to the intended implementation date of the rate adjustment; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date of the rate adjustment.

(b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended rate adjustments include classification changes or operations changes likely to have a material impact on mailers.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33832, June 12, 2014]

**§ 3010.11 Proceedings for Type 1-A, Type 1-B, and Type 1-C rate adjustment filings.**

(a) The Commission will establish a docket for each notice of Type 1-A, Type 1-B, or Type 1-C rate adjustment filing, promptly publish notice of the filing in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 20 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) Public comments should focus primarily on whether planned rate adjustments comply with the following mandatory requirements of 39 U.S.C. chapter 36, subchapter I:

(1) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the annual limitation calculated under §§ 3010.21 or 3010.22, as applicable; and

(2) Whether the planned rate adjustments measured using the formula established in § 3010.23(c) are at or below the limitation established in § 3010.29.

(c) Public comments may also address other relevant statutory provisions and applicable Commission orders and directives.

(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 § 3010.21 or § 3010.22, as applicable, the limitation set forth in § 3010.29, and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

(e) If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Governors.

(f) If planned rate adjustments are found inconsistent with applicable law by the Commission, the Postal Service will submit an amended notice of rate adjustment that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(g) The Commission will post any amended notice of rate adjustment filing on its Web site and allow a period of 7 days from the date of the filing for public comment. Comments in the amended notice of rate adjustment



## § 3010.12

## 39 CFR Ch. III (7–1–16 Edition)

should address the subjects identified in paragraph (b) of this section and may address the subjects identified in paragraph (c) of this section.

(h) The Commission will review any amended notice of rate adjustment together with any comments filed for compliance and within 14 days issue an order announcing its findings.

(i) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(j) If the planned rate adjustments in an amended notice of rate adjustment are found to be inconsistent with applicable law, the Commission shall explain the basis of its determination and suggest an appropriate remedy.

(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 § 3010.21 or § 3010.22, as applicable; the limitation set forth in § 3010.29; 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.

[78 FR 52704, Aug. 26, 2013, as amended by Order 1786, 78 FR 67952, Nov. 13, 2013; 79 FR 33832, June 12, 2014]

### § 3010.12 Contents of notice of rate adjustment.

(a) A Type 1–A, Type 1–B, or Type 1–C notice of rate adjustment must include the following information:

(1) A schedule of the planned rates;

(2) The planned effective date(s) of the planned rates;

(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the planned rates; and

(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) The notice of rate adjustment shall be accompanied by the following information:

(1) The annual limitation calculated as required by § 3010.21 or § 3010.22, 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.

(2) A schedule showing unused rate adjustment authority available for each class of mail displayed by class and available amount for each of the preceding 5 years. This information must be supported by workpapers in which all calculations are shown.

(3) The percentage change in rates for each class of mail calculated as required by § 3010.23. 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 § 3010.26 or § 3010.27, 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.

(5) A schedule of the workshare discounts included in the planned rates, and a companion schedule listing the avoided costs that underlie each such discount. This information must be supported by workpapers in which all calculations are shown and all input values are listed with citations to the original sources.

(6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs.

(7) A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c).

(8) A discussion that demonstrates the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629.

(9) For a notice that includes a rate incentive:

(i) If the rate incentive is a rate of general applicability, sufficient information to demonstrate that the rate incentive is a rate of general applicability; and

(ii) Whether the Postal Service has excluded the rate incentive from the calculation of the percentage change in rates under § 3010.23(e) or § 3010.24.

(10) For a Type 1-C rate adjustment, whether the Postal Service elects to generate unused rate adjustment authority.

(11) A schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments.

(12) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.

(c) Whenever the Postal Service establishes a new workshare discount rate, it must include with its filing:

(1) A statement explaining its reasons for establishing the discount;

(2) All data, economic analyses, and other information relied on to justify the discount; and

(3) A certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d) Whenever the Postal Service establishes a new discount or surcharge it does not believe is a workshare discount, it must include with its filing:

(1) An explanation of the basis for its belief that the discount or surcharge is not a workshare discount; and

(2) A certification that the Postal Service applied approved analytical principles to the discount or surcharge.

(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 § 3010.28. All calculations are to be shown, including citations to the original sources.

(f) All cost, avoided cost, volume, and revenue figures submitted with the notice of rate adjustment shall be developed from the most recent applicable Commission approved analytical principles.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33832, June 12, 2014]

### Subpart C—Rules for Determining the Maximum Rate Adjustment

#### § 3010.20 Calculation of maximum rate adjustment.

(a) Rate adjustments for each class of market dominant products in any 12-month period are limited.

(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 §§ 3010.21(a) and 3010.22(a).

(c) An exception to the annual limitation allows a limited annual recapture of unused rate adjustment authority. The amount of unused rate adjustment authority is measured separately for each class.

(d) In any 12-month period the maximum rate adjustment applicable to a class is:

(1) For a Type 1-A notice of rate adjustment, the annual limitation for the class; and

(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 § 3010.29.

(e) There is no limitation on the amount of a rate decrease contained in a notice of Type 1-C rate adjustment.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33833, June 12, 2014]

**§ 3010.21 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are 12 or more months apart.**

(a) The monthly CPI–U values needed for the calculation of the full year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982–84 = 100. The current Series ID for the index is “CUUR0000SA0.”

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed 12 or more months after the most recent Type 1–A or Type 1–B notice of rate adjustment, then the calculation of an annual limitation for the class (referred to as the *full year limitation*) involves three steps. First, a simple average CPI–U index is calculated by summing the most recently available 12 monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI–U index is similarly calculated by summing the 12 monthly CPI–U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the full year limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(c) The formula for calculating a full year limitation for a notice of rate adjustment filed 12 or more months after the last notice is as follows: Full Year Limitation = (Recent Average/Base Average) – 1.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33833, June 12, 2014]

**§ 3010.22 Calculation of annual limitation when Type 1–A or Type 1–B notices of rate adjustment are less than 12 months apart.**

(a) The monthly CPI–U values needed for the calculation of the partial year limitation under this section shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982 – 84 = 100. The current Series ID for the index is “CUUR0000SA0.”

(b) If a notice of a Type 1–A or Type 1–B rate adjustment is filed less than 12 months after the most recent Type 1–A or Type 1–B notice of rate adjustment, then the annual limitation for the class (referred to as the *partial year limitation*) will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(c) The applicable partial year limitation is calculated in two steps. First, a simple average CPI–U index is calculated by summing the 12 most recently available monthly CPI–U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to three decimal places.

(d) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 12 months after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) – 1.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33833, June 12, 2014]

**§ 3010.23 Calculation of percentage change in rates.**

(a) *Definitions.* In this section:

(1) *Current rate*—(i) *In general.* Except as provided in paragraphs (a)(1)(ii) and (iii) of this section, the term *current rate* means the rate in effect when the Postal Service files the notice of rate adjustment.

(ii) *Seasonal and temporary rates.* When used with respect to a seasonal or temporary rate, as described in paragraph (a)(2) of this section, the term *current rate* means the most recent rate in effect for the rate cell, regardless of whether the seasonal or temporary rate is available at the time the Postal Service files the notice of rate adjustment.

(iii) *Exception.* When used with respect to a rate cell that corresponds to a rate incentive that was previously excluded from the calculation of the percentage change in rates under paragraph (e)(1) of this section, the term *current rate* means the full undiscounted rate in effect for the rate cell at the time of the filing of the notice of rate adjustment, not the discounted rate in effect for the rate cell at such time. For example, if a rate incentive provides a 5-cent discount on a 25-cent rate and the Postal Service previously elected to exclude the rate incentive from the calculation of the percentage change in rates, the Postal Service may choose to begin including the discounted rate in its calculation of the percentage change in rates. If the Postal Service makes that choice, the current rate for the discounted rate cell will be 25 cents (the full undiscounted rate).

(2) *Rate cell.* The term *rate cell* means each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. A seasonal or temporary rate shall be identified and treated as a rate cell separate and distinct from the corresponding non-seasonal or permanent rate.

(3) *Rate incentive* means a discount that is not a workshare discount and that is designed to increase or retain volume, improve the value of mail for mailers, or improve the operations of the Postal Service.

(b) *Calculation—(1) Type 1-A and Type 1-B rate adjustments.* For a Type 1-A or Type 1-B rate adjustment, for each class of mail and product within the class, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and the resulting products are summed. Then, the same set of rate cell volumes are multiplied by the corresponding current rate for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(2) *Type 1-C rate adjustments.* For a Type 1-C rate adjustment, for each class of mail and product within the class, the percentage change in rates is calculated by amending the workpapers attached to the Commission's order relating to the most recent Type 1-A or Type 1-B notice of rate adjustment to replace the planned rates under the most recent Type 1-A or Type 1-B notice of rate adjustment with the corresponding planned rates applicable to the class from the Type 1-C notice of rate adjustment.

(c) *Formula.* The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

Percentage change in rates =

$$\left( \frac{\sum_{i=1}^N (R_{i,n})(V_i)}{\sum_{i=1}^N (R_{i,c})(V_i)} \right) - 1$$

Where,

N = number of rate cells in the class

i = denotes a rate cell (i = 1, 2, . . . , N)

R<sub>i,n</sub> = planned rate of rate cell i

R<sub>i,c</sub> = current rate of rate cell i (for a Type 1-A or Type 1-B rate adjustment) or rate from most recent Type 1-A rate adjustment for rate cell i (for a Type 1-C rate adjustment)

V<sub>i</sub> = volume of rate cell i

(d) *Volumes—(1) Obtaining Volumes from billing determinants.* The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants.

(2) *Permissible adjustments.* The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

(3) *Basis for adjustments.* Whenever possible, adjustments shall be based on known mail characteristics or historical volume data, as opposed to forecasts of mailer behavior.

## § 3010.24

(4) *Adjustment for deletion of rate cell when alternate rate cell is not available.* For an adjustment accounting for the effects of the deletion of a rate cell when an alternate rate cell is not available, the Postal Service should adjust the billing determinants associated with the rate cell to zero. If the Postal Service does not adjust the billing determinants for the rate cell to zero, the Postal Service shall include a rationale for its treatment of the rate cell with the information required under paragraph (d)(2) of this section.

(e) *Treatment of rate incentives.* (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 § 3010.24).

(2) A rate incentive may be included in a percentage change in rates calculation if it meets the following criteria:

(i) The rate incentive is in the form of a discount or can be easily translated into a discount;

(ii) Sufficient billing determinants are available for the rate incentive to be included in the percentage change in rate calculation for the class, which may be adjusted based on known mail characteristics or historical volume data (as opposed to forecasts of mailer behavior); and

(iii) The rate incentive is a rate of general applicability.

[79 FR 33833, June 12, 2014]

### **§ 3010.24 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 § 3010.23 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

## 39 CFR Ch. III (7–1–16 Edition)

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.

(b) The Postal Service shall identify and explain all assumptions it makes with respect to the treatment of negotiated service agreements and rate incentives that are not rates of general applicability in the calculation of the percentage change in rates and provide the rationale for its assumptions.

[79 FR 33834, June 12, 2014]

### **§ 3010.25 Limitation on application of unused rate adjustment authority.**

Unused rate adjustment authority may only be applied after applying the annual limitation calculated pursuant to § 3010.21 or § 3010.22.

### **§ 3010.26 Calculation of unused rate adjustment authority for Type 1-A and Type 1-B rate adjustments.**

(a) Unused rate adjustment authority accrues during the entire period between notices of Type 1-A and Type 1-B rate adjustments. When notices of Type 1-A or Type 1-B rate adjustments are filed 12 months apart or less, the unused rate adjustment authority is the annual unused rate adjustment authority calculated under paragraph (b) of this section. When notices of Type 1-A or Type 1-B rate adjustments are filed more than 12 months apart, unused rate adjustment authority is the sum of the annual unused rate adjustment calculated under paragraph (b) of this section plus the interim unused rate adjustment authority calculated under paragraph (c)(2) of this section, less any interim unused rate adjustment authority used in accordance with paragraph (d) of this section.

(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 § 3010.21 or § 3010.22 and the percentage change in rates for the class calculated pursuant to § 3010.23(b)(1).

(c)(1) When notices of Type 1-A or Type 1-B rate adjustments are filed

more than 12 months apart, annual unused rate adjustment authority will be calculated for the 12-month period ending on the date on which the second notice is filed and interim unused rate adjustment authority will be calculated for the period beginning on the date the first notice is filed and ending on the day before the date that is 12 months before the second notice is filed.

(2) Interim unused rate adjustment authority is equal to the Base Average applicable to the second notice of rate adjustment (as developed pursuant to §3010.21(b)) divided by the Recent Average utilized in the first notice of rate adjustment (as developed pursuant to §3010.21(b)) and subtracting 1 from the quotient. The result is expressed as a percentage.

(d) Interim unused rate adjustment authority may be used to make a rate adjustment pursuant to the notice of rate adjustment that led to its calculation. If interim unused rate adjustment authority is used to make such a rate adjustment, the interim unused rate adjustment authority generated pursuant to the notice shall first be added to the schedule of unused rate adjustment authority devised and maintained under paragraph (f) of this section as the most recent entry. Then, any interim unused rate adjustment authority used in accordance with this paragraph shall be subtracted from the existing unused rate adjustment authority using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

(e) Unused rate adjustment authority generated under this section lapses 5 years after the date of filing of the notice of rate adjustment leading to its calculation.

(f) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority for that class.

[78 FR 52704, Aug. 26, 2013, as amended at 79 FR 33834, June 12, 2014]

**§ 3010.27 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 §3010.21 or §3010.22 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 §3010.23(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.

(b) Unused rate adjustment authority generated under paragraph (a) of this section lapses 5 years after the date of filing of the most recent notice of Type 1-A or Type 1-B rate adjustment.

(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 §3010.26(f). For purposes of §3010.28, 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 §3010.26(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 §3010.29, regardless of whether it is used alone or in combination with other existing unused rate adjustment authority.

[79 FR 33834, June 12, 2014]

**§ 3010.28 Application of unused rate adjustment authority.**

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates for the class and the annual limitation shall be subtracted from the existing unused rate adjustment authority for the class, using a first-in,

## § 3010.29

first-out (FIFO) method, beginning 5 years before the instant notice.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33834, June 12, 2014]

### § 3010.29 Maximum size of Type 1-B rate adjustments.

Unused rate adjustment authority used to make a Type 1-B rate adjustment for any class in any 12-month period may not exceed 2 percentage points.

[78 FR 52704, Aug. 26, 2013, redesignated at 79 FR 33834, June 12, 2014]

### § 3010.30 De minimis rate increases.

(a) The Postal Service may elect to file a Type 1-A notice of rate adjustment as a *de minimis* rate increase if:

(1) For each affected class, the rate increases contained within the notice of a Type 1-A rate adjustment do not result in the percentage change in rates for the class equaling or exceeding 0.001 percent; and

(2) For each affected class, the sum of all rate increases included in *de minimis* rate increases since the most recent Type 1-A, Type 1-B, or Type 3 rate adjustment that was not a *de minimis* rate increase does not result in the percentage change in rates for the class equaling or exceeding 0.001 percent.

(b) No unused rate adjustment authority will be added to the schedule of unused rate adjustment authority maintained under § 3010.26(f) as a result of a *de minimis* rate increase.

(c) No rate decreases may be taken into account when determining whether rate increases comply with paragraphs (a)(1) and (2) of this section.

(d) In the next notice of a Type 1-A or Type 1-B rate adjustment for a class that is not a *de minimis* rate increase:

(1) The annual limitation shall be calculated as if the *de minimis* rate increase had not been filed; and

(2) For purposes of calculating the percentage change in rates, the current rate shall be the current rate from the *de minimis* rate increase.

(e) The Postal Service shall file supporting workpapers with each notice of *de minimis* rate increase that demonstrate that the sum of all rate increases included in *de minimis* rate increases since the most recent Type 1-A, Type 1-B, or Type 3 notice of rate ad-

## 39 CFR Ch. III (7-1-16 Edition)

justment that was not *de minimis* does not result in a *percentage* change in rates for the class equaling or exceeding 0.001 percent.

[79 FR 33834, June 12, 2014]

## Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

### § 3010.40 Negotiated service agreements.

(a) In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10). Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or

(2) Enhance the performance of operational functions (39 U.S.C. 3622(c)(10)(A)(ii)).

(b) Negotiated service agreements may not cause unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

(c) Negotiated service agreements must be available on public and reasonable terms to similarly situated mailers.

### § 3010.41 Notice.

The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 2 rate adjustment for a market dominant postal product shall provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and transmit a notice of agreement to the Commission no later than 45 days prior to the intended implementation date.

### § 3010.42 Contents of notice of agreement in support of a Type 2 rate adjustment.

Whenever the Postal Service proposes to establish or change rates, fees, or the Mail Classification Schedule

## Postal Regulatory Commission

## § 3010.43

based on a negotiated service agreement, the Postal Service shall file with the Commission a notice of agreement that shall include at a minimum the following information:

(a) A copy of the negotiated service agreement;

(b) The planned effective date(s) of the planned rates;

(c) A representation or evidence that public notice of the planned rate adjustments has been issued or will be issued at least 45 days before the effective date(s) for the planned rates;

(d) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission;

(e) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement;

(f) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall be based on accepted analytical principles. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:

(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;

(2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;

(3) An analysis of the effects of the negotiated service agreement on the contribution to institutional costs from mailers not party to the agreement;

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs; and

(5) If the Postal Service believes the Commission's accepted analytical principles are not the most accurate and reliable methodology available:

(i) An explanation of the basis for that belief; and

(ii) A projection of the change in net financial position resulting from the agreement made using the Postal Service's alternative methodology.

(g) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement;

(h) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace; and

(i) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.

[78 FR 52704, Aug. 26, 2013, as amended by Order 1786, 78 FR 67952, Nov. 13, 2013]

### § 3010.43 Data collection plan and report.

(a) The Postal Service shall include with any notice of agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10).

(b) A data report under the plan is due 60 days after each anniversary date of implementation and shall include, at a minimum, the following information for each 12-month period the agreement has been in effect:

(1) The change in net financial position of the Postal Service as a result of the agreement. This calculation shall include for each year of the agreement:

(i) The actual mailer-specific costs, volumes, and revenues of the Postal Service;

(ii) An analysis of the effects of the negotiated service agreement on the net overall contribution to the institutional costs of the Postal Service; and

(iii) If mailer-specific costs are not available, the source and derivation of



#### § 3010.44

the costs that are used shall be provided, including a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

(2) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement.

(3) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

#### § 3010.44 Proceedings for Type 2 rate adjustments.

(a) The Commission will establish a docket for each notice of Type 2 rate adjustment filed, promptly publish notice of the filing in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 10 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission shall review the planned Type 2 rate adjustments and the comments thereon, and issue an order announcing its findings. So long as such adjustments are not inconsistent with 39 U.S.C. 3622, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(c) Commission findings that a planned Type 2 rate adjustment is not

#### 39 CFR Ch. III (7–1–16 Edition)

inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review.

### Subpart E—Rules for Rate Adjustments in Extraordinary and Exceptional Circumstances (Type 3 Rate Adjustments)

#### § 3010.60 Applicability.

The Postal Service may request to adjust rates for market dominant products in excess of the maximum rate adjustment due to extraordinary or exceptional circumstances. In this subpart, such requests are referred to as *exigent requests*.

#### § 3010.61 Contents of exigent requests.

(a) Each exigent request shall include the following:

(1) A schedule of the proposed rates;

(2) Calculations quantifying the increase for each affected product and class;

(3) A full discussion of the extraordinary or exceptional circumstances giving rise to the request, and a complete explanation of how both the requested overall increase and the specific rate adjustments requested relate to those circumstances;

(4) A full discussion of why the requested rate adjustments are necessary to enable the Postal Service, under best practices of honest, efficient, and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;

(5) A full discussion of why the requested rate adjustments are reasonable and equitable as among types of users of market dominant products;

(6) An explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent rate adjustments in whole or in part;

(7) An analysis of the circumstances giving rise to the exigent request, which should, if applicable, include a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action; and

(8) Such other information as the Postal Service believes will assist the

## Postal Regulatory Commission

## § 3010.65

Commission to issue a timely determination of whether the requested rate adjustments are consistent with applicable statutory policies.

(b) The Postal Service shall identify one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification related to each topic specified in paragraph (a) of this section.

### § 3010.62 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 § 3010.61 in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate adjustments requested.

### § 3010.63 Treatment of unused rate adjustment authority.

(a) Each exigent request will identify the unused rate adjustment authority available as of the date of the request for each class of mail and the available amount for each of the preceding 5 years.

(b) Pursuant to an exigent request, rate adjustments may use existing unused rate adjustment authority in amounts greater than the limitation described in § 3010.28 of this subpart.

(c) Exigent increases will exhaust all unused rate adjustment authority for each class of mail before imposing additional rate adjustments in excess of the maximum rate adjustment for any class of mail.

### § 3010.64 Expedient treatment of exigent requests.

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.

### § 3010.65 Special procedures applicable to exigent requests.

(a) The Commission will establish a docket for each exigent request, promptly publish notice of the request

in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority under which the proceeding is to be conducted;

(3) A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A specified period for public comment; and

(6) Such other information as the Commission deems appropriate.

(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 § 3010.61(a).

(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 § 3001.9 of this chapter, and will become part of the administrative record of the proceeding.

(d) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and completeness of the supporting materials provided with the request.

(e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

(f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:

(1) The sufficiency of the justification for an exigent rate adjustment;

## § 3010.66

(2) The adequacy of the justification for adjustments in the amounts requested by the Postal Service; and

(3) Whether the specific rate adjustments requested are reasonable and equitable.

(g) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

### § 3010.66 Deadline for Commission decision.

The Commission will act expeditiously on the Postal Service request, taking into account all written comments. In every instance a Commission decision will be issued within 90 days of the filing of an exigent request.

## PART 3015—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

Sec.

3015.1 Scope.

3015.2 Changes in rates of general applicability.

3015.3 Decrease in rates of general applicability.

3015.4 Change in class of general applicability.

3015.5 Rate or class not of general applicability.

3015.6 Sufficiency of information.

3015.7 Standards for compliance.

AUTHORITY: 39 U.S.C. 503; 3633.

SOURCE: 72 FR 63697, Nov. 9, 2007, unless otherwise noted.

### § 3015.1 Scope.

Rules in this part are applicable to competitive products.

### § 3015.2 Changes in rates of general applicability.

(a) When the Postal Service determines to change a rate or rates of general applicability, it shall file notice of the change with the Commission no later than the date of publication of the decision in the FEDERAL REGISTER concerning such change, but at least 30 days before the effective date of the change.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and a schedule of the changed rates.

## 39 CFR Ch. III (7–1–16 Edition)

### § 3015.3 Decrease in rates of general applicability.

(a) When the Postal Service determines to change a rate or rates of general applicability for any competitive product that results in a decrease in the average rate of that product, it shall file notice of the change with the Commission no later than the date of publication of the decision in the FEDERAL REGISTER concerning such change, but at least 30 days before the effective date of the change.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and a schedule of the changed rates.

(c) In addition to the notice, the Postal Service shall file with the Commission:

(1) Sufficient revenue and cost data for the 12-month period following the effective date of the rate to demonstrate that each affected competitive product will be in compliance with 39 U.S.C. 3633(a)(2); and

(2) A certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).

### § 3015.4 Change in class of general applicability.

(a) In the case of a change in class of general applicability, the Postal Service shall file notice of the change with the Commission no later than the date of publication of the decision in the FEDERAL REGISTER, but at least 30 days before the effective date of the increase.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and the record of proceedings regarding such decision.

### § 3015.5 Rate or class not of general applicability.

(a) When the Postal Service determines to add or change a rate or class not of general applicability, it shall file notice of its decision with the Commission at least 15 days before the effective date of the change.

## Postal Regulatory Commission

## § 3017.3

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, the rate and class decision, and the record of proceedings regarding such decision.

(c) In addition to the notice, the Postal Service shall file with the Commission:

(1) Sufficient revenue and cost data for the 12-month period following the effective date of the rate or class to demonstrate that each affected competitive product will be in compliance with 39 U.S.C. 3633(a)(2); and

(2) A certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).

### § 3015.6 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the Commission determines additional information is necessary to enable it to evaluate whether competitive products will be in compliance with 39 U.S.C. 3633(a), it may, in its discretion, require the Postal Service to provide additional information as deemed necessary.

### § 3015.7 Standards for compliance.

For purposes of determining competitive products' compliance with 39 U.S.C. 3633, the Commission will apply the following standards:

(a) Incremental costs will be used to test for cross-subsidies by market dominant products of competitive products. To the extent that incremental cost data are unavailable, the Commission will use competitive products' attributable costs supplemented to include causally related, group-specific costs to test for cross-subsidies.

(b) Each competitive product must recover its attributable costs as defined in 39 U.S.C. 3631(b).

(c) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively is, at a minimum, 5.5 percent of the Postal Service's total institutional costs.

## PART 3017—PROCEDURES RELATED TO COMMISSION VIEWS

Sec.

3017.1 Definitions in this part.

3017.2 Purpose.

3017.3 Establishment and scope of docket.

3017.4 Comment deadline(s).

3017.5 Commission discretion as to treatment of comments.

AUTHORITY: 39 U.S.C. 407; 503.

SOURCE: 81 FR 877, Jan. 8, 2016, unless otherwise noted.

### § 3017.1 Definitions in this part.

(a) *Modern rate regulation* refers to the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622.

(b) *Views* refers to the opinion the Commission provides to the Secretary of State pursuant to 39 U.S.C. 407(c)(1) on the consistency with modern rate regulation of a proposed treaty, convention, or amendment that establishes a market dominant rate or classification.

### § 3017.2 Purpose.

The rules in this part are intended to facilitate public participation in, and promote the transparency of, the development of Commission views.

### § 3017.3 Establishment and scope of docket.

(a) On or about 150 days before a Universal Postal Union Congress convenes or such advance time as the Commission determines for any other 39 U.S.C. 407(c)(1) matter, the Commission will establish a docket to solicit comments on the general principles that should guide the Commission's development of views on relevant proposals, in a general way, and on specific relevant proposals, if the Commission is able to make these available.

(b) The docket established pursuant to paragraph (a) of this section may also include matters related to development of the Commission's views, such as the availability of relevant proposals, Commission views, other documents, or related actions.

(c) The Commission shall arrange for publication in the FEDERAL REGISTER of the notice establishing each docket authorized under this part.

## § 3017.4

### § 3017.4 Comment deadline(s).

(a) The Commission shall establish a deadline for comments upon establishment of the docket that is consistent with timely submission of the Commission's views to the Secretary of State. The Commission may establish other deadlines for comments as appropriate.

(b) The Commission may suspend or forego solicitation of comments if it determines that such solicitation is not consistent with timely submission of Commission views to the Secretary of State.

### § 3017.5 Commission discretion as to treatment of comments.

The Commission will review timely filed comments responding to a Commission solicitation under this part prior to submitting its views to the Secretary of State.

## PART 3020—PRODUCT LISTS

### Subpart A—Mail Classification Schedule

Sec.

- 3020.1 Applicability.
- 3020.10 General.
- 3020.11 Initial Mail Classification Schedule.
- 3020.12 Publication of the Mail Classification Schedule.
- 3020.13 Contents of the Mail Classification Schedule.
- 3020.14 Notice of change.

#### APPENDIX A TO SUBPART A OF PART 3020—MAIL CLASSIFICATION SCHEDULE

### Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists Described Within the Mail Classification Schedule

- 3020.30 General.
- 3020.31 Contents of a request.
- 3020.32 Supporting justification.
- 3020.33 Docket and notice.
- 3020.34 Review.
- 3020.35 Further proceedings.

### Subpart C—Requests Initiated by Users of Mail To Modify the Product Lists Described Within the Mail Classification Schedule

- 3020.50 General.
- 3020.51 Contents of a request.
- 3020.52 Supporting justification.
- 3020.53 Docket and notice.
- 3020.54 Postal Service notice and reply.
- 3020.55 Review.

## 39 CFR Ch. III (7–1–16 Edition)

- 3020.56 Further proceedings.

### Subpart D—Proposal of the Commission To Modify the Product Lists Described Within the Mail Classification Schedule

- 3020.70 General.
- 3020.71 Contents of a proposal.
- 3020.72 Supporting justification.
- 3020.73 Docket and notice.
- 3020.74 Postal Service notice and reply.
- 3020.75 Review.
- 3020.76 Further proceedings.

### Subpart E—Requests Initiated by the Postal Service To Make Material Changes or Minor Corrections to the Mail Classification Schedule

- 3020.80 Material changes to product descriptions.
- 3020.81 Supporting justification for material changes to product descriptions.
- 3020.82 Docket and notice of material changes to product descriptions.
- 3020.83 Commission review of material changes to product descriptions.
- 3020.84–3020.89 [Reserved]
- 3020.90 Minor corrections to product descriptions.
- 3020.91 Docket and notice of minor corrections to product descriptions.
- 3020.92 Commission review of minor corrections to product descriptions.

### Subpart F—Size and Weight Limitations for Mail Matter

- 3020.110 General.
- 3020.111 Limitations applicable to market dominant mail matter.
- 3020.112 Limitations applicable to competitive mail matter.

AUTHORITY: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

SOURCE: 72 FR 63698, Nov. 9, 2007, unless otherwise noted.

### Subpart A—Mail Classification Schedule

EFFECTIVE DATE NOTE: At 81 FR 38954, June 15, 2016, subpart A was revised, effective July 15, 2016. For the convenience of the user, the revised text follows this subpart.

#### § 3020.1 Applicability.

(a) The rules in this part provide for establishing product lists. The product lists shall categorize postal products as either market dominant or competitive. As established, the market dominant and competitive product lists will

be specified in the Mail Classification Schedule and shall be consistent with the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a).

(b) Once established, the Mail Classification Schedule may be modified subject to the procedures specified in this part.

#### § 3020.10 General.

The Mail Classification Schedule shall consist of two parts. Part One shall specify the list of market dominant products and include the explanatory information specified in § 3020.13(a). Part Two shall specify the list of competitive products and include the explanatory information specified in § 3020.13(b).

#### § 3020.11 Initial Mail Classification Schedule.

The initial Mail Classification Schedule shall specify the market dominant and competitive product lists. The Mail Classification Schedule product lists shall reflect the market dominant and competitive product lists identified in 39 U.S.C. 3621(a) and 39 U.S.C. 3631(a) respectively. The explanatory detailed descriptive information specified in § 3020.13(a) and § 3020.13(b) shall be incorporated by subsequent rule-making.

#### § 3020.12 Publication of the Mail Classification Schedule.

(a) The Mail Classification Schedule established in accordance with subchapters I, II, and III of chapter 36 of title 39 of the United States Code and this subpart shall appear as Appendix A to this subpart.

(b) *Availability of the Mail Classification Schedule.* Copies of the Mail Classification Schedule, both current and previous issues, are available during regular business hours for reference and public inspection at the Postal Regulatory Commission's Reading Room located at 901 New York Avenue, NW., Suite 200, Washington, DC 20268-0001. The Mail Classification Schedule, both current and previous issues, also is available on the Internet at <http://www.prc.gov>.

#### § 3020.13 Contents of the Mail Classification Schedule.

The Mail Classification Schedule shall provide:

(a) The list of market dominant products, including:

(1) The class of each market dominant product;

(2) The description of each market dominant product;

(3) A schedule listing for each market dominant product the current rates and fees;

(4) Where applicable, the identification of a product as a special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(5) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(6) Where applicable, the identification of a product as a non-postal product.

(b) The list of competitive products, including:

(1) The description of each competitive product;

(2) A schedule listing for each competitive product of general applicability the current rates and fees;

(3) The identification of each product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products;

(4) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(5) Where applicable, the identification of a product as a non-postal product.

#### § 3020.14 Notice of change.

Whenever the Postal Regulatory Commission modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the FEDERAL REGISTER. The notice shall:

(a) Include the current list of market dominant products and the current list of competitive products appearing in the Mail Classification Schedule;

(b) Indicate how and when the previous product lists have been modified; and

**Pt. 3020, Subpt. A, App. A**

**39 CFR Ch. III (7–1–16 Edition)**

(c) Describe other changes to the Mail Classification Schedule as necessary.

**PART B—COMPETITIVE PRODUCTS**

**2000 COMPETITIVE PRODUCT LIST**

**APPENDIX A TO SUBPART A OF PART 3020—MAIL CLASSIFICATION SCHEDULE**

(An asterisk (\*) indicates an organizational class or group, not a Postal Service product.)

**PART A—MARKET DOMINANT PRODUCTS**

**1000 MARKET DOMINANT PRODUCT LIST**

First-Class Mail\*  
Single-Piece Letters/Postcards  
Presorted Letters/Postcards  
Flats  
Parcels  
Outbound Single-Piece First-Class Mail International  
Inbound Letter Post  
Standard Mail (Commercial and Nonprofit)\*  
High Density and Saturation Letters  
High Density and Saturation Flats/Parcels  
Carrier Route  
Letters  
Flats  
Parcels  
Every Door Direct Mail—Retail  
Periodicals\*  
In-County Periodicals  
Outside County Periodicals  
Package Services\*  
Alaska Bypass Service  
Bound Printed Matter Flats  
Bound Printed Matter Parcels  
Media Mail/Library Mail  
Special Services\*  
Ancillary Services  
International Ancillary Services  
Address Management Services  
Caller Service  
Credit Card Authentication  
International Reply Coupon Service  
International Business Reply Mail Service  
Money Orders  
Post Office Box Service  
Customized Postage  
Stamp Fulfillment Services  
Negotiated Service Agreements\*  
Domestic\*  
PHI Acquisitions, Inc. Negotiated Service Agreement  
International\*  
Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1  
Inbound Market Dominant Express Service Agreement 1  
Nonpostal Services\*  
Alliances with the Private Sector to Defray Cost of Key Postal Functions  
Philatelic Sales  
Market Tests\*

Domestic Products\*  
Priority Mail Express  
Priority Mail  
Parcel Select  
Parcel Return Service  
First-Class Package Service  
Retail Ground  
International Products\*  
Outbound International Expedited Services  
Inbound Parcel Post (at UPU rates)  
Outbound Priority Mail International  
International Priority Airmail (IPA)  
International Surface Air List (ISAL)  
International Direct Sacks—M-Bags  
Outbound Single-Piece First-Class Package International Service  
Negotiated Service Agreements\*  
Domestic\*  
Priority Mail Express Contract 8  
Priority Mail Express Contract 15  
Priority Mail Express Contract 16  
Priority Mail Express Contract 17  
Priority Mail Express Contract 18  
Priority Mail Express Contract 19  
Priority Mail Express Contract 20  
Priority Mail Express Contract 21  
Priority Mail Express Contract 22  
Priority Mail Express Contract 23  
Priority Mail Express Contract 24  
Priority Mail Express Contract 25  
Priority Mail Express Contract 26  
Priority Mail Express Contract 27  
Priority Mail Express Contract 28  
Priority Mail Express Contract 29  
Priority Mail Express Contract 30  
Priority Mail Express Contract 31  
Priority Mail Express Contract 32  
Priority Mail Express Contract 33  
Priority Mail Express Contract 34  
Priority Mail Express Contract 35  
Parcel Return Service Contract 5  
Parcel Return Service Contract 6  
Parcel Return Service Contract 7  
Parcel Return Service Contract 8  
Parcel Return Service Contract 9  
Parcel Return Service Contract 10  
Priority Mail Contract 24  
Priority Mail Contract 29  
Priority Mail Contract 33  
Priority Mail Contract 56  
Priority Mail Contract 57  
Priority Mail Contract 58  
Priority Mail Contract 59  
Priority Mail Contract 60  
Priority Mail Contract 61  
Priority Mail Contract 62  
Priority Mail Contract 63  
Priority Mail Contract 64  
Priority Mail Contract 65  
Priority Mail Contract 66  
Priority Mail Contract 67  
Priority Mail Contract 70  
Priority Mail Contract 71  
Priority Mail Contract 72





Priority Mail Express & Priority Mail Contract 14	Priority Mail Express, Priority Mail & First-Class Package Service Contract 7
Priority Mail Express & Priority Mail Contract 16	Priority Mail Express, Priority Mail & First-Class Package Service Contract 8
Priority Mail Express & Priority Mail Contract 17	Priority Mail Express, Priority Mail & First-Class Package Service Contract 9
Priority Mail Express & Priority Mail Contract 18	Priority Mail & First-Class Package Service Contract 2
Priority Mail Express & Priority Mail Contract 19	Priority Mail & First-Class Package Service Contract 3
Priority Mail Express & Priority Mail Contract 20	Priority Mail & First-Class Package Service Contract 4
Priority Mail Express & Priority Mail Contract 21	Priority Mail & First-Class Package Service Contract 5
Priority Mail Express & Priority Mail Contract 22	Priority Mail & First-Class Package Service Contract 6
Priority Mail Express & Priority Mail Contract 23	Priority Mail & First-Class Package Service Contract 7
Priority Mail Express & Priority Mail Contract 24	Priority Mail & First-Class Package Service Contract 8
Priority Mail Express & Priority Mail Contract 25	Priority Mail & First-Class Package Service Contract 9
Priority Mail Express & Priority Mail Contract 26	Priority Mail & First-Class Package Service Contract 10
Priority Mail Express & Priority Mail Contract 27	Priority Mail & First-Class Package Service Contract 11
Priority Mail Express & Priority Mail Contract 28	Priority Mail & First-Class Package Service Contract 12
Parcel Select & Parcel Return Service Contract 3	Priority Mail & First-Class Package Service Contract 13
Parcel Select & Parcel Return Service Contract 5	Priority Mail & First-Class Package Service Contract 14
Parcel Select Contract 2	Priority Mail & First-Class Package Service Contract 15
Parcel Select Contract 5	Priority Mail & First-Class Package Service Contract 16
Parcel Select Contract 7	Outbound International*
Parcel Select Contract 8	Global Expedited Package Services (GEPS) Contracts GEPS 3
Parcel Select Contract 9	Global Bulk Economy (GBE) Contracts
Parcel Select Contract 10	Global Plus Contracts
Parcel Select Contract 11	Global Plus 1C
Parcel Select Contract 12	Global Plus 2C
Parcel Select Contract 13	Global Reseller Expedited Package Contracts
Parcel Select Contract 14	Global Reseller Expedited Package Services 1
Priority Mail—Non-Published Rates	Global Reseller Expedited Package Services 2
Priority Mail—Non-Published Rates 1	Global Reseller Expedited Package Services 3
First-Class Package Service Contract 35	Global Reseller Expedited Package Services 4
First-Class Package Service Contract 36	Global Expedited Package Services (GEPS)—Non-Published Rates
First-Class Package Service Contract 37	Global Expedited Package Services (GEPS)—Non-Published Rates 2
First-Class Package Service Contract 38	Global Expedited Package Services (GEPS)—Non-Published Rates 3
First-Class Package Service Contract 39	Global Expedited Package Services (GEPS)—Non-Published Rates 4
First-Class Package Service Contract 40	Global Expedited Package Services (GEPS)—Non-Published Rates 5
First-Class Package Service Contract 41	Global Expedited Package Services (GEPS)—Non-Published Rates 6
First-Class Package Service Contract 42	Global Expedited Package Services (GEPS)—Non-Published Rates 7
First-Class Package Service Contract 43	
First-Class Package Service Contract 44	
First-Class Package Service Contract 45	
First-Class Package Service Contract 46	
First-Class Package Service Contract 47	
Priority Mail Express, Priority Mail & First-Class Package Service Contract 2	
Priority Mail Express, Priority Mail & First-Class Package Service Contract 3	
Priority Mail Express, Priority Mail & First-Class Package Service Contract 4	
Priority Mail Express, Priority Mail & First-Class Package Service Contract 5	
Priority Mail Express, Priority Mail & First-Class Package Service Contract 6	

## Postal Regulatory Commission

## Pt. 3020, Subpt. A, Nt.

Global Expedited Package Services (GEPS)—  
Non-Published Rates 8  
Global Expedited Package Services (GEPS)—  
Non-Published Rates 9  
Global Expedited Package Services (GEPS)—  
Non-Published Rates 10  
Priority Mail International Regional Rate  
Boxes—Non-Published Rates  
Outbound Competitive International Mer-  
chandise Return Service Agreement with  
Royal Mail Group, Ltd.  
Priority Mail International Regional Rate  
Boxes Contracts Priority Mail Inter-  
national Regional Rate Boxes Contracts  
1  
Competitive International Merchandise Re-  
turn Service Agreements with Foreign  
Postal Operators  
Competitive International Merchandise Re-  
turn Service Agreements with Foreign  
Postal Operators 1  
Competitive International Merchandise Re-  
turn Service Agreements with Foreign  
Postal Operators 2  
Inbound International\*  
International Business Reply Service (IBRS)  
Competitive Contracts  
International Business Reply Service Com-  
petitive Contract 1  
International Business Reply Service Com-  
petitive Contract 3  
Inbound Direct Entry Contracts withcus-  
tomers  
Inbound Direct Entry Contracts with For-  
eign Postal Administrations  
Inbound Direct Entry Contracts with For-  
eign Postal Administrations  
Inbound Direct Entry Contracts with For-  
eign Postal Administrations 1  
Inbound EMS  
Inbound EMS 2  
Inbound Air Parcel Post (at non-UPU rates)  
Royal Mail Group Inbound Air Parcel Post  
Agreement  
Inbound Competitive Multi-Service Agree-  
ments with Foreign Postal Operators 1  
Special Services\*  
Address Enhancement Services  
Greeting Cards, Gift Cards, and Stationery  
International Ancillary Services  
International Money Transfer Service—Out-  
bound  
International Money Transfer Service—In-  
bound  
Premium Forwarding Service  
Shipping and Mailing Supplies  
Post Office Box Service  
Competitive Ancillary Services  
Nonpostal Services\*  
Advertising  
Licensing of Intellectual Property other  
than Officially Licensed Retail  
Products (OLRP)  
Mail Service Promotion  
Officially Licensed Retail Products (OLRP)  
Passport Photo Service  
Photocopying Service

Rental, Leasing, Licensing or other Non-Sale  
Disposition of Tangible Property  
Training Facilities and Related Services  
USPS Electronic Postmark (EPM) Program  
Market Tests\*  
International Merchandise Return Service  
(IMRS)—Non-Published Rates Cus-  
tomized Delivery

[81 FR 20532, Apr. 8, 2016]

EFFECTIVE DATE NOTE: At 81 FR 38954, June 15, 2016, subpart A was revised, effective July 15, 2016. For the convenience of the user, the revised text is set forth as follows:

### Subpart A—Product Lists and the Mail Classification Schedule

#### § 3020.1 Applicability.

(a) The rules in this part require the Postal Regulatory Commission to establish and maintain lists of Postal Service products and a Mail Classification Schedule.

(b) The product lists shall categorize postal products as either market dominant or competitive. As established, the market dominant and competitive product lists shall be consistent with the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a). The market dominant and competitive product lists shall also include products identified as market tests pursuant to 39 U.S.C. 3641 and nonpostal pursuant to 39 U.S.C. 404(e).

(c) The Mail Classification Schedule shall provide current price and classification information applicable to the products appearing on the market dominant and competitive product lists.

(d) Once established, the product lists and the Mail Classification Schedule may be modified subject to the procedures specified in this part.

#### § 3020.2 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 3020—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 3020—Competitive Product List.

#### § 3020.3 Notice of product list change.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the FEDERAL REGISTER.

(b) Notice shall be submitted to the FEDERAL REGISTER for publication within 6 months of the issue date of the applicable final order that affects the change.

(c) Modifications pending publication in the FEDERAL REGISTER are effective immediately upon written direction from the Postal Regulatory Commission.

(d) The FEDERAL REGISTER document shall:

(1) Identify modifications to the current list of market dominant products and the current list of competitive products; and

(2) Indicate how and when the previous product lists have been modified.

#### § 3020.4 Mail Classification Schedule.

(a) The Postal Regulatory Commission shall publish a Mail Classification Schedule (including both current and previous versions) on its Web site at <http://www.prc.gov>. Copies of the Mail Classification Schedule also shall be available during regular business hours for reference and public inspection at the Postal Regulatory Commission located at 901 New York Avenue NW., Suite 200, Washington, DC 20268-0001.

(b) The Mail Classification Schedule shall include, but shall not be limited to:

(1) Front matter, including:

(i) A cover page identifying the title of the document as the Mail Classification Schedule, the source of the document as the Postal Regulatory Commission (including Commission seal), and the publication date;

(ii) A table of contents;

(iii) A table specifying the revision history of the Mail Classification Schedule; and

(iv) A table identifying Postal Service trademarks; and

(2) Information concerning market dominant products, including:

(i) A copy of the Market Dominant Product List;

(ii) Descriptions of each market dominant product organized by the class of product, including:

(A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price categories, and available optional features of each market dominant product;

(B) A schedule listing the rates and fees for each market dominant product;

(C) Where applicable, the identification of a product as a special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(D) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(E) Where applicable, the identification of a product as a nonpostal product; and

(3) Information concerning competitive products, including:

(i) A copy of the competitive product list; and

(ii) Descriptions of each competitive product, including:

(A) Where applicable, the general characteristics, size and weight limitations, minimum volume requirements, price cat-

egories, and available optional features of each competitive product;

(B) A schedule listing the current rates and fees for each competitive product of general applicability;

(C) The identification of each product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products;

(D) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(E) Where applicable, the identification of a product as a nonpostal product; and

(4) A glossary of terms and conditions; and

(5) A list of country codes for international mail prices.

#### § 3020.5 Modifications to the Mail Classification Schedule.

(a) Whenever the Postal Regulatory Commission issues a final order that modifies the Mail Classification Schedule, it shall update the Mail Classification Schedule appearing on its Web site at <http://www.prc.gov> in accordance with paragraph (b) of this section.

(b) Modification to the Mail Classification Schedule shall be incorporated within 3 months of the issue date of the final order.

(c) Modifications pending incorporation into the Mail Classification Schedule are effective immediately upon written direction from the Postal Regulatory Commission.

#### APPENDIX A TO SUBPART A OF PART 3020—MARKET DOMINANT PRODUCT LIST

(An asterisk (\*) indicates an organizational group, not a Postal Service product.)

First-Class Mail \*  
 Single-Piece Letters/Postcards  
 Presorted Letters/Postcards  
 Flats  
 Parcels  
 Outbound Single-Piece First-Class Mail  
 International  
 Inbound Letter Post  
 Standard Mail (Commercial and Nonprofit) \*  
 High Density and Saturation Letters  
 High Density and Saturation Flats/Parcels  
 Carrier Route  
 Letters  
 Flats  
 Parcels  
 Every Door Direct Mail—Retail  
 Periodicals \*  
 In-County Periodicals  
 Outside County Periodicals  
 Package Services \*  
 Alaska Bypass Service  
 Bound Printed Matter Flats  
 Bound Printed Matter Parcels  
 Media Mail/Library Mail  
 Special Services \*  
 Ancillary Services  
 International Ancillary Services  
 Address Management Services

**Postal Regulatory Commission**

**Pt. 3020, Subpt. A, Nt.**

Caller Service	Priority Mail Express Contract 34
Credit Card Authentication	Priority Mail Express Contract 35
International Reply Coupon Service	Parcel Return Service Contract 5
International Business Reply Mail Service	Parcel Return Service Contract 6
Money Orders	Parcel Return Service Contract 7
Post Office Box Service	Parcel Return Service Contract 8
Customized Postage	Parcel Return Service Contract 9
Stamp Fulfillment Services	Parcel Return Service Contract 10
Negotiated Service Agreements * Domestic *	Priority Mail Contract 24
PHI Acquisitions, Inc. Negotiated Service Agreement	Priority Mail Contract 29
International*	Priority Mail Contract 56
Inbound Market Dominant Multi-Service Agreements with Foreign Postal Opera- tors 1	Priority Mail Contract 57
Inbound Market Dominant Exprés Service Agreement 1	Priority Mail Contract 58
Nonpostal Services*	Priority Mail Contract 59
Alliances with the Private Sector to Defray Cost of Key Postal Functions	Priority Mail Contract 60
Philatelic Sales	Priority Mail Contract 61
Market Tests*	Priority Mail Contract 62
	Priority Mail Contract 63
	Priority Mail Contract 64
	Priority Mail Contract 65
	Priority Mail Contract 66
	Priority Mail Contract 67
	Priority Mail Contract 70
	Priority Mail Contract 71
	Priority Mail Contract 72
	Priority Mail Contract 73
	Priority Mail Contract 74
	Priority Mail Contract 75
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	Priority Mail Contract 77
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	Priority Mail Contract 98
	Priority Mail Contract 99
	Priority Mail Contract 100
	Priority Mail Contract 101
	Priority Mail Contract 102
	Priority Mail Contract 103
	Priority Mail Contract 104
	Priority Mail Contract 105
	Priority Mail Contract 106
	Priority Mail Contract 107
	Priority Mail Contract 108
	Priority Mail Contract 109
	Priority Mail Contract 110
	Priority Mail Contract 111
	Priority Mail Contract 112
	Priority Mail Contract 113
	Priority Mail Contract 114

**APPENDIX B TO SUBPART A OF PART  
3020—COMPETITIVE PRODUCT LIST**

(An asterisk (\*) indicates an organizational class or group, not a Postal Service product.)

Domestic Products *	Priority Mail Express Contract 8
Priority Mail Express	Priority Mail Express Contract 15
Priority Mail	Priority Mail Express Contract 16
Parcel Select	Priority Mail Express Contract 17
Parcel Return Service	Priority Mail Express Contract 18
First-Class Package Service	Priority Mail Express Contract 19
Retail Ground	Priority Mail Express Contract 20
International Products *	Priority Mail Express Contract 21
Outbound International Expedited Services	Priority Mail Express Contract 22
Inbound Parcel Post (at UPU rates)	Priority Mail Express Contract 23
Outbound Priority Mail International	Priority Mail Express Contract 24
International Priority Airmail (IPA)	Priority Mail Express Contract 25
International Surface Air List (ISAL)	Priority Mail Express Contract 26
International Direct Sacks—M-Bags	Priority Mail Express Contract 27
Outbound Single-Piece First-Class Package International Service	Priority Mail Express Contract 28
Negotiated Service Agreements * Domestic *	Priority Mail Express Contract 29
Priority Mail Express Contract 8	Priority Mail Express Contract 30
Priority Mail Express Contract 15	Priority Mail Express Contract 31
Priority Mail Express Contract 16	Priority Mail Express Contract 32
Priority Mail Express Contract 17	Priority Mail Express Contract 33
Priority Mail Express Contract 18	
Priority Mail Express Contract 19	
Priority Mail Express Contract 20	
Priority Mail Express Contract 21	
Priority Mail Express Contract 22	
Priority Mail Express Contract 23	
Priority Mail Express Contract 24	
Priority Mail Express Contract 25	
Priority Mail Express Contract 26	
Priority Mail Express Contract 27	
Priority Mail Express Contract 28	
Priority Mail Express Contract 29	
Priority Mail Express Contract 30	
Priority Mail Express Contract 31	
Priority Mail Express Contract 32	
Priority Mail Express Contract 33	

**Pt. 3020, Subpt. A, Nt.**

**39 CFR Ch. III (7-1-16 Edition)**

Priority Mail Contract 115  
Priority Mail Contract 116  
Priority Mail Contract 117  
Priority Mail Contract 118  
Priority Mail Contract 119  
Priority Mail Contract 120  
Priority Mail Contract 121  
Priority Mail Contract 122  
Priority Mail Contract 123  
Priority Mail Contract 124  
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Priority Mail Contract 127  
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Priority Mail Contract 197  
Priority Mail Contract 198  
Priority Mail Contract 199  
Priority Mail Contract 200  
Priority Mail Contract 201  
Priority Mail Contract 202  
Priority Mail Contract 203  
Priority Mail Express & Priority Mail Contract 10  
Priority Mail Express & Priority Mail Contract 12  
Priority Mail Express & Priority Mail Contract 13  
Priority Mail Express & Priority Mail Contract 14  
Priority Mail Express & Priority Mail Contract 16  
Priority Mail Express & Priority Mail Contract 17  
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Priority Mail Express & Priority Mail Contract 24  
Priority Mail Express & Priority Mail Contract 25  
Priority Mail Express & Priority Mail Contract 26  
Priority Mail Express & Priority Mail Contract 27  
Priority Mail Express & Priority Mail Contract 28  
Parcel Select & Parcel Return Service Contract 3  
Parcel Select & Parcel Return Service Contract 5  
Parcel Select Contract 2  
Parcel Select Contract 5  
Parcel Select Contract 7  
Parcel Select Contract 8  
Parcel Select Contract 9  
Parcel Select Contract 10  
Parcel Select Contract 11

Postal Regulatory Commission

Pt. 3020, Subpt. A, Nt.

Parcel Select Contract 12	Global Expedited Package Services (GEPS) Contracts
Parcel Select Contract 13	GEPS 3
Parcel Select Contract 14	Global Bulk Economy (GBE) Contracts
Priority Mail—Non-Published Rates	Global Plus Contracts
Priority Mail—Non-Published Rates 1	Global Plus 1C
First-Class Package Service Contract 35	Global Plus 2C
First-Class Package Service Contract 36	Global Reseller Expedited Package Contracts
First-Class Package Service Contract 37	Global Reseller Expedited Package Services 1
First-Class Package Service Contract 38	Global Reseller Expedited Package Services 2
First-Class Package Service Contract 39	Global Reseller Expedited Package Services 3
First-Class Package Service Contract 40	Global Reseller Expedited Package Services 4
First-Class Package Service Contract 41	Global Expedited Package Services (GEPS)—Non-Published Rates
First-Class Package Service Contract 42	Global Expedited Package Services (GEPS)—Non-Published Rates 2
First-Class Package Service Contract 43	Global Expedited Package Services (GEPS)—Non-Published Rates 3
First-Class Package Service Contract 44	Global Expedited Package Services (GEPS)—Non-Published Rates 4
First-Class Package Service Contract 45	Global Expedited Package Services (GEPS)—Non-Published Rates 5
First-Class Package Service Contract 46	Global Expedited Package Services (GEPS)—Non-Published Rates 6
First-Class Package Service Contract 47	Global Expedited Package Services (GEPS)—Non-Published Rates 7
Priority Mail Express, Priority Mail & First-Class Package Service Contract 2	Global Expedited Package Services (GEPS)—Non-Published Rates 8
Priority Mail Express, Priority Mail & First-Class Package Service Contract 3	Global Expedited Package Services (GEPS)—Non-Published Rates 9
Priority Mail Express, Priority Mail & First-Class Package Service Contract 4	Global Expedited Package Services (GEPS)—Non-Published Rates 10
Priority Mail Express, Priority Mail & First-Class Package Service Contract 5	Priority Mail International Regional Rate Boxes—Non-Published Rates
Priority Mail Express, Priority Mail & First-Class Package Service Contract 6	Outbound Competitive International Merchandise Return Service Agreement with Royal Mail Group, Ltd.
Priority Mail Express, Priority Mail & First-Class Package Service Contract 7	Priority Mail International Regional Rate Boxes Contracts
Priority Mail Express, Priority Mail & First-Class Package Service Contract 8	Priority Mail International Regional Rate Boxes Contracts 1
Priority Mail Express, Priority Mail & First-Class Package Service Contract 9	Competitive International Merchandise Return Service Agreements with Foreign Postal Operators
Priority Mail & First-Class Package Service Contract 2	Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 1
Priority Mail & First-Class Package Service Contract 3	Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2
Priority Mail & First-Class Package Service Contract 4	Inbound International*
Priority Mail & First-Class Package Service Contract 5	International Business Reply Service (IBRS) Competitive Contracts
Priority Mail & First-Class Package Service Contract 6	International Business Reply Service Competitive Contract 1
Priority Mail & First-Class Package Service Contract 7	International Business Reply Service Competitive Contract 3
Priority Mail & First-Class Package Service Contract 8	Inbound Direct Entry Contracts with Customers
Priority Mail & First-Class Package Service Contract 9	Inbound Direct Entry Contracts with Foreign Postal Administrations
Priority Mail & First-Class Package Service Contract 10	
Priority Mail & First-Class Package Service Contract 11	
Priority Mail & First-Class Package Service Contract 12	
Priority Mail & First-Class Package Service Contract 13	
Priority Mail & First-Class Package Service Contract 14	
Priority Mail & First-Class Package Service Contract 15	
Priority Mail & First-Class Package Service Contract 16	
Priority Mail & Parcel Select Contract 1	
Outbound International*	

## § 3020.30

Inbound Direct Entry Contracts with Foreign Postal Administrations  
Inbound Direct Entry Contracts with Foreign Postal Administrations 1  
Inbound EMS  
Inbound EMS 2  
Inbound Air Parcel Post (at non-UPU rates)  
Royal Mail Group Inbound Air Parcel Post Agreement  
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1  
Special Services\*  
Address Enhancement Services  
Greeting Cards, Gift Cards, and Stationery  
International Ancillary Services  
International Money Transfer Service—Outbound  
International Money Transfer Service—Inbound  
Premium Forwarding Service  
Shipping and Mailing Supplies  
Post Office Box Service  
Competitive Ancillary Services  
Nonpostal Services\*  
Advertising  
Licensing of Intellectual Property other than Officially Licensed Retail Products (OLRP)  
Mail Service Promotion  
Officially Licensed Retail Products (OLRP)  
Passport Photo Service  
Photocopying Service  
Rental, Leasing, Licensing or other Non-Sale Disposition of Tangible Property  
Training Facilities and Related Services  
USPS Electronic Postmark (EPM) Program  
Market Tests\*  
International Merchandise Return Service (IMRS)—Non-Published Rates  
Customized Delivery

### **Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists Described Within the Mail Classification Schedule**

EFFECTIVE DATE NOTE: At 81 FR 38957, June 15, 2016, the heading of subpart B was revised, effective July 15, 2016. For the convenience of the user, the revised text is set forth as follows:

### **Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists**

#### **§ 3020.30 General.**

The Postal Service, by filing a request with the Commission, may propose a modification to the market dominant product list or the competi-

## 39 CFR Ch. III (7–1–16 Edition)

tive product list appearing in the Mail Classification Schedule. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.

EFFECTIVE DATE NOTE: At 81 FR 38957, June 15, 2016, § 3020.30 was revised, effective July 15, 2016. For the convenience of the user, the revised text is set forth as follows:

#### **§ 3020.30 General.**

The Postal Service, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.

#### **§ 3020.31 Contents of a request.**

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Provide a copy of the Governor's decision supporting the request, if any;

(c) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or transfer a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(d) Indicate whether each product that is the subject of the request is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products; or

(3) A non-postal product.

(e) Provide all supporting justification upon which the Postal Service proposes to rely; and

(f) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

#### **§ 3020.32 Supporting justification.**

Supporting justification shall be in the form of a statement from one or

more knowledgeable Postal Service official(s) who sponsors the request and attests to the accuracy of the information contained within the statement. The justification shall:

(a) Demonstrate why the change is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

#### § 3020.33 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(a) The general nature of the proceeding;

(b) A reference to legal authority to which the proceeding is to be conducted;

(c) A concise description of the proposals for changes in the Mail Classification Schedule;

(d) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(e) A specified period for public comment; and

(f) Such other information as the Commission deems appropriate.

#### § 3020.34 Review.

The Commission shall review the request and responsive comments. The Commission shall either:

(a) Approve the request to modify the market dominant and competitive product lists;

(b) Institute further proceedings to consider all or part of the request if it finds that there is substantial likelihood that the modification is inconsistent with statutory policies or Commission rules, and explain its reasons for not approving the request to modify the market dominant and competitive product lists;

(c) Provide an opportunity for the Postal Service to modify its request; or

(d) Direct other action as the Commission may consider appropriate.

#### § 3020.35 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the concerns expressed by the Commission. Written statements commenting on the Commission's concerns shall be requested, to be filed 7 days prior to the conference. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;



**§ 3020.50**

**39 CFR Ch. III (7–1–16 Edition)**

(b) Schedule a hearing on the record for further consideration of the request;

(c) Explain the reasons for not going forward with additional proceedings and approve the request to modify the market dominant and competitive product lists; or

(d) Direct other action as the Commission may consider appropriate.

**Subpart C—Requests Initiated by Users of the Mail To Modify the Product Lists Described Within the Mail Classification Schedule**

EFFECTIVE DATE NOTE: At 81 FR 38957, June 15, 2016, the heading of subpart C was revised, effective July 15, 2016. For the convenience of the user, the revised text is set forth as follows:

**Subpart C—Requests Initiated by Users of the Mail to Modify the Product Lists**

**§ 3020.50 General.**

Users of the mail, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list appearing in the Mail Classification Schedule. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

EFFECTIVE DATE NOTE: At 81 FR 38957, June 15, 2016, § 3020.50 was revised, effective July 15, 2016. For the convenience of the user, the revised text is set forth as follows:

**§ 3020.50 General.**

Users of the mail, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

**§ 3020.51 Contents of a request.**

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(c) Indicate whether each product that is the subject of the request is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b) for competitive products; or

(3) A non-postal product.

(d) Provide all supporting justification upon which the proponent of the request proposes to rely; and

(e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

**§ 3020.52 Supporting justification.**

Supporting justification shall be in the form of a statement from a knowledgeable proponent of the request who attests to the accuracy of the information contained within the statement. The justification shall:

(a) Demonstrate why the change is in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C.;

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

## Postal Regulatory Commission

## § 3020.56

- (1) Set the price of such product substantially above costs;
  - (2) Raise prices significantly;
  - (3) Decrease quality; or
  - (4) Decrease output.
- (e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly, as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;
- (f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;
- (g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;
- (h) Provide a description of the likely impact of the proposed modification on small business concerns; and
- (i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

### § 3020.53 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

- (a) The general nature of the proceeding;
- (b) A reference to legal authority to which the proceeding is to be conducted;
- (c) A concise description of the proposals for changes in the Mail Classification Schedule;
- (d) The identification of an Office of the Commission to represent the interests of the general public in the docket;
- (e) A specified period for public comment; and
- (f) Such other information as the Commission deems appropriate.

### § 3020.54 Postal Service notice and reply.

The Secretary of the Commission shall forward to the Postal Service a copy of the request. Within 28 days of the filing of the request, the Postal

Service shall provide its preliminary views in regard to the request. The Postal Service may include suggestions for appropriate Commission action in response to the request.

### § 3020.55 Review.

The Commission shall review the request, the Postal Service reply, and any public comment to determine whether the proposed modification to the market dominant and competitive product lists complies with applicable statutory requirements and the Commission's rules, and whether the proposed modification is consistent with the position of the Postal Service as expressed in its reply. The Commission shall either:

- (a) Approve the request to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;
- (b) Reject the request;
- (c) Institute further proceedings to consider the request to modify the market dominant and competitive product lists; or
- (d) Direct other action as the Commission may consider appropriate.

### § 3020.56 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the merits of going forward with the request. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

- (a) Provide for a period of discovery to obtain further information;
- (b) Schedule a hearing on the record for further consideration of the request;
- (c) Explain the reasons for not going forward with formal proceedings; or
- (d) Direct other action as the Commission may consider appropriate.

**Subpart D—Proposal of the Commission To Modify the Product Lists Described Within the Mail Classification Schedule**

EFFECTIVE DATE NOTE: At 81 FR 38957, June 15, 2016, the heading of subpart D was revised, effective July 15, 2016. For the convenience of the user, the revised text is set forth as follows:

**Subpart D—Proposal of the Commission to Modify the Product Lists**

**§ 3020.70 General.**

The Commission, of its own initiative, may propose a modification to the market dominant product list or the competitive product list provided within the Mail Classification Schedule. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

EFFECTIVE DATE NOTE: At 81 FR 38957, June 15, 2016, § 3020.70 was revised, effective July 15, 2016. For the convenience of the user, the revised text is set forth as follows:

**§ 3020.70 General.**

The Commission, of its own initiative, may propose a modification to the market dominant product list or the competitive product list. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

**§ 3020.71 Contents of a proposal.**

A proposal to modify the market dominant product list or the competitive product list shall:

- (a) Provide the name, and class if applicable, of each product that is the subject of the proposal;
- (b) Indicate whether the proposal would add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;
- (c) Indicate whether each product that is the subject of the proposal is:

- (1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;
- (2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b) for competitive products; or
- (3) A non-postal product.
- (d) Provide justification supporting the proposal; and
- (e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

**§ 3020.72 Supporting justification.**

Supporting justification shall:

- (a) Provide an explanation for initiating the docket;
- (b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);
- (c) Explain why, as to competitive products, the addition, subtraction, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;
- (d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:
  - (1) Set the price of such product substantially above costs;
  - (2) Raise prices significantly;
  - (3) Decrease quality; or
  - (4) Decrease output.
- (e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;
- (f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;
- (g) Provide any information available on the views of those who use the product involved on the appropriateness of the proposed modification;
- (h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Postal Service and users of the mail of the nature, scope, significance, and impact of the proposed modification.

**§ 3020.73 Docket and notice.**

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall include:

(a) The general nature of the proceeding;

(b) A reference to legal authority to which the proceeding is to be conducted;

(c) A concise description of the proposals for changes in the Mail Classification Schedule;

(d) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(e) A specified period for public comment; and

(f) Such other information as the Commission deems appropriate.

**§ 3020.74 Postal Service notice and reply.**

The Secretary of the Commission shall forward to the Postal Service a copy of the notice of proposal. Within 28 days of the filing of the proposal, the Postal Service shall provide its preliminary views in regard to the proposal. The Postal Service may include suggestions for appropriate further procedural steps.

**§ 3020.75 Review.**

The Commission shall review the Postal Service reply and public comment. The Commission shall either:

(a) Approve the proposal to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;

(b) Withdraw the proposal;

(c) Institute further proceedings to consider the proposal, identifying relevant issues that may require further development; or

(d) Direct other action as the Commission may consider appropriate.

**§ 3020.76 Further proceedings.**

If the Commission determines that further proceedings are appropriate, a conference shall be scheduled to consider the merits of going forward with the proposal. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the proposal;

(c) Explain the reasons for not going forward with formal proceedings; or

(d) Direct other action as the Commission may consider appropriate.

**Subpart E—Requests Initiated by the Postal Service To Make Material Changes or Minor Corrections to the Mail Classification Schedule**

SOURCE: 80 FR 35575, June 22, 2015, unless otherwise noted.

**§ 3020.80 Material changes to product descriptions.**

(a) Whenever the Postal Service proposes material changes to a product description in the Mail Classification Schedule, no later than 30 days prior to implementing the proposed changes, it shall submit to the Commission a request to change the product description in the Mail Classification Schedule.

(b) The request shall:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format; and

(2) Provide all supporting justification for the changes upon which the Postal Service proposes to rely.

**§ 3020.81 Supporting justification for material changes to product descriptions.**

(a) Supporting justification for changes to a product description in the Mail Classification Schedule shall include a description of, and rationale

## § 3020.82

for, the proposed changes to the product description; and the additional material in paragraphs (b) and (c) of this section.

(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 3010 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 3015 of this chapter.

(c) Describe the likely impact that the changes will have on users of the product and on competitors.

### **§ 3020.82 Docket and notice of material changes to product descriptions.**

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.

(b) Establish a docket for each request to change a product description in the Mail Classification Schedule;

(c) Publish notice of the request on its Web site;

(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and

(e) Provide interested persons with an opportunity to comment on whether the proposed changes are consistent with title 39 and applicable Commission regulations.

### **§ 3020.83 Commission review of material changes to product descriptions.**

(a) The Commission shall review the request and any comments filed. The Commission shall take one of the actions identified in paragraphs (b) through (g) of this section.

(b) Approve the proposed changes, subject to editorial corrections, and change the Mail Classification Schedule to coincide with the effective date of the proposed change;

(c) Reject the proposed changes;

(d) Provide the Postal Service with an opportunity to amend the proposed changes;

(e) Direct the Postal Service to make an appropriate filing under a different section;

(f) Institute further proceedings; or

## 39 CFR Ch. III (7–1–16 Edition)

(g) Direct other action that the Commission considers appropriate.

### **§§ 3020.84–3020.89 [Reserved]**

### **§ 3020.90 Minor corrections to product descriptions.**

(a) The Postal Service shall ensure that product descriptions in the Mail Classification Schedule accurately represent the current offerings of the Postal Service.

(b) The Postal Service shall submit minor corrections to product descriptions in the Mail Classification Schedule by filing notice with the Commission no later than 15 days prior to the effective date of the proposed corrections.

(c) The notice shall:

(1) Explain why the proposed corrections do not constitute material changes to the product description for purposes of § 3020.80;

(2) Explain why the proposed corrections are consistent with any applicable provisions of title 39; and

(3) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed corrections therein in legislative format.

### **§ 3020.91 Docket and notice of minor corrections to product descriptions.**

(a) The Commission shall take the actions identified in paragraphs (b) through (e) of this section.

(b) Establish a docket for each proposal to correct a product description in the Mail Classification Schedule;

(c) Publish notice of the proposal on its Web site;

(d) Designate an officer of the Commission to represent the interests of the general public in the docket; and

(e) Provide interested persons with an opportunity to comment on whether the proposed corrections are consistent with title 39 and applicable Commission regulations.

### **§ 3020.92 Commission review of minor corrections to product descriptions.**

(a) The Commission shall review the notice and any comments filed. The Commission shall take one of the actions identified in paragraphs (b) through (g) of this section.

(b) Approve the proposed corrections, subject to editorial corrections, and

## Postal Regulatory Commission

## § 3025.2

change the Mail Classification Schedule to coincide with the effective date of the proposed change;

(c) Reject the proposed corrections;

(d) Provide the Postal Service with an opportunity to amend the proposed corrections;

(e) Direct the Postal Service to make an appropriate filing under a different section;

(f) Institute further proceedings; or

(g) Direct other action that the Commission considers appropriate.

### Subpart F—Size and Weight Limitations for Mail Matter

#### § 3020.110 General.

Applicable size and weight limitations for mail matter shall appear in the Mail Classification Schedule as part of the description of each product.

#### § 3020.111 Limitations applicable to market dominant mail matter.

(a) The Postal Service shall inform the Commission of updates to size and weight limitations for market dominant mail matter by filing notice with the Commission 45 days prior to the effective date of the proposed update. The notice shall include a copy of the applicable sections of the Mail Classification Schedule and the proposed updates therein in legislative format.

(b) The Commission shall provide notice of the proposed update in the FEDERAL REGISTER and seek public comment on whether the proposed update is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.

(c) If the Commission finds the proposed update in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C., the Commission shall review the proposed Mail Classification Schedule language for formatting and conformance with the structure of the Mail Classification Schedule, and subject to editorial changes, shall change the Mail Classification Schedule to coincide with the effective date of the proposed update.

(d) If the Commission finds the proposed update not in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the Commission may di-

rect other action as deemed appropriate.

#### § 3020.112 Limitations applicable to competitive mail matter.

The Postal Service shall notify the Commission of updates to size and weight limitations for competitive mail matter pursuant to subpart E of this part.

## PART 3025—RULES FOR APPEALS OF POSTAL SERVICE DETERMINATIONS TO CLOSE OR CONSOLIDATE POST OFFICES

Sec.

3025.1 Definitions.

3025.2 Applicability.

3025.3 Notice by the Postal Service.

3025.10 Starting an appeal.

3025.11 Submitting an appeal and other documents.

3025.12 Duplicate appeals.

3025.13 Deadlines for appeals.

3025.14 Participation by others.

3025.20 The record on review.

3025.21 Filing of the administrative record.

3025.22 Making documents available for inspection by the public.

3025.30 Suspension pending review.

3025.40 Participant statement.

3025.41 Due date for participant statement.

3025.42 Due date for Postal Service response.

3025.43 Due date for replies to the Postal Service.

AUTHORITY: 39 U.S.C. 404(d).

SOURCE: 77 FR 6679, Feb. 9, 2012, unless otherwise noted.

#### § 3025.1 Definitions.

The following definitions apply in this part:

(a) *Final determination* means the written determination and findings required by 39 U.S.C. 404(d)(3).

(b) *Petitioner* means a person who files a Petition for Review.

(c) *Petition for Review* means a written document that the Commission accepts as an appeal of a post office closing or consolidation.

#### § 3025.2 Applicability.

(a) The rules in this part apply when:

- (1) The Postal Service decides to close or consolidate a post office, and
- (2) A patron of that post office appeals the closing or consolidation.

### § 3025.3

### 39 CFR Ch. III (7–1–16 Edition)

(b) The following sections in part 3001, subpart A of this chapter, apply to appeals of post office closings or consolidations: §§3001.1 through 3001.9 of this chapter; §3001.11(a) of this chapter, §3001.11(c) through (f) of this chapter; §§3001.12 through 3001.17 of this chapter; and §§3001.21 and 3001.22 of this chapter.

(c) Answers to motions filed by the Postal Service are due within 10 days.

#### § 3025.3 Notice by the Postal Service.

(a) Pursuant to section 404(d) of title 39, United States Code, any decision to close or consolidate a post office must be preceded by 60 days' notice to persons served by such post office, the opportunity for such persons to present their views, and a written determination based upon consideration of each of the factors listed in section 404(d)(2) of title 39, United States Code.

(b) This notice must include a provision stating that, pursuant to section 404(d)(5) of title 39, United States Code, a final Postal Service determination to close or consolidate a post office may be appealed by any person served by such office to the Postal Regulatory Commission at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001, within 30 days after such determination is made available to such person by the Postal Service.

#### § 3025.10 Starting an appeal.

(a) A Postal Service decision to close or consolidate a post office may be appealed only by a person served by that office. An appeal is commenced by submitting a Petition for Review to the Postal Regulatory Commission.

(b) The Petition for Review must state that the person(s) submitting it is/are served by the post office that the Postal Service has decided to close or consolidate. The petition should include the name(s) and address(es) of the person(s) filing it and the name or location of the post office to be closed or consolidated. A petitioner may include other information deemed pertinent.

#### § 3025.11 Submitting an appeal and other documents.

Petitions for Review, comments, motions, answers, and other documents

may be submitted by persons other than the Postal Service by mail, electronically through the Commission's Web site, <http://www.prc.gov>, or by delivery to the Commission's offices at 901 New York Avenue NW., Suite 200, Washington, DC 20268–0001.

#### § 3025.12 Duplicate appeals.

If the Commission receives more than one Petition for Review of the same post office closing or consolidation, the petitions will be considered in a single docket.

#### § 3025.13 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 §3025.3(b).

(b) *Appeals sent by mail.* If sent by mail, a Petition for Review must be postmarked no later than 30 days after the final determination has been made available.

(c) *Appeals sent by other physical delivery.* If sent by some other form of physical delivery, a Petition for Review must be received in the Commission's Docket Section no later than 4:30 p.m., eastern time, on the 30th day after the final determination has been made available.

(d) *Appeals sent electronically.* If submitted electronically, a Petition for Review must be received in the Commission's Docket Section no later than 4:30 p.m., eastern time, on the 30th day after the final determination has been made available.

#### § 3025.14 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 §3025.11.

## Postal Regulatory Commission

## § 3025.42

(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 §§ 3025.41 through 3025.43. Commenters may use PRC Form 61, which is available on the Commission's Web site, <http://www.prc.gov>.

### § 3025.20 The record on review.

(a) The record on review includes:

- (1) The final determination;
- (2) The notices to persons served by the post office to be closed or consolidated;
- (3) The administrative record; and
- (4) All documents submitted in the appeal proceeding.

(b) The record shall contain all evidence considered by the Postal Service in making its determination and shall contain no evidence not previously considered by the Postal Service.

### § 3025.21 Filing of the administrative record.

The Postal Service shall file the administrative record within 10 days of the date of posting of a Petition for Review on the Commission's Web site. The Commission may alter this time for good cause. The Secretary will notify participants that they may view the administrative record at post offices where the final determination was posted.

### § 3025.22 Making documents available for inspection by the public.

Copies of all filings (including the administrative record) related to an appeal shall be available for public inspection at the post offices where the final determination was posted. The Secretary will notify participants that they may view copies of filings at post offices where the final determination was posted.

### § 3025.30 Suspension pending review.

(a) *Application.* Application for suspension of a determination of the Postal Service to close or consolidate any post office pending the outcome of an appeal to the Postal Regulatory Commission shall be made at the time of the filing of a Petition for Review. The

application shall show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by affidavits or other sworn statements or copies thereof. The applicant must be a person served by the affected post office. Immediate notice of the application shall be given to all parties to the proceeding. The application shall be filed with the Secretary of the Commission.

(b) *Answer and filing of the relevant record by the Postal Service.* Within 10 days after the application for suspension is filed, the Postal Service shall file with the Secretary of the Commission and serve on the petitioners an answer to the application supported by affidavits or other sworn statements or copies thereof.

### § 3025.40 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 his/her arguments in support of the petition.

(b) The instructions for PRC Form 61 shall provide:

- (1) A concise explanation of the purpose of the form;
- (2) A copy of section 404(d)(2)(A) of title 39, United States Code; and
- (3) Notification that, if petitioner prefers, he or she may file a brief in lieu of or in addition to completing PRC Form 61.

### § 3025.41 Due date for participant statement.

The statement or brief of petitioner and of any other participant seeking to have the Commission return the entire matter to the Postal Service for further consideration, shall be filed not more than 20 days after the filing of the administrative record.

### § 3025.42 Due date for Postal Service response.

The statement or brief of the Postal Service, and of any other participant opposing return of the matter for further consideration, shall be filed not



**§ 3025.43**

more than 14 days after the date for filing of petitioner's statement.

**§ 3025.43 Due date for replies to the Postal Service.**

Petitioner, and any other participant seeking to have the Commission return the matter for further consideration, may file a reply to the Postal Service response not more than 10 days after the date of the Postal Service response. Replies are limited to issues discussed in the responses of the Postal Service and other participants seeking affirmation of the Postal Service determination.

**PART 3030—RULES FOR COMPLAINTS**

**Subpart A—General**

Sec.

3030.1 Applicability.

3030.2 Scope and nature of complaints.

**Subpart B—Form and Manner Requirements of Initial Pleadings**

3030.10 Complaint contents.

3030.11 Service.

3030.12 Pleadings filed in response to a complaint.

3030.13 Conditions for applying rate or service inquiry procedures to complaints.

3030.14 Answer contents.

**Subpart C—Supplemental Information**

3030.20 Sufficiency of information.

3030.21 Investigator.

**Subpart D—Proceedings**

3030.30 Beginning proceedings on complaints.

**Subpart E—Settlement**

3030.40 Policy on settlement.

3030.41 Satisfaction.

**Subpart F—Commission Determinations and Relief**

3030.50 Remedies.

AUTHORITY: 39 U.S.C. 503; 3662.

SOURCE: 74 FR 16744, Apr. 10, 2009, unless otherwise noted.

**39 CFR Ch. III (7–1–16 Edition)**

**Subpart A—General**

**§ 3030.1 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 3001, subpart A of this chapter, applies unless otherwise stated in this part or otherwise ordered by the Commission.

(b) Sections 3001.25 through 27 of this chapter and §3001.33 of this chapter do not apply to this part unless and until the Commission makes a finding under §3030.30(a)(1) that the complaint raises material issues of fact or law.

**§ 3030.2 Scope and nature of complaints.**

Any interested person (including a duly appointed officer of the Commission representing the interests of the general public) may file a written complaint with the Commission if that person believes that the Postal Service is not operating in conformance with:

(a) The provisions of 39 U.S.C. chapter 36, or 39 U.S.C. 101(d), 401(2), 403(c), 404a, or 601; or

(b) Any rule, order, or other regulatory requirement based on any of these statutory provisions.

**Subpart B—Form and Manner Requirements of Initial Pleadings**

**§ 3030.10 Complaint contents.**

(a) A complaint must:

(1) Set forth the facts and circumstances that give rise to the complaint;

(2) Clearly identify and explain how the Postal Service action or inaction violates applicable statutory standards or regulatory requirements including citations to the relied upon section or sections of title 39, order, regulation, or other regulatory requirements;

(3) Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to the complainant;

(4) Include a description of persons or classes of persons known or believed to be similarly affected by the issues involved in the complaint, if applicable;

(5) State the nature of the evidentiary support that the complainant has or expects to obtain during discovery to support the facts alleged in the complaint;

(6) Include an explanation as to why such facts could not reasonably be ascertained by the complainant where claims are premised on information and belief;

(7) State whether the issues presented are pending in or have been resolved by an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party; and if so, provide an explanation why timely resolution cannot be achieved in that forum;

(8) State the specific relief or remedy requested and the basis for that relief; and

(9) Include a certification that states that prior to filing, the complainant attempted to meet or confer with the Postal Service's general counsel to resolve or settle the complaint, why the complainant believes additional such steps would be inadequate, and the reasons for that belief; and

(10) Include a certification that the complaint has been served on the United States Postal Service as required by §3030.11.

(b) The Commission may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.

#### § 3030.11 Service.

Any person filing a complaint must simultaneously serve a copy of the complaint on the Postal Service at the following address: *PRCCOMPLAINTS@usps.gov*. A complaint is not deemed filed until it is served on the Postal Service. A waiver may be obtained pursuant to §3001.9(a) of this chapter.

[74 FR 54755, Oct. 23, 2009]

#### § 3030.12 Pleadings filed in response to a complaint.

(a) Unless otherwise ordered by the Commission, the Postal Service shall file its answer to a complaint within 20 days after the complaint is filed.

(b) If appropriate, the Postal Service may file a dispositive motion or otherwise move to delay disposition of the

complaint. If the Postal Service files such a motion, unless otherwise ordered by the Commission, the period of time for filing its answer is altered as follows:

(1) If the Commission denies the motion or postpones disposition, the answer is due within 10 days of the Commission's action; or

(2) If the Commission invokes the rate or service inquiry special procedures under §3030.13 to the complaint, the answer is due contemporaneously with the Postal Service's report under §3031.11 of this chapter if the complaint has not been resolved by that date.

(c) If the Postal Service answer is delayed by the filing of a motion under paragraph (b) of this section, it may not obtain a further delay by filing another motion under paragraph (b) of this section raising an issue or objection that was available to the Postal Service but omitted from its earlier motion.

#### § 3030.13 Conditions for applying rate or service inquiry procedures to complaints.

(a) This section applies to complaints that concern rate or service matters that are isolated incidents affecting few mail users provided that the complaint does not either:

- (1) Raise unfair competition issues;
- (2) Raise issues affecting a significant number of mail users;
- (3) Represent a pattern, practice, or systemic issue that affects a significant number of mail users (or is reasonably likely to be evidence that such a pattern has begun); or
- (4) Impact a substantial region of the nation.

(b) The Commission may in its discretion, *sua sponte*, attempt to resolve a complaint through the rate or service inquiry procedures of §3031.11 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 §3031.11 of this chapter prior to the due date for the Postal Service answer set forth in §3030.12.

(c) If the Commission determines that application of paragraph (a) of this section is appropriate and the

## § 3030.14

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 § 3030.12(b)(2).

### § 3030.14 Answer contents.

(a) An answer must:

(1) Contain a clear and concise statement of any disputed factual allegations upon which the answer relies;

(2) Contain a clear and concise statement of any legal interpretation upon which the answer relies;

(3) Admit or deny, specifically and with explanatory detail, each material factual allegation of the complaint. Denials based on information and belief must include an explanation as to why such facts could not reasonably be ascertained by the Postal Service prior to filing the answer. Each fact alleged in a complaint not thus specifically answered shall be deemed to have been admitted;

(4) Set forth every defense relied upon. The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, including factual allegations and law upon which the Postal Service relies. Affirmative defenses shall be specifically captioned as such and presented separately from any denials;

(5) State the nature of the evidentiary support that the Postal Service has or expects to obtain to support its factual allegations and defenses; and

(6) Include a certification that states that prior to the filing of its answer, the Postal Service met or conferred with the complainant to resolve or settle the complaint, whether the Postal Service believes additional such steps would be inappropriate and the reasons for that belief.

(b) The Commission may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.

### Subpart C—Supplemental Information

#### § 3030.20 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the

## 39 CFR Ch. III (7–1–16 Edition)

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 § 3030.21, or do both.

#### § 3030.21 Investigator.

The Commission may appoint an investigator to examine issues raised by the complaint and responses thereto. The investigator will use appropriate due diligence under the circumstances and provide a public, written report to the Commission.

### Subpart D—Proceedings

#### § 3030.30 Beginning proceedings on complaints.

(a) Within 90 days after receiving a properly filed complaint under this part, the Commission will issue:

(1) A notice and order in accordance with § 3001.17 of this chapter that finds the complaint raises one or more material issues of fact or law and begin proceedings on the complaint; or

(2) An order dismissing the complaint.

(b) Orders issued pursuant to paragraph (a) of this section shall include the Commission's written statement setting forth the bases of its determination.

(c) Contemporaneously with, or shortly after issuing a notice and order under paragraph (a)(1) of this section, the Commission will appoint a public representative to represent the interests of the general public in the complaint proceeding.

### Subpart E—Settlement

#### § 3030.40 Policy on settlement.

It shall be the general policy and practice of the Commission to encourage alternative dispute resolution and settlement of complaints by informal procedures, such as correspondence, conferences between the parties, and the conduct of proceedings off the record with the consent of the parties.

**§ 3030.41 Satisfaction.**

(a) If a complaint is resolved informally, in whole or in part, subsequent to Commission action under § 3030.30(a)(1), the complainant must promptly file:

(1) A statement explaining the resolution; and

(2) A motion to dismiss or amend the complaint based on the resolution.

(b) The Commission may order the submission of additional information before acting on any motion filed under paragraph (a)(2) of this section.

(c) In determining whether to allow the complaint to be dismissed or amended under this section, the Commission will take into consideration whether the issues raised by the complaint may continue to impact a significant segment of the mailing community.

**Subpart F—Commission Determinations and Relief**

**§ 3030.50 Remedies.**

(a) If the Commission finds that a complaint is justified, it will order that the Postal Service take such action as the Commission determines appropriate to:

(1) Achieve compliance with the applicable requirements; and

(2) Remedy the effects of any non-compliance.

(b) If the Commission finds deliberate non-compliance on the part of the Postal Service, the Commission may order, based on the nature, circumstances, extent, and seriousness of the non-compliance, a fine for each incidence of non-compliance.

(c) In any case where the Commission is considering the extraordinary relief described in paragraph (b) of this section, the Commission will provide notice to the participants that such relief is being considered. It will allow the participants a reasonable opportunity to comment and present aggravating and mitigating factors for its consideration.

**PART 3031—RULES FOR RATE OR SERVICE INQUIRIES**

**Subpart A—Rate or Service Inquiry Forms and Procedures**

Sec.

3031.10 Rate or service inquiry contents.

3031.11 Rate or service inquiry procedures.

3031.12 Treatment as a complaint.

**Subpart B [Reserved]**

AUTHORITY: 39 U.S.C. 503, 3662.

SOURCE: 74 FR 16746, Apr. 10, 2009, unless otherwise noted.

**Subpart A—Rate or Service Inquiry Forms and Procedures**

**§ 3031.10 Rate or service inquiry contents.**

(a) A rate or service inquiry shall be in writing and should contain:

(1) The name, address, and telephone number of the inquiring party;

(2) Details regarding the Postal Service's action or inaction;

(3) A statement of facts supporting the inquiring party's allegations; and

(4) The specific relief being sought, if any.

(b) The Commission may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.

**§ 3031.11 Rate or service inquiry procedures.**

(a) The Commission will forward rate or service inquiries to the Postal Service for investigation. The Postal Service will, within 45 days of receipt of such inquiry, advise the Commission in writing, with a copy to the inquiring party, of its resolution of the inquiry or its refusal or inability to do so.

(b) The Commission will monitor all rate or service inquiries to determine if Commission action under § 3031.12 is appropriate.

(c) Where there are clear indications from the Postal Service's report or from other communications between the parties that the inquiry has been resolved, the Commission may, in its discretion, consider such proceeding to be resolved, without response to the inquiring party.

§ 3031.12

39 CFR Ch. III (7-1-16 Edition)

§ 3031.12 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 § 3030.21 of this chapter or appoint a public representative representing the interests of the general public to pursue the matter.

Subpart B [Reserved]

PART 3032—SPECIAL RULES FOR COMPLAINTS ALLEGING VIOLATIONS OF 39 U.S.C. 404a

Subpart A—General

Sec.

3032.1 Applicability.

3032.2-3032.4 [Reserved]

Subpart B—Requirements and Defenses

3032.5 Postal Service rules that create an unfair competitive advantage.

3032.6 Disclosure, transfer, and licensing of intellectual property.

3032.7 Unlawfully obtaining information.

3032.8 Statutorily authorized affirmative defense.

AUTHORITY: 39 U.S.C. 404a; 3662.

SOURCE: 79 FR 62294, Oct. 16, 2014, unless otherwise noted.

Subpart A—General

§ 3032.1 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 §§ 3030.2 and 3030.10 of this chapter.

§§ 3032.2-3032.4 [Reserved]

Subpart B—Requirements and Defenses

§ 3032.5 Postal Service rules that create an unfair competitive advantage.

(a) A complaint alleging a violation of 30 U.S.C. 404(a)(1) must show that a Postal Service rule, regulation, or standard has the effect of:

- (1) Precluding competition; or

(2) Establishing the terms of competition.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404a(a)(1), the Postal Service may demonstrate that the rule, regulation, or standard at issue does not create an unfair competitive advantage for itself or any entity funded, in whole or in part, by the Postal Service.

(c) As used in this section, the term rule, regulation, or standard includes, among other things, documents or policies issued by the Postal Service to exercise its regulatory authority or otherwise act as a governmental entity.

§ 3032.6 Disclosure, transfer, and licensing of intellectual property.

(a) A complaint alleging a violation of 39 U.S.C. 404a(a)(2) must show that the Postal Service has compelled or attempted to compel the disclosure, transfer, or licensing of the intellectual property of the person filing the complaint to a third party.

(b) As used in this section, the term intellectual property includes, among other things, patents, copyrights, trademarks, trade secrets, and proprietary information.

(c) As used in this section, the term disclosure, transfer, or licensing of intellectual property includes, among other things, an action that has an adverse effect on the value of intellectual property.

§ 3032.7 Unlawfully obtaining information.

(a) A complaint alleging a violation of 39 U.S.C. 404a(a)(3) must show that:

(1) The person filing the complaint has provided or sought to provide a product;

(2) The Postal Service obtained information about such product from the person filing the complaint; and

(3) The Postal Service offers or offered a postal service that uses or is based, in whole or in part, on the information obtained from the person filing the complaint.

(b) As an affirmative defense to a complaint under 39 U.S.C. 404a(a)(3), the Postal Service may demonstrate that substantially the same information was obtained (or was obtainable)

## Postal Regulatory Commission

## § 3035.3

from an independent source or is otherwise obtained (or obtainable) through lawful means.

(c) As an affirmative defense to a complaint under 39 U.S.C. 404a(a)(3), the Postal Service may show that the information obtained was provided by written consent.

### § 3032.8 Statutorily authorized affirmative defense.

(a) As an affirmative defense to an allegation of a violation of 39 U.S.C. 404a(a), the Postal Service may demonstrate that it is specifically authorized by law to take the action or inaction alleged to be a violation of that section.

(b) Authority under 39 U.S.C. 401 or 39 U.S.C. 404 may not form the basis of an affirmative defense under paragraph (a) of this section.

(c) Paragraph (b) of this section does not preclude the Postal Service from arguing that a particular Postal Service regulation or other action (or inaction) does not have the requisite effect to violate 39 U.S.C. 404a(a).

## PART 3035—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

Sec.

- 3035.1 Applicability.
- 3035.2 Advance notice.
- 3035.3 Contents of notice.
- 3035.4 Review.
- 3035.5 Commission action.
- 3035.6 Changes in market test.
- 3035.7–3035.9 [Reserved]
- 3035.10 Duration.
- 3035.11 Extension of market test.
- 3035.12 Cancellation of market test.
- 3035.13–3035.14 [Reserved]
- 3035.15 Dollar amount limitation.
- 3035.16 Exemption from dollar amount limitation.
- 3035.17 Prevention of market disruption.
- 3035.18 Filing for permanent product status.
- 3035.19 [Reserved]
- 3035.20 Data collection and reporting requirements.

AUTHORITY: 39 U.S.C. 3641.

SOURCE: 79 FR 54563, Sept. 11, 2014, unless otherwise noted.

### § 3035.1 Applicability.

The rules in this part apply to market tests of experimental products undertaken pursuant to 39 U.S.C. 3641.

### § 3035.2 Advance notice.

The Postal Service shall file notice with the Commission of its determination to initiate a market test at least 30 days before initiating the market test.

### § 3035.3 Contents of notice.

(a) Notices of proposed market tests shall include:

(1) The basis for the Postal Service's determination that the market test is governed by 39 U.S.C. 3641, which shall:

(i) Describe, from the viewpoint of mail users, how the experimental product is significantly different from all products offered by the Postal Service within the 2 fiscal years preceding the start of the market test;

(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 §3001.5(v) of this chapter; and

(iii) Identify the experimental product as either market dominant or competitive for purposes of the market test, and explain the reasoning for the categorization in accordance with the criteria set forth in 39 U.S.C. 3642(b)(1).

(2) A description of the nature and the scope of the market test that:

(i) Describes the market test and experimental product;

(ii) Demonstrates why the market test is not inconsistent with the requirements of 39 U.S.C. 3641;

(iii) Identifies the beginning and ending dates of the market test;

(iv) Describes the geographic market(s) where the market test may be conducted;

(v) Estimates the total revenue that is anticipated by the Postal Service for each fiscal year of the market test, including available supporting documentation; and

(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 §3035.20.

## § 3035.4

## 39 CFR Ch. III (7–1–16 Edition)

### § 3035.4 Review.

(a) The Commission will establish a docket for each market test initiated under this part, promptly publish a notice in the FEDERAL REGISTER, and post the filing on its Web site. The notice shall:

- (1) Describe the general nature of the proceeding;
- (2) Refer to the legal authority under which the proceeding is to be conducted;
- (3) Identify an officer of the Commission to represent the interests of the general public in the docket;
- (4) Specify a period for public comment; and
- (5) Include such other information as the Commission deems appropriate.

(b) [Reserved]

### § 3035.5 Commission action.

(a) The Commission shall review the Postal Service notice together with any comments for initial compliance with the statutory requirements of 39 U.S.C. 3641, and:

- (1) Find that the market test is consistent with the requirements of 39 U.S.C. 3641;
- (2) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;
- (3) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and order that the market test not go into effect; or
- (4) Direct other action as the Commission may consider appropriate.

(b) [Reserved]

### § 3035.6 Changes in market test.

(a) The Postal Service shall file a notice with the Commission describing each material change made to the market test or services offered under the market test at least 10 days before implementing such changes. Material changes are changes that may affect compliance with 39 U.S.C. 3641 and include, without limitation, adjustments to prices, geographic scope, eligibility for service, and termination date.

(b) The Commission may, in its discretion, notice the filing and provide an opportunity for comment.

### §§ 3035.7–3035.9 [Reserved]

### § 3035.10 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 § 3035.11.

### § 3035.11 Extension of market test.

(a) The Postal Service may request an extension of the duration of a market test, not to exceed an additional 12 months, if such an extension is necessary to determine the feasibility or desirability of a product being tested. The Postal Service must file a written request for extension with the Commission at least 60 days before the market test is scheduled to terminate.

(b) The request for extension shall:

- (1) Explain why an extension is necessary to determine the feasibility or desirability of the experimental product;
- (2) List the new end date for the market test;
- (3) Calculate the total revenue received by the Postal Service from the market test for each fiscal year the market test has been in operation and provide supporting documentation for the calculations;
- (4) Estimate the additional revenue that is anticipated by the Postal Service for each fiscal year remaining on the market test, including the requested extension period, and provide available supporting documentation; and
- (5) Provide any additional information necessary for the Commission to evaluate the continued consistency with the requirements of 39 U.S.C. 3641.

(c) The Commission shall review the Postal Service request for extension to ensure that an extension is necessary in order to determine the feasibility or desirability of the experimental product and:

- (1) Find that the extension is consistent with the requirements of 39 U.S.C. 3641;
- (2) Find that the extension is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

## Postal Regulatory Commission

## § 3035.16

(3) Find that the extension is inconsistent with the requirements of 39 U.S.C. 3641 and deny the extension; or

(4) Direct other action as the Commission considers appropriate.

### § 3035.12 Cancellation of market test.

(a) The Postal Service may cancel a market test at any time. It shall file notice of cancellation with the Commission within 10 days of cancelling the market test.

(b) Pursuant to 39 U.S.C. 3641(f), the Commission may direct the Postal Service to demonstrate that the market test continues to meet the requirements of 39 U.S.C. 3641 and the Commission's rules. The Commission, in its discretion, may provide an opportunity for comments.

(c) Based upon its review, the Commission may:

(1) Find that the market test is consistent with the requirements of 39 U.S.C. 3641;

(2) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the market test is inconsistent with the requirements of 39 U.S.C. 3641 and cancel the market test; or

(4) Direct other action as the Commission may consider appropriate.

### §§ 3035.13–3035.14 [Reserved]

### § 3035.15 Dollar amount limitation.

(a) The Consumer Price Index used for calculations under this part is the CPI-U index, as specified in §§ 3010.21(a) and 3010.22(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 \$10,000,000 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 § 3035.16.

(c) For each fiscal year, the \$10 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as de-

scribed in paragraph (d) of this section. The Commission shall publish this figure annually, after the close of the fiscal year, on its Web site at <http://www.prc.gov>.

(d) The calculation of the \$10 Million Adjusted Limitation involves the following steps. First, a simple average CPI-U index was calculated for fiscal year 2008 by summing the monthly CPI-U values from October 2007 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.5. Then, a second simple average CPI-U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI-U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying \$10,000,000 by the Recent Average divided by 214.5. The result is expressed as a number, rounded to the nearest dollar.

(e) The formula for calculating the \$10 Million Adjusted Limitation is as follows: \$10 Million Adjusted Limitation = \$10,000,000 \* (Recent Average/214.5).

### § 3035.16 Exemption from dollar amount limitation.

(a) The Postal Service may request an exemption from the \$10 Million Adjusted Limitation by filing a written request with the Commission. In no instance shall the request for exemption exceed the market test dollar amount limitation of \$50,000,000 in any fiscal year, as adjusted for the change in the CPI-U index, as specified in paragraph (c) of this section (\$50 Million Adjusted Limitation).

(b) For each fiscal year, the \$50 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as described in paragraph (c) of this section. The Commission shall publish this figure annually, after the close of the fiscal year, on its Web site at <http://www.prc.gov>.

(c) The calculation of the \$50 Million Adjusted Limitation involves the following steps. First, a simple average CPI-U index was calculated for fiscal year 2008 by summing the monthly CPI-U values from October 2007



**§ 3035.17**

**39 CFR Ch. III (7-1-16 Edition)**

through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.5. Then, a second simple average CPI-U index is similarly calculated for each subsequent fiscal year by summing the 12 monthly CPI-U values for the previous fiscal year and dividing the sum by 12 (Recent Average). Finally, the annual limitation for the current fiscal year is calculated by multiplying \$50,000,000 by the Recent Average divided by 214.5. The result is expressed as a number, rounded to the nearest dollar.

(d) The formula for calculating the \$50 Million Adjusted Limitation is as follows: \$50 Million Adjusted Limitation = \$50,000,000 \* (Recent Average/214.5).

(e) The Postal Service shall file its request for exemption at least 45 days before it expects to exceed the \$10 Million Adjusted Limitation.

(f) The request for exemption shall:

(1) Explain how the experimental product will:

(i) Benefit the public and meet an expected demand;

(ii) Contribute to the financial stability of the Postal Service; and

(iii) Not result in unfair or otherwise inappropriate competition;

(2) Calculate the total revenue received by the Postal Service from the market test for each fiscal year the market test has been in operation, and provide supporting documentation;

(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 §3035.11(c), and provide available supporting documentation; and

(4) Quantify the product specific costs associated with the development of the market test; that is, costs incurred before the market test is implemented.

(g) The Commission shall review the request for exemption for consistency with the statutory requirements of 39 U.S.C. 3641 and:

(1) Find that the exemption is consistent with the requirements of 39 U.S.C. 3641;

(2) Find that the exemption is inconsistent with the requirements of 39

U.S.C. 3641 and provide an opportunity to correct the identified deficiencies;

(3) Find that the exemption is inconsistent with the requirements of 39 U.S.C. 3641 and deny the exemption; or

(4) Direct other action as the Commission may consider appropriate.

**§ 3035.17 Prevention of market disruption.**

Notwithstanding the \$10 Million Adjusted Limitation or any adjustment granted pursuant to §3035.16, 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 §3001.5(v) of this chapter.

**§ 3035.18 Filing for permanent product status.**

(a) If the Postal Service determines to make an experimental product permanent, it shall file a request, pursuant to 39 U.S.C. 3642 and part 3020, subpart B of this chapter, to add a new product or price category to the market dominant or competitive product list. Requests to make existing experimental products permanent must be filed at least 60 days before the market test expires (including any extension period granted) or the market test exceeds any authorized adjusted limitation in any fiscal year, whichever is earlier.

(b) A request to make an experimental product permanent must, among other things, quantify the product specific costs associated with the development of the market test; that is, costs incurred before the market test is implemented.

(c) The Postal Service shall also file a notice of its request to make an experimental product permanent in the market test proceeding's docket. The notice shall include the applicable docket number(s) for the proceeding evaluating the request.

## Postal Regulatory Commission

## § 3050.1

### § 3035.19 [Reserved]

### § 3035.20 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 § 3035.3(a)(2)(vi). Data collection plans shall include, at a minimum:

(1) The revenue by fiscal quarter received to date by the Postal Service from the market test;

(2) Attributable costs incurred in conducting the market test, including product specific costs related to the administration of the market test; and

(3) Volumes of the experimental product by fiscal quarter.

(b) The Commission may request additional information or data as it deems appropriate.

(c) To assess the potential impact of a market test in a particular geographic market, the Commission may require the Postal Service to report the revenues from the market test for specified geographic markets.

(d) The Postal Service shall file the information required by the data collection plan in data collection reports. Data collection reports must be filed within 40 days after the close of each fiscal quarter during which the market test is offered, or such other period as the Commission may prescribe.

(e) The Postal Service shall file in its Annual Compliance Report information on each market test conducted during the fiscal year pursuant to § 3050.21(h) of this chapter.

## PART 3050—PERIODIC REPORTING

Sec.

3050.1 Definitions applicable to this part.

3050.2 Documentation of periodic reports.

3050.3 Access to information supporting Commission reports or evaluations.

3050.10 Analytical principles to be applied in the Postal Service's annual periodic reports to the Commission.

3050.11 Proposals to change an accepted analytical principle applied in the Postal Service's annual periodic reports to the Commission.

3050.12 Obsolescence of special studies relied on to produce the Postal Service's annual periodic reports to the Commission.

3050.13 Additional documentation required in the Postal Service's section 3652 report.

3050.14 Format of the Postal Service's section 3652 report.

3050.20 Compliance and other analyses in the Postal Service's section 3652 report.

3050.21 Content of the Postal Service's section 3652 report.

3050.22 Documentation supporting attributable cost estimates in the Postal Service's section 3652 report.

3050.23 Documentation supporting incremental cost estimates in the Postal Service's section 3652 report.

3050.24 Documentation supporting estimates of costs avoided by worksharing and other mail characteristics in the Postal Service's section 3652 report.

3050.25 Volume and revenue data.

3050.26 Documentation of demand elasticities and volume forecasts.

3050.27 Workers' Compensation Report.

3050.28 Monthly and pay period reports.

3050.30 Information needed to estimate the cost of the universal service obligation. [Reserved]

3050.35 Financial reports.

3050.40 Additional financial reporting.

3050.41 Treatment of additional financial reports.

3050.42 Proceedings to improve the quality of financial data.

3050.43 Information on program performance.

3050.60 Miscellaneous reports and documents.

AUTHORITY: 39 U.S.C. 503, 3651, 3652, 3653.

SOURCE: 74 FR 20850, May 5, 2009, unless otherwise noted.

### § 3050.1 Definitions applicable to this part.

(a) *Accepted analytical principle* refers to an analytical principle that was applied by the Commission in its most recent Annual Compliance Determination unless a different analytical principle subsequently was accepted by the Commission in a final rule.

(b) *Accepted quantification technique* refers to a quantification technique that was applied in the most recent iteration of the periodic report applying that quantification technique or was used to support a new analytical principle adopted in a subsequent rule 3050.11 proceeding.

(c) *Analytical principle* refers to a particular economic, mathematical, or statistical theory, precept, or assumption applied by the Postal Service in producing a periodic report to the Commission.

(d) *Annual Compliance Determination* refers to the report that 39 U.S.C. 3653

## § 3050.2

requires the Commission to issue each year evaluating the compliance of the Postal Service.

(e) *Annual periodic reports to the Commission* refers to all of the reports that the Postal Service is required to provide to the Commission each year.

(f) *Quantification technique* refers to any data entry or manipulation technique whose validity does not require the acceptance of a particular economic, mathematical, or statistical theory, precept, or assumption. A change in quantification technique should not change the output of the analysis in which it is employed.

(g) *Section 3652 report* refers to the annual compliance report provided by the Postal Service to the Commission pursuant to 39 U.S.C. 3652, but does not include the reports required by 39 U.S.C. 2803 and 2804.

### § 3050.2 Documentation of periodic reports.

(a) At the time that it submits any periodic report to the Commission, the Postal Service shall identify any input data that have changed, list any quantification techniques that it has changed, and list any corrections that it has made since that report was last submitted to and accepted by the Commission. It shall provide a brief narrative explanation of each listed change.

(b) If workpapers are required to support a periodic report, they shall:

(1) Show all calculations employed in producing each estimate;

(2) Be sufficiently detailed to allow all numbers used in such calculations to be traced back to public documents or to primary data sources; and

(3) Be submitted in a form, and be accompanied by sufficient explanation and documentation, to allow them to be replicated using a publicly available PC application.

(c) Spreadsheets used in preparing periodic reports shall be submitted in electronic form. They shall display the formulas used, their links to related spreadsheets, and shall not be password protected.

(d) Filing of portions of the documentation required by paragraphs (b) and (c) of this section that are not time critical may be delayed up to 2 weeks if

## 39 CFR Ch. III (7–1–16 Edition)

the Postal Service obtains permission from the Commission to defer filing of such portions at least 30 days prior to the date on which the periodic report is due.

### § 3050.3 Access to information supporting Commission reports or evaluations.

(a) The Commission shall have access to material if, in its judgment, the information supports any report, assessment, or evaluation required by title 39 of the United States Code, including:

(1) The working papers and supporting matter of the Postal Service or the Postal Service Inspector General in connection with any information submitted under 39 U.S.C. 3652; and

(2) Information that supports the Commission's annual assessment under 39 U.S.C. 3651.

(b) [Reserved]

### § 3050.10 Analytical principles to be applied in the Postal Service's annual periodic reports to the Commission.

In its annual periodic reports to the Commission, the Postal Service shall use only accepted analytical principles. With respect to its submissions under § 3050.26, however, the Postal Service may elect to use an analytical principle prior to its acceptance by the Commission.

### § 3050.11 Proposals to change an accepted analytical principle applied in the Postal Service's annual periodic reports to the Commission.

(a) To improve the quality, accuracy, or completeness of the data or analysis of data contained in the Postal Service's annual periodic reports to the Commission, the Commission, acting on its own behalf, may issue a notice of proceeding to change an accepted analytical principle. In addition, any interested person, including the Postal Service or a public representative, may submit a petition to the Commission to initiate such a proceeding.

(b) *Form and content of notice or petition.* The notice of proceeding or petition shall identify the accepted analytical principle proposed for review, explain its perceived deficiencies, and suggest how those deficiencies should be remedied.

(1) If the notice of proceeding or petition proposes that a specific alternative analytical principle be followed, it should include the data, analysis, and documentation on which the proposal is based, and, where feasible, include an estimate of the impact of the proposed change on the relevant characteristics of affected postal products, including their attributable cost, avoided cost, average revenue, or service attainment.

(2) If the petitioner requests access to data from the Postal Service to support the assertions or conclusions in its petition, and such data are not otherwise available, it shall accompany the petition with a request to gain access to such data. The petitioner's request should identify the data sought, and include the reasons for believing that the data will support its petition. To expedite its evaluation of the data request, the Commission may, after reasonable public notice, order that answers or objections be presented orally or in writing.

(c) *Procedures for processing a notice or petition.* To better evaluate a notice or petition to change an accepted analytical principle, the Commission may order that it be made the subject of discovery. By request of any interested person, or on its own behalf, the Commission may order that the petitioner and/or the Postal Service provide experts on the subject matter of the proposal to participate in technical conferences, prepare statements clarifying or supplementing their views, or answer questions posed by the Commission or its representatives.

(d) *Action on the notice or petition.* (1) After the conclusion of discovery procedures, if any, the Commission shall determine whether to issue a notice of proposed rulemaking based on the petition and the supporting material received. Such notice shall be evaluated by procedures that are consistent with 5 U.S.C. 553. Interested parties will be afforded an opportunity to present written comments and reply comments, and, if the Commission so orders, to present oral comments as well.

(2) If accepted by the Commission, the change proposed in the notice of proposed rulemaking shall be published in a final rule in the FEDERAL REG-

ISTER and on the Commission's Web site.

**§ 3050.12 Obsolescence of special studies relied on to produce the Postal Service's annual periodic reports to the Commission.**

The Postal Service shall provide a list of special studies whose results are used to produce the estimates in its annual periodic reports to the Commission. It shall indicate the date the study was completed and whether the study reflects current operating conditions and procedures. The Postal Service shall update the list annually.

**§ 3050.13 Additional documentation required in the Postal Service's section 3652 report.**

At the time the Postal Service files its section 3652 report, it shall include a brief narrative explanation of any changes to accepted analytical principles that have been made since the most recent Annual Compliance Determination was issued and the reasons that those changes were accepted.

**§ 3050.14 Format of the Postal Service's section 3652 report.**

The Postal Service's Cost and Revenue Analysis (CRA) report shall be presented in a format reflecting the classification structure in the Mail Classification Schedule.

[79 FR 24336, Apr. 30, 2014]

**§ 3050.20 Compliance and other analyses in the Postal Service's section 3652 report.**

(a) The Postal Service's section 3652 report shall include an analysis of the information that it contains in sufficient detail to demonstrate the degree to which, in the fiscal year covered by its report, each of its products (market dominant and competitive) comply with all of the applicable provisions of title 39 of the United States Code and the regulations promulgated thereunder, and promote the public policy objectives set out in title 39 of the United States Code.

(b) Its analysis shall be applied to products individually, and, where appropriate, to products collectively.

(c) It shall address such matters as non-compensatory rates, discounts

## § 3050.21

greater than avoided costs, and failures to achieve stated goals for on-time delivery standards. A more detailed analysis is required when the Commission observed and commented upon the same matter in its Annual Compliance Determination for the previous fiscal year.

### § 3050.21 Content of the Postal Service's section 3652 report.

(a) No later than 90 days after the close of each fiscal year, the Postal Service shall submit a report to the Commission analyzing its cost, volume, revenue, rate, and service information in sufficient detail to demonstrate that all products during such year comply with all applicable provisions of title 39 of the United States Code. The report shall provide the items in paragraphs (b) through (j) of this section.

(b) The volume and revenue generated by each product;

(c) The attributable costs of, and the contribution to institutional costs made by, each product;

(d) The quality of service received by each market dominant product, including the speed of delivery and the reliability of delivery;

(e) For each market dominant workshare discount offered during the reporting year:

(1) The per-item cost avoided by the Postal Service by virtue of such discount;

(2) The percentage of such per-item cost avoided that the per-item workshare discount represents;

(3) The per-item contribution made to institutional costs; and

(4) The factual and analytical bases for its conclusion that one or more of the exception provisions of 39 U.S.C. 3622(e)(2)(A) through (D) apply.

(f) For each market dominant negotiated service agreement:

(1) Identify its rates and service features;

(2) Estimate its costs, volumes, and revenues;

(3) Analyze its effect on the operational performance of the Postal Service, specifying the affected operations and, to the extent possible, quantifying the effect;

(4) Analyze the contribution of the agreement to institutional costs for its

## 39 CFR Ch. III (7-1-16 Edition)

most recent year of operation. The year analyzed shall end on the anniversary of the negotiated service agreement that falls within the fiscal year covered by the Postal Service's annual periodic reports to the Commission and include the 12 preceding months. The analysis shall show all calculations and fully identify all inputs. Inputs used to estimate the effect on total contribution to the Postal Service, such as unit costs and price elasticities, shall be updated using fiscal year values; and

(5) Analyze the effect of the negotiated service agreement (and other functionally equivalent negotiated service agreements) on the marketplace. If there were harmful effects, explain why those effects were not unreasonable.

(g) For each competitive negotiated service agreement:

(1) Identify its rates and service features; and

(2) Estimate its costs, volumes, and revenues.

(h) For market tests of experimental products:

(1) Estimate their costs, volumes, and revenues individually, and in aggregate, by market dominant and by competitive product group;

(2) Estimate the quality of service of each individual experimental product; and

(3) Indicate whether offering the experimental product has created an inappropriate competitive advantage for the Postal Service or any mailer.

(i) For each nonpostal service, estimate its costs, volumes, and revenues; and

(j) Provide any other information that the Postal Service believes will help the Commission evaluate the Postal Service's compliance with the applicable provisions of title 39 of the United States Code.

### § 3050.22 Documentation supporting attributable cost estimates in the Postal Service's section 3652 report.

(a) The items in paragraphs (b) through (p) of this section shall be reported when they have changed from those used in the most recent Annual Compliance Determination.

## Postal Regulatory Commission

## § 3050.24

(b) The CRA report, including relevant data on international mail services;

(c) The Cost Segments and Components (CSC) report;

(d) All input data and processing programs used to produce the CRA report, to include:

(1) CSC Reconciliation to Financial Statement and Account Reallocations;

(2) Manual Input Requirement (reflecting direct accounting or modeled costs);

(3) The CSC "A" report (showing how indirect costs are distributed to products based on the distribution of direct costs);

(4) The CSC "B" report (showing how indirect Property Equipment Supplies Services and Administrative (PESSA) costs are distributed to products);

(5) The CSC "D" report (showing final adjustments to total attributable and product-specific costs);

(6) The CSC "F" report (containing distribution keys for indirect labor components);

(7) The control file that includes the CRA program control string commands used to produce the CRA and the above-described CSC reports; and

(8) The master list of cost segment components, including all of the components used as distribution keys in the development of the CSC report and its accompanying reports.

(e) Spreadsheet workpapers underlying development of the CSC report by component. These workpapers shall include the updated factors and input data sets from the supporting data systems used, including:

(1) The In-Office Cost System (IOCS);

(2) The Management Operating Data System (MODS);

(3) The City Carrier Cost System (CCCS);

(4) The City Carrier Street Time Sampling System (CCSTS);

(5) The Rural Carrier Cost System (RCCS);

(6) The National Mail Count;

(7) The Transportation Cost System (TRACS);

(8) System for International Revenues and Volumes/Outbound (SIRV/O);

(9) System for International Revenues and Volumes/Inbound (SIRV/I);

(10) Military and International Dispatch and Accountability System; and

(11) Inbound International Revenue Accounting Systems (IAB data).

(f) The econometric analysis of carrier street time, including input data, processing programs, and output;

(g) The Window Service Supply Side Variability, Demand Side Variability, and Network Variability studies, including input data, processing programs, and output;

(h) The econometric analysis of purchased highway transportation cost variability, including input data, processing programs, and output;

(i) The econometric analysis of freight rail cost variability, including input data, processing programs, and output;

(j) A list and summary description of any transportation contracts whose unit rates vary according to the level of postal volume carried. The description should include the product or product groups carried under each listed contract;

(k) Spreadsheets and processing programs distributing attributable mail processing costs;

(l) The Vehicle Service Driver Data Collection System;

(m) Input data, processing programs, and output of the Vehicle Service Driver Cost Variability Study;

(n) Econometric analysis of postmaster cost variability;

(o) Floor Space Survey; and

(p) Density studies used to convert weight to cubic feet of mail.

### **§ 3050.23 Documentation supporting incremental cost estimates in the Postal Service's section 3652 report.**

Input data, processing programs, and output of an incremental cost model shall be reported.

### **§ 3050.24 Documentation supporting estimates of costs avoided by worksharing and other mail characteristics in the Postal Service's section 3652 report.**

(a) The items in paragraphs (b) through (l) of this section shall be reported, including supporting calculations and derivations.

(b) Letter, card, flat, parcel and non-flat machinable mail processing cost models with Delivery Point Sequence

**§ 3050.25**

**39 CFR Ch. III (7-1-16 Edition)**

percentages calculated, which shall include:

- (1) Coverage factors for any equipment where coverage is less than 100 percent;
- (2) MODS productivities;
- (3) Piggyback factors and supporting data;
- (4) Entry profiles, bundle sorts, and pieces per bundle;
- (5) Bundle breakage, handlings, and density;
- (6) Mail flow density and accept rates;
- (7) Remote Computer Reader finalization costs, cost per image, and Remote Bar Code Sorter leakage;
- (8) Percentage of mail finalized to carrier route;
- (9) Percentage of mail destinating at post office boxes; and
- (10) Wage rates and premium pay factors.
- (c) Pallet cost models for Periodicals;
- (d) Sack cost models for Periodicals;
- (e) Bundle cost models for Periodicals;
- (f) Other container cost models for Periodicals;
- (g) Analysis of Periodicals container costs;
- (h) Business Reply Mail cost supporting material;
- (i) Mail processing units costs for Carrier Route, High Density, and Saturation mail;
- (j) Mail processing unit costs by shape and cost pool for each product and benchmark category;
- (k) Delivery costs by product, shape, presort level, automation compatibility, and machinability, including Detached Address Label cost calculations; and
- (l) Dropship cost avoidance models.

**§ 3050.25 Volume and revenue data.**

(a) The items in paragraphs (b) through (e) of this section shall be provided.

(b) The Revenue, Pieces, and Weight (RPW) report, including estimates by shape, weight, and indicia, and the underlying billing determinants, broken out by quarter, within 90 days of the close of each fiscal year;

(c) Revenue, pieces, and weight by rate category and special service by quarter, within 30 days of the close of the quarter;

(d) Quarterly Statistics Report, including estimates by shape, weight, and indicia, within 30 days of the close of the quarter; and

(e) Billing determinants within 40 days of the close of the quarter.

**§ 3050.26 Documentation of demand elasticities and volume forecasts.**

By January 20 of each year, the Postal Service shall provide econometric estimates of demand elasticity for all postal products accompanied by the underlying econometric models and the input data sets used; and a volume forecast for the current fiscal year, and the underlying volume forecasting model.

**§ 3050.27 Workers' Compensation Report.**

The Workers' Compensation Report, including summary workpapers, shall be provided by March 1 of each year.

**§ 3050.28 Monthly and pay period reports.**

(a) The reports in paragraphs (b) through (f) of this section shall be provided within 15 days of the close of the relevant period or as otherwise stated.

(b) Monthly Summary Financial Report on the 24th day of the following month, except that the report for the last month of each quarter shall be provided at the time that the Form 10-Q report is provided.

(1) The report shall follow the formats as shown below.

Table 1—USPS Monthly Financial Statement  
 Month, Fiscal Year  
 [\$ millions]

	Current Period					Year-to-Date				
	Actual	Plan	SPLY	% Plan Var	% SPLY Var	Actual	Plan	SPLY	% Plan Var	% SPLY Var
Operating Revenue:.....										
Mail and Services Revenue.....										
Government Appropriations.....										
Total Operating Revenue.....										
Operating Expenses:										
Personnel Compensation and Benefits.....										
Transportation.....										
Supplies and Services.....										
Other Expenses.....										
Total Operating Expenses.....										
Net Operating Income.....										
Interest Income.....										
Interest Expense.....										
Total Net Income.....										
Other Operating Statistics:										
Mail Volume (Millions):										
Total Market Dominant Volumes...										
Total Competitive Product Volumes.....										
Total Mail Volume.....										
Total Workhours (Millions).....										
Total Career Employees.....										
Total Non-Career Employees.....										



Table 2—Mail Volume and Mail Revenue

Month, Fiscal Year

[Thousands]

	Current Period			Year-to-Date		
	Actual	SPLY	% SPLY Var	Actual	SPLY	% SPLY Var
Market Dominant Products:.....						
First Class:						
Volume.....						
Revenue.....						
Periodicals:						
Volume.....						
Revenue.....						
Standard Mail:						
Volume.....						
Revenue.....						
Package Services:						
Volume.....						
Revenue.....						
All Other Market Dominant Mail:						
Volume.....						
Revenue.....						
Total Market Dominant Products:						
Volume.....						
Revenue.....						
Total Competitive Products:						
Volume.....						
Revenue.....						
Total All Mail:						
Volume.....						
Revenue.....						

Table 3—USPS Expenses

Month, Fiscal Year

[\$ millions]

	Current Period					Year-to-Date				
	Actual	Plan	SPLY	% Plan Var	% SPLY Var	Actual	Plan	SPLY	% Plan Var	% SPLY Var
Personnel Expenses:										
Salaries and Benefits:										
City Delivery										
Mail Processing										
Customer Services and Retail										
Rural Delivery										
Other, including Plant and Vehicle Maintenance										
Operational Support, Postmasters, and Administration										
Total Salaries and Benefits										
Other Personnel Related Expenses:										
Retiree Health Benefits										
Workers' Compensation										
All Other Personnel Related Expenses										
Total Other Personnel Related Expenses										
Total Personnel Compensation and Benefits										
Non-Personnel Expenses:										
Transportation										
Supplies and Services										
Depreciation and Amortization										
Rent and Utilities										
Vehicle Maintenance Service										
Information Technology										
Rural Carrier Equipment Maintenance										
Other Non-Personnel Expenses										
Total Non-Personnel Expenses										
Total Operating Expenses										
Interest Expense										
Total Expenses										

Table 4—USPS Workhours

Month, Fiscal Year

[data in thousands]

	Current Period					Year-to-Date				
	Actual	Plan	SPLY	% Plan Var	% SPLY Var	Actual	Plan	SPLY	% Plan Var	% SPLY Var
Workhours:										
City Delivery										
Mail Processing										
Mail Processing										
Customer Services and Retail										
Rural Delivery										
Other, including Plant and Vehicle Maintenance, Operational Support, Postmasters, and Administration										
Total Workhours										
Overtime Ratio per 100 Workhours										

(2) [Reserved]

(c) National Consolidated Trial Balances and the Revenue and Expense Summary (monthly);

### § 3050.30

(d) National Payroll Hours Summary in electronic form (pay period);

(e) On-roll and Paid Employee Statistics (ORPES) (pay period); and

(f) Postal Service Active Employee Statistical Summary (HAT report) (pay period).

### § 3050.30 Information needed to estimate the cost of the universal service obligation. [Reserved]

### § 3050.35 Financial reports.

(a) The reports in paragraphs (b) through (d) of this section shall be provided annually at the time indicated.

(b) Annual Report of the Postmaster General (when released to the public);

(c) Congressional Budget Submission and supporting workpapers, including Summary Tables SE 1, 2, and 6 (within 7 days of the submission of the Federal Budget by the President to the Congress); and

(d) Integrated Financial Plan (within 7 days of approval by the Board of Governors).

### § 3050.40 Additional financial reporting.

(a) *In general.* The Postal Service shall file with the Commission:

(1) Within 40 days after the end of each fiscal quarter, a quarterly report containing the information required by the Securities and Exchange Commission to be included in quarterly reports under sections 13 and 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m, 78o(d)) on Form 10-Q, as such form (or any successor form) may be revised from time to time;

(2) Within 60 days after the end of each fiscal year, an annual report containing the information required by the Securities and Exchange Commission to be included in annual reports under such sections on Form 10-K, as such form (or any successor form) may be revised from time to time; and

(3) Periodic reports within the time frame and containing the information prescribed in Form 8-K of the Securities and Exchange Commission, as such form (or any successor form) may be revised from time to time.

(b) *Internal control report.* For purposes of defining the reports required by paragraph (a)(2) of this section, the Postal Service shall comply with the

### 39 CFR Ch. III (7-1-16 Edition)

rules prescribed by the Securities and Exchange Commission implementing section 404 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7262), beginning with the annual report for fiscal year 2010.

(c) *Financial reporting.* The reports required by paragraph (a)(2) of this section shall include, with respect to the Postal Service's pension and post-retirement health obligations:

(1) The funded status of the Postal Service's pension and post-retirement health obligations;

(2) Components of the net change in the fund balances and obligations and the nature and cause of any significant changes;

(3) Components of net periodic costs;

(4) Cost methods and assumptions underlying the relevant actuarial valuations;

(5) The effect of a 1 percentage point increase in the assumed health care cost trend rate for each future year on the service and interest costs components of net periodic post-retirement health cost and the accumulated obligation;

(6) Actual contributions to and payments from the funds for the years presented and the estimated future contributions and payments for each of the following 5 years;

(7) The composition of plan assets reflected in the fund balances; and

(8) The assumed rate of return on fund balances and the actual rates of return for the years presented.

(d) *Time of filing.* Within 5 business days of receiving the data listed under paragraph (c) of this section from the Office of Personnel Management, the Postal Service shall provide two copies of that data to the Commission.

(e) *Segment reporting.*

(1) Beginning with reports for fiscal year 2010, for purposes of the reports required under paragraphs (a)(1) and (2) of this section, the Postal Service shall include segment reporting.

(2) The Postal Service shall determine the appropriate segment reporting under paragraph (e)(1) of this section after consultation with the Commission.

**§ 3050.41 Treatment of additional financial reports.**

(a) For purposes of the reports required by §3050.40(a)(2), the Postal Service shall obtain an opinion from an independent auditor on whether the information listed in §3050.40(c) is fairly stated in all material respects, either in relation to the basic financial statements as a whole or on a stand-alone basis.

(b) *Supporting matter.* The Commission shall have access to the audit documentation and any other supporting matter of the Postal Service and its independent auditor in connection with any information submitted under §3050.40.

**§ 3050.42 Proceedings to improve the quality of financial data.**

The Commission may, on its own motion or on request of an interested party, initiate proceedings to improve the quality, accuracy, or completeness of Postal Service data required under §3050.40 whenever it shall appear that the data have become significantly inaccurate or can be significantly improved; or those revisions are, in the judgment of the Commission, otherwise necessitated by the public interest.

**§ 3050.43 Information on program performance.**

(a) The Postal Service shall provide the items in paragraphs (b)(1) through (3) of this section at the same time that the President submits an annual budget to Congress:

(b)(1) The comprehensive statement required by 39 U.S.C. 2401(e);

(2) The performance plan required by 39 U.S.C. 2803; and

(3) The program performance reports required by 39 U.S.C. 2804.

(c) Section 3050.10 does not apply to the reports referenced in this section.

**§ 3050.60 Miscellaneous reports and documents.**

(a) The reports in paragraphs (b) through (g) of this section shall be provided at the times indicated.

(b) A master list of publications and handbooks, including those related to internal information procedures, data collection forms, and corresponding

training handbooks by July 1, 2009, and again when changed;

(c) The items listed in paragraph (b) of this section in hard copy form, and in electronic form, if available;

(d) Household Diary Study (when completed);

(e) Input data and calculations used to produce the annual Total Factor Productivity estimates (by March 1 of each year);

(f) Succinct narrative explanations of how the estimates in the most recent Annual Compliance Determination were calculated and the reasons that particular analytical principles were followed. The narrative explanations shall be comparable in detail to that which had been provided in Library Reference 1 in omnibus rate cases processed under the Postal Reorganization Act (by July 1 of each year); and

(g) An update of the history of changes in postal volumes, revenues, rates, and fees that appears in library references USPS-LR-L-73 through 76 in Docket No. R2006-1 (by July 1 of each year).

**PART 3055—SERVICE PERFORMANCE AND CUSTOMER SATISFACTION REPORTING**

**Subpart A—Annual Reporting of Service Performance Achievements**

Sec.

3055.1 Annual reporting of service performance achievements.

3055.2 Contents of the annual report of service performance achievements.

3055.3 Reporting exceptions.

3055.4 Internal measurement systems.

3055.5 Changes to measurement systems, service standards, service goals or reporting methodologies.

3055.6 Addition of new market dominant products or changes to existing market dominant products.

3055.7 Special study.

3055.20 First-Class Mail.

3055.21 Standard Mail.

3055.22 Periodicals.

3055.23 Package Services.

3055.24 Special Services.

3055.25 Non-postal products. [Reserved]

**Subpart B—Periodic Reporting of Service Performance Achievements**

3055.30 Periodic reporting of service performance achievements.

## § 3055.1

## 39 CFR Ch. III (7–1–16 Edition)

- 3055.31 Contents of the Quarterly Report of service performance achievements.
- 3055.32 Measurement systems using a delivery factor.
- 3055.45 First-Class Mail.
- 3055.50 Standard Mail.
- 3055.55 Periodicals.
- 3055.60 Package Services.
- 3055.65 Special Services.
- 3055.70 Non-postal products. [Reserved]

### Subpart C—Reporting of Customer Satisfaction

- 3055.90 Reporting of customer satisfaction.
- 3055.91 Consumer access to postal services.
- 3055.92 Customer Experience Measurement Surveys.

AUTHORITY: 39 U.S.C. 503, 3622(a), 3652(d) and (e); 3657(c).

SOURCE: 75 FR 38742, July 6, 2010, unless otherwise noted.

### Subpart A— Annual Reporting of Service Performance Achievements

#### § 3055.1 Annual reporting of service performance achievements.

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 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.

#### § 3055.2 Contents of the annual report of service performance achievements.

(a) The items in paragraphs (b) through (k) of this section shall be included in the annual report of service performance achievements.

(b) The class or group-specific reporting requirements specified in §§ 3055.20 through 3055.25.

(c) The applicable service standard(s) for each product.

(d) The applicable service goal(s) for each product.

(e) A description of the measurement system for each product, including:

(1) A description of what is being measured;

(2) A description of the system used to obtain each measurement;

(3) A description of the methodology used to develop reported data from measured data;

(4) A description of any changes to the measurement system or data reporting methodology implemented within the reported fiscal year; and

(5) Where proxies are used, a description of and justification for the use of each proxy.

(f) A description of the statistical validity and reliability of the results for each measured product.

(g) A description of how the sampled data represents the national geographic mail characteristics or behavior of the product.

(h) For each product that does not meet a service standard, an explanation of why the service standard is not met, and a plan describing the steps that have or will be taken to ensure that the product meets or exceeds the service standard in the future.

(i) The identification of each product, or component of a product, granted an exception from reporting pursuant to § 3055.3, and a certification that the rationale for originally granting the exception remains valid.

(j) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

(k) For each product, documentation showing how the reports required by subpart A of this part were derived from the reports required by subpart B of this part. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

#### § 3055.3 Reporting exceptions.

(a) The Postal Service may petition the Commission to request that a product, or component of a product, be excluded from reporting, provided the Postal Service demonstrates that:

(1) The cost of implementing a measurement system would be prohibitive in relation to the revenue generated by the product, or component of a product;

(2) The product, or component of a product, defies meaningful measurement; or

(3) The product, or component of a product, is in the form of a negotiated service agreement with substantially all components of the agreement included in the measurement of other products.

(b) The Postal Service shall identify each product or component of a product granted an exception in each report required under subparts A or B of this part, and certify that the rationale for originally granting the exception remains valid.

**§ 3055.4 Internal measurement systems.**

Service performance measurements obtained from internal measurement systems or hybrid measurement systems (which are defined as systems that rely on both an internal and an external measurement component) shall not be used to comply with any reporting requirement under subparts A or B of this part without prior Commission approval.

**§ 3055.5 Changes to measurement systems, service standards, service goals, or reporting methodologies.**

The Postal Service shall file notice with the Commission describing all changes to measurement systems, service standards, service goals or reporting methodologies, including the use of proxies for reporting service performance, 30 days prior to planned implementation. The Commission may initiate a proceeding at any time to consider such changes if it appears that the changes might have a material impact on the accuracy, reliability, or utility of the reported measurement, or if the changes might have a material impact on the characteristics of the underlying product.

**§ 3055.6 Addition of new market dominant products or changes to existing market dominant products.**

Whenever the Postal Service proposes the addition of a new market dominant product or a change to an existing market dominant product, it also shall propose new or revised (as necessary) service performance measurement systems, service standards, service goals, data reporting elements, and data reporting methodologies.

**§ 3055.7 Special study.**

Included in the second section 3652 report due after this rule becomes final, and every 2 years thereafter, the Postal Service shall provide a report, by class of mail, on delivery performance to remote areas of the Alaska, Caribbean, and Honolulu districts.

**§ 3055.20 First-Class Mail.**

(a) *Single-Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels.* For each of the Single-Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, and 3/4/5-day service standards.

(b) *Outbound Single-Piece First-Class Mail International and Inbound Single-Piece First-Class Mail International.* For each of the Outbound Single-Piece First-Class Mail International and Inbound Single-Piece First-Class Mail International products within the First-Class Mail class, report the on-time service performance (as a percentage rounded to one decimal place).

**§ 3055.21 Standard Mail.**

For each product within the Standard Mail class, report the on-time service performance (as a percentage rounded to one decimal place).

**§ 3055.22 Periodicals.**

For each product within the Periodicals class, report the on-time service performance (as a percentage rounded to one decimal place).

**§ 3055.23 Package Services.**

For each product within the Package Services class, report the on-time service performance (as a percentage rounded to one decimal place).

**§ 3055.24 Special Services.**

For each product within the Special Services group, report the percentage of time (rounded to one decimal place) that each product meets or exceeds its service standard.

**§ 3055.25**

**§ 3055.25 Nonpostal products. [Reserved]**

**Subpart B—Periodic Reporting of Service Performance Achievements**

**§ 3055.30 Periodic reporting of service performance achievements.**

For each market dominant product specified in the Mail Classification Schedule in part 3020, appendix A to subpart A of part 3020 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).

**§ 3055.31 Contents of the Quarterly Report of service performance achievements.**

(a) The items in paragraphs (b) through (e) of this section shall be included in the quarterly report of service performance achievements.

(b) The class or group-specific reporting items specified in §§ 3055.45 through 3055.70.

(c) The identification of each product, or component of a product, granted an exception from reporting pursuant to § 3055.3, and a certification that the rationale for originally granting the exception remains valid.

(d) Documentation showing how data reported at a given level of aggregation were derived from data reported at greater levels of disaggregation. Such documentation shall be in electronic format with all data links preserved. It shall show all formulas used, including volumes and other weighting factors.

(e) A year-to-date aggregation of each data item provided in each Quarterly Report due for the reported fiscal year, where applicable, including volumes and other weighting factors provided in electronic format, with formulas shown and data links preserved to allow traceability to individual Quarterly Reports.

**§ 3055.32 Measurement systems using a delivery factor.**

For measurements that include a delivery factor, the duration of the deliv-

**39 CFR Ch. III (7–1–16 Edition)**

ery factor also shall be presented independent of the total measurement.

**§ 3055.45 First-Class Mail.**

(a) *Single-Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels.* For each of the Single-Piece Letters/Postcards, Bulk Letters/Postcards, Flats, and Parcels products within the First-Class Mail class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the overnight, 2-day, and 3/4/5-day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the overnight, 2-day, and 3/4/5-day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) *Outbound Single-Piece First-Class Mail International and Inbound Single-Piece First-Class Mail International.* For each of the Outbound Single-Piece First-Class Mail International and Inbound Single-Piece First-Class Mail International products within the First-Class Mail class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

**§ 3055.50 Standard Mail.**

(a) For each product within the Standard Mail class, report the on-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District,

## Postal Regulatory Commission

## § 3055.65

Postal Administrative Area, and National levels.

(b) For each product within the Standard Mail class, report the service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry (2-day), Destination Entry (3-day through 4-day), Destination Entry (5-day through 10-day), End-to-End (3-day through 5-day), End-to-End (6-day through 10-day), and End-to-End (11-day through 22-day) entry mail/service standards, provided at the District, Postal Administrative Area, and National levels.

### § 3055.55 Periodicals.

(a) *Within County Periodicals.* For the Within County Periodicals product within the Periodicals class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

(b) *Outside County Periodicals.* For the Outside County Periodicals product within the Periodicals class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End-to-End entry mail, provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End-to-End entry mail, provided at the Postal Administrative Area and National levels.

### § 3055.60 Package Services.

(a) *Single-Piece Parcel Post.* For the Single-Piece Parcel Post product within the Package Services class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by mail subject to the 2-day through 4-day and 5-day through 20-day service standards, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by mail subject to the 2-day through 4-day and 5-day through 20-day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) *Bound Printed Matter Flats, Bound Printed Matter Parcels, and Media Mail/Library Mail.* For each of the Bound Printed Matter Flats, Bound Printed Matter Parcels, and Media Mail/Library Mail products within the Package Services class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, disaggregated by the Destination Entry and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels.

(c) *Inbound Surface Parcel Post (at UPU rates).* For the Inbound Surface Parcel Post (at UPU rates) product within the Package Services class, report the:

(1) On-time service performance (as a percentage rounded to one decimal place), provided at the Postal Administrative Area and National levels; and

(2) Service variance (as a percentage rounded to one decimal place) for mail delivered within +1 day, +2 days, and +3 days of its applicable service standard, provided at the Postal Administrative Area and National levels.

### § 3055.65 Special Services.

(a) For each product within the Special Services group, report the percentage of time (rounded to one decimal



**§ 3055.70**

place) that each product meets or exceeds its service standard, provided at the National level.

(b) *Additional reporting for Ancillary Services.* For the Certified Mail, electronic Return Receipt, Delivery Confirmation, Insurance, and an aggregation of all other services within the Ancillary Services product, individually report the percentage of time (rounded to one decimal place) that each service meets or exceeds its service standard. For green card Return Receipt report:

- (1) The number of EXFC seed mailpieces sent;
- (2) The percentage of green cards properly completed and returned;
- (3) The percentage of green cards not properly completed, but returned;
- (4) The percentage of mailpieces returned without a green card signature; and
- (5) The percentage of the time the service meets or exceeds its overall service standard.

(c) *Additional reporting for Post Office Box Service.* For Post Office Box Service, report the percentage of time (rounded to one decimal place) that the product meets or exceeds its service standard, provided at the District and Postal Administrative Area levels.

(d) *Additional reporting for Stamp Fulfillment Service.* For Stamp Fulfillment Service, report:

- (1) The on-time service performance (as a percentage rounded to one decimal place), disaggregated by customer order entry method; and
- (2) The service variance (as a percentage rounded to one decimal place) for orders fulfilled within +1 day, +2 days, and +3 days of their applicable service standard, disaggregated by customer order entry method.

[75 FR 38742, July 6, 2010, as amended at 76 FR 70656, Nov. 15, 2011]

**§ 3055.70 Nonpostal products. [Reserved]**

**Subpart C—Reporting of Customer Satisfaction**

**§ 3055.90 Reporting of customer satisfaction.**

For each market dominant product specified in the Mail Classification

Schedule in part 3020, appendix A to subpart A of part 3020 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.

**§ 3055.91 Consumer access to postal services.**

(a) The following information pertaining to post offices shall be reported, disaggregated by type of post office facility, and provided at the Postal Administrative Area and National levels:

- (1) The number of post offices at the beginning of the reported fiscal year;
- (2) The number of post offices at the end of the reported fiscal year;
- (3) The number of post office closings in the reported fiscal year;
- (4) The number of post office emergency suspensions in effect at the beginning of the reported fiscal year;
- (5) The number of post office emergency suspensions in the reported fiscal year; and
- (6) The number of post office emergency suspensions in effect at the end of the reported fiscal year.

(b) The following information pertaining to delivery points shall be reported, disaggregated by delivery point type, provided at the Postal Administrative Area and National levels:

- (1) The number of residential delivery points at the beginning of the reported fiscal year;
- (2) The number of residential delivery points at the end of the reported fiscal year;
- (3) The number of business delivery points at the beginning of the reported fiscal year; and
- (4) The number of business delivery points at the end of the reported fiscal year.

(c) The following information pertaining to collection boxes shall be reported, provided at the Postal Administrative Area and National levels:

- (1) The number of collection boxes at the beginning of the reported fiscal year;

## Postal Regulatory Commission

## § 3060.11

(2) The number of collection boxes at the end of the reported fiscal year;

(3) The number of collection boxes removed during the reported fiscal year; and

(4) The number of collection boxes added to new locations during the reported fiscal year.

(d) The average customer wait time in line for retail service shall be reported. Data shall be provided for the beginning of the reported fiscal year and for the close of each successive fiscal quarter at the Postal Administrative Area and National levels.

### § 3055.92 Customer Experience Measurement Surveys.

(a) The report shall include a copy of each type of Customer Experience Measurement instrument, or any similar instrument that may supersede the Customer Experience Measurement instrument used in the preceding fiscal year.

(b) The report shall include information obtained from each type of Customer Experience Measurement instrument, or any similar instrument that may supersede the Customer Experience Measurement instrument including:

(1) A description of the customer type targeted by the survey;

(2) The number of surveys initiated and the number of surveys received; and

(3) Where the question asked is subject to a multiple choice response, the number of responses received for each question, disaggregated by each of the possible responses.

## PART 3060—ACCOUNTING PRACTICES AND TAX RULES FOR THE THEORETICAL COMPETITIVE PRODUCTS ENTERPRISE

Sec.

3060.1 Scope.

3060.10 Costing.

3060.11 Valuation of assets.

3060.12 Asset allocation.

3060.13 Valuation of liabilities.

3060.14 Competitive products enterprise statement of allocated assets and liabilities.

3060.20 Reports.

3060.21 Income report.

3060.22 Financial status report.

3060.23 Identified property and equipment assets report.

3060.24 Competitive products fund report.

3060.30 Statement of allocated assets and liabilities for competitive products.

3060.31 Initial filing.

3060.40 Calculation of the assumed Federal income tax.

3060.41 Supporting documentation.

3060.42 Commission review.

3060.43 Annual transfer from competitive products fund to Postal Service fund.

AUTHORITY: 39 U.S.C. 503, 2011, 3633, 3634.

SOURCE: 73 FR 79261, Dec. 24, 2008, unless otherwise noted.

### § 3060.1 Scope.

The rules in this part are applicable to the Postal Service's theoretical competitive products enterprise developed pursuant to 39 U.S.C. 2011 and 3634 and to the Postal Service's obligation to calculate annually an assumed Federal income tax on competitive products income and transfer annually any such assumed Federal income tax due from the Competitive Products Fund to the Postal Service Fund.

### § 3060.10 Costing.

(a) The assumed taxable income from competitive products for the Postal Service's theoretical competitive products enterprise for a fiscal year shall be based on total revenues generated by competitive products during that year less the costs identified in paragraph (b) of this section calculated using the methodology most recently approved by the Commission.

(b) The net income for the Postal Service's theoretical competitive products enterprise shall reflect the following costs:

(1) Attributable costs, including volume variable and product specific costs; and

(2) The appropriate share of institutional costs assigned to competitive products by the Commission pursuant to 39 U.S.C. 3633(a)(3).

### § 3060.11 Valuation of assets.

For the purposes of 39 U.S.C. 2011, the total assets of the Postal Service theoretical competitive products enterprise are the greater of:

(a) The percentage of total Postal Service revenues and receipts from

## § 3060.12

## 39 CFR Ch. III (7–1–16 Edition)

competitive products times the total net assets of the Postal Service, or

(b) The net assets related to the provision of competitive products as determined pursuant to § 3060.12.

### § 3060.12 Asset allocation.

Within 6 months of January 23, 2009, and for each fiscal year thereafter, the Postal Service will develop the net assets of the theoretical competitive products enterprise as follows:

(a) Identify all asset accounts within the Postal Service's Chart of Accounts used solely for the provision of competitive products.

(b) Identify all asset accounts within the Postal Service's Chart of Accounts used solely for the provision of market dominant products.

(c) The portion of asset accounts in the Postal Service's Chart of Accounts that are not identified in either paragraph (a) or paragraph (b) of this section shall be assigned to the Postal Service theoretical competitive products enterprise using a method of allocation based on appropriate revenue or cost drivers approved by the Commission.

(d) Within 6 months of January 23, 2009, the Postal Service shall submit to the Commission for approval a proposed methodology detailing how each asset account identified in the Chart of Accounts shall be allocated to the theoretical competitive products enterprise and provide an explanation in support of each allocation.

(e) If the Postal Service desires to change the methodologies outlined above, it shall utilize the procedures provided in § 3050.11 of this chapter.

### § 3060.13 Valuation of liabilities.

Within 6 months of January 23, 2009, and for each fiscal year thereafter, the Postal Service will develop the liabilities of the theoretical competitive products enterprise as follows:

(a) Identify all liability accounts within the Postal Service's Chart of Accounts used solely for the provision of competitive products.

(b) Identify all liability accounts within the Postal Service's Chart of Accounts used solely for the provision of market dominant products.

(c) The portion of liability accounts in the Postal Service's Chart of Accounts that are not identified in either paragraph (a) or paragraph (b) of this section shall be assigned to the theoretical competitive products enterprise using a method of allocation based on appropriate revenue or cost drivers approved by the Commission.

(d) Within 6 months of the effective date of these rules, the Postal Service shall submit to the Commission for approval a proposed methodology detailing how each liability account identified in the Chart of Accounts shall be allocated to the theoretical competitive products enterprise and provide an explanation in support of each allocation.

(e) If the Postal Service desires to change the methodologies outlined above, it shall utilize the procedures provided in § 3050.11 of this chapter.

### § 3060.14 Competitive products enterprise statement of allocated assets and liabilities.

The Postal Service will report the assets and liabilities of the theoretical competitive products enterprise as computed under §§ 3060.12 and 3060.13 in the format as prescribed under § 3060.30 for each fiscal year starting with FY 2010.

### § 3060.20 Reports.

(a) Beginning with reports for FY 2009, the Postal Service shall file with the Commission each of the reports required by this part by no later than 90 days after the close of each fiscal year. For FY 2008, the Postal Service may file these reports by January 15, 2009, with the exception of the report required by § 3060.24.

(b) Each report shall include workpapers that cite all numbers to primary sources and such other information needed to present complete and accurate financial information concerning the provision of competitive products.

(c) Each report shall utilize the same books of accounts and data collection systems used to produce the report required by part 3050 of this chapter.

(d) Each report shall include summary descriptions of computations

**Postal Regulatory Commission**

**§ 3060.22**

used, assumptions made, and other relevant information in the form of notes to the financial statements.

(e) A one-time extension until January 15, 2009, shall be permitted for the submission of the reports due for fiscal year ending September 30, 2008.

(f) The accounting practices used by the Postal Service in the reports filed for FY 2008, as approved by the Commission, shall be used for all future re-

ports until such time as they may be changed by the Commission. If the Postal Service desires to change such practices, it shall utilize the procedures provided in §3050.11 of this chapter.

**§ 3060.21 Income report.**

The Postal Service shall file an Income Report in the form and content of Table 1, below.

**TABLE 1—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP-01**  
[\$ in 000s]

	FY 20xx	FY 20xx-1	Percent change from SPLY	Percent change from SPLY
Revenue: .....	\$x,xxx	\$x,x xx	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:				
(4) Volume-Variable Costs .....	x,xxx	x,xxx	xxx	xx.x
(5) Product Specific Costs .....	x,xxx	x,xxx	xxx	xx.x
(6) Total Competitive Products Attributable Costs .....	x,xxx	x,xxx	xxx	xx.x
(7) Net Income Before Institutional Cost Contribution ...	x,xxx	x,xxx	xxx	
(8) Required Institutional Cost Contribution .....	x,xxx	x,xxx	\$xxx	x.x.x
(9) Net Income (Loss) Before Tax .....	x,xxx	x,xxx	\$xxx	xx.x
(10) Assumed Federal Income Tax .....	x,xxx	x,xxx	\$xxx	xx.x
(11) 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): Sum total of Competitive Products costs (sum of lines 4 and 5).
- Line (7): Difference between Competitive Products total revenues and attributable costs (line 3 less line 6).
- Line (8): Minimum amount of Institutional Cost contribution required under 39 CFR 3015.7 of this chapter.
- Line (9): Line 7 less line 8.
- Line (10): Total assumed Federal income tax as calculated under 39 CFR 3060.40.
- Line (11): Line 9 less line 10.

**§ 3060.22 Financial status report.**

The Postal Service shall file a Financial Status Report in the form and content of Table 2, below.

**TABLE 2—ANNUAL SUMMARY OF COMPETITIVE PRODUCTS FINANCIALS—PRC FORM CP-02**  
[\$ in 000s]

	Beginning value	Change from prior year	Ending value
(1) Cumulative Net Income (Loss) After Assumed Federal Income Tax.			
(2) Total Financial Obligations (List of Financial Obligations).			
(3) Total Financial Investments (List of Financial Investments).			

- Line 1: Beginning Value: Sum total of Net Income (Loss) as of October 1 of Reportable Fiscal Year.  
Change from Prior Year: Amount of Net Income (Loss) of Reportable Fiscal Year.  
Ending Value: Sum of Beginning Value and the Change from Prior Year.
- Line 2: Beginning Value: Sum total of Financial Obligations as of October 1 of Reportable Fiscal Year.  
Change from Prior Year: Amount of Net Financial Obligations of Reportable Fiscal Year.  
Ending Value: Sum of Beginning Value and the Change from Prior Year.
- Line 3: Beginning Value: Sum total of Financial Investments as of October 1 of Reportable Fiscal Year.

**§ 3060.23**

**39 CFR Ch. III (7-1-16 Edition)**

**TABLE 2—ANNUAL SUMMARY OF COMPETITIVE PRODUCTS FINANCIALS—PRC FORM CP-02—**  
Continued  
[\$ in 000s]

	Beginning value	Change from prior year	Ending value
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Change from Prior Year: Amount of Net Financial Investments of Reportable Fiscal Year.  
Ending Value: Sum of Beginning Value and the Change from Prior Year.

**§ 3060.23 Identified property and equipment assets report.**

The Postal Service shall file an Identified Property and Equipment Assets Report in the form and content of Table 3, below.

**TABLE 3—COMPETITIVE PRODUCTS PROPERTY AND EQUIPMENT ASSETS—PRC FORM CP-03**  
[\$ in 000s]

Finance No.	Finance location	Asset identifier	Asset description	Cost	Accumulated depreciation	Net book value
Total .....	.....	.....	.....	\$x,xxx	\$x,xxx	\$x,xxx

**§ 3060.24 Competitive products fund report.**

Within 90 days of the close of each fiscal year the Postal Service will provide the most recent report of the activity of the Competitive Products Fund as provided to the Secretary of the Treasury under 39 U.S.C. 2011(i)(1).

**§ 3060.30 Statement of allocated assets and liabilities for competitive products.**

(a) The Postal Service shall file a Statement of Allocated Assets and Liabilities for Competitive Products in the form and content of Table 4, below.

**TABLE 4—STATEMENT OF ALLOCATED ASSETS AND LIABILITIES FOR COMPETITIVE PRODUCTS—PRC FORM CP-04**  
[\$ in millions]

	USPS annual report	FY20XX competitive products	FY 20XX-1 competitive products	Distributed on basis of:
<b>Total net assets</b>				
Cash and Cash Equivalents .....	\$x,xxx	\$x,xxx	\$x,xxx	
Net Accounts Receivable .....	x,xxx	x,xxx	x,xxx	
Supplies, Advances and Prepayments .....	x,xxx	x,xxx	x,xxx	
Appropriations Receivable—Revenue Forgone .....	x,xxx	x,xxx	x,xxx	
<b>Total Current Assets</b> .....	x,xxx	x,xxx	x,xxx	
<b>Property and Equipment:</b>				
Buildings .....	x,xxx	x,xxx	x,xxx	
Leasehold Improvements .....	x,xxx	x,xxx	x,xxx	
Equipment .....	x,xxx	x,xxx	x,xxx	
Land .....	x,xxx	x,xxx	x,xxx	
Accumulated Depreciation .....	x,xxx	x,xxx	x,xxx	
Construction in Progress .....	x,xxx	x,xxx	x,xxx	
<b>Total Property and Equipment, Net</b> .....	x,xxx	x,xxx	x,xxx	
<b>Total Assets</b> .....	\$x,xxx	\$x,xxx	\$x,xxx	
<b>Total Assets Determined from 39 U.S.C. 2011(e)(5)</b> .....	\$x,xxx	\$x,xxx	\$x,xxx	
<b>Total net liabilities</b>				
<b>Liabilities</b>				
<b>Current Liabilities:</b>				
Compensation and Benefits .....	x,xxx	x,xxx	x,xxx	

TABLE 4—STATEMENT OF ALLOCATED ASSETS AND LIABILITIES FOR COMPETITIVE PRODUCTS—PRC  
FORM CP-04—Continued  
[\$ in millions]

	USPS annual report	FY20XX competitive products	FY 20XX-1 competitive products	Distributed on basis of:
Payables and Accrued Expenses .....	x,xxx	x,xxx	x,xxx	
Customer Deposit Accounts .....	x,xxx	x,xxx	x,xxx	
Deferred Revenue-Prepaid Postage .....	x,xxx	x,xxx	x,xxx	
Outstanding Postal Money Orders .....	x,xxx	x,xxx	x,xxx	
Prepaid Box Rent and Other Deferred Revenue .....	x,xxx	x,xxx	x,xxx	
Debt .....	x,xxx	x,xxx	x,xxx	
Non-Current Liabilities: .....	x,xxx	x,xxx	x,xxx	
Workers' Compensation .....	x,xxx	x,xxx	x,xxx	
Employees Accumulated Leave .....	x,xxx	x,xxx	x,xxx	
Deferred Appropriation and Other Revenue .....				
Long-Term Portion of Capital Lease Obligations .....	x,xxx	x,xxx	x,xxx	
Deferred Gains on Sales of Property .....	x,xxx	x,xxx	x,xxx	
Contingent Liabilities and Other .....	x,xxx	x,xxx	x,xxx	
Total Liabilities .....	x,xxx	x,xxx	x,xxx	

(b) The Statement of Allocated Assets and Liabilities for Competitive Products shall detail the analysis and selection of methods of allocation of total assets and liabilities to the competitive products.

**§ 3060.31 Initial filing.**

The due date for filing the initial Statement of Allocated Assets and Liabilities for Competitive Products is 90 days after the close of FY 2010.

**§ 3060.40 Calculation of the assumed Federal income tax.**

(a) The assumed Federal income tax on competitive products income shall be based on the Postal Service theoretical competitive products enterprise income statement for the relevant year and must be calculated in compliance with chapter 1 of the Internal Revenue Code by computing the tax liability on the taxable income from the competitive products of the Postal Service theoretical competitive products enterprise at the section 11 (regular) or section 55(b)(1)(B) (Alternative Minimum Tax) tax rates, as applicable.

(b) The end of the fiscal year for the annual calculation of the assumed Federal income tax on competitive products income shall be September 30.

(c) The calculation of the assumed Federal income tax due shall be submitted to the Commission no later

than the January 15 following the close of the fiscal year referenced in paragraph (b) of this section, except that a one-time extension of 6 months, until July 15, 2009, shall be permitted for the calculation of the assumed Federal income tax due for fiscal year end September 30, 2008.

(d) No estimated Federal income taxes need to be calculated or paid.

(e) No state, local, or foreign income taxes need to be calculated or paid.

**§ 3060.41 Supporting documentation.**

(a) In support of its calculation of the assumed Federal income tax, the Postal Service shall file detailed schedules reporting the Postal Service theoretical competitive products enterprise assumed taxable income, effective tax rate, and tax due.

(b) Adjustments made to book income, if any, to arrive at the assumed taxable income for any year shall be submitted to the Commission no later than January 15 of the following year.

**§ 3060.42 Commission review.**

(a) Interested persons shall be provided an opportunity to comment on the filing of the calculation of the assumed Federal income tax and supporting documentation.

(b) The Commission will review the calculation of the assumed Federal income tax submitted pursuant to

**§ 3060.43**

**39 CFR Ch. III (7-1-16 Edition)**

§ 3060.40, the supporting documentation submitted pursuant to § 3060.41, and any comments. The Commission then will issue an order either approving the calculation of the assumed Federal income tax for that tax year or take such other action as the Commission deems appropriate, including, but not limited to, directing the Postal Service to file additional supporting materials.

(c) The Commission will issue such order no later than 6 months after the Postal Service's filing pursuant to § 3060.40.

(d) Notwithstanding paragraph (b) of this section, if the Commission determines within 3 years of its submission that the Postal Service's calculation of an assumed Federal income tax is incomplete, inaccurate, or otherwise deficient, the Commission will notify the Postal Service in writing and provide it with an opportunity to cure or otherwise explain the deficiency. Upon receipt of the Postal Service's responsive pleading, the Commission may order such action as it deems appropriate.

**§ 3060.43 Annual transfer from competitive products fund to Postal Service fund.**

(a) The Postal Service must on an annual basis transfer the assumed Federal income tax due on competitive products income from the Competitive Products Fund to the Postal Service Fund.

(b) If the assumed taxable income from competitive products for a given fiscal year is positive, the assumed Federal income tax due, calculated pursuant to § 3060.40, shall be transferred to the Postal Service Fund no later than the January 15 following the close of the relevant fiscal year.

(c) A one-time extension of 6 months, until July 15, 2009, shall be permitted for the transfer of the assumed Federal income tax due for fiscal year ending September 30, 2008.

(d) If assumed taxable income from competitive products for a given fiscal year is negative, and:

(1) A payment was made to the Postal Service Fund for the previous tax year, a transfer equaling the lesser of the amount paid into the Postal Service Fund for the past 2 tax years or the amount of the hypothetical tax on the loss shall be made from the Postal Service Fund to the Competitive Products Fund no later than the January 15 following the close of the relevant fiscal year; or

(2) No payment has been made into the Postal Service Fund for the previous 2 tax years, the loss may be carried forward and offset against any calculated assumed Federal taxable income on competitive products income for 20 years.

**PARTS 3061-3099 [RESERVED]**