

§ 966.13

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

39 CFR Ch. I (7–1–23 Edition)

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

SUBCHAPTER A—THE COMMISSION

<i>Part</i>		<i>Page</i>
3000	The Commission and its offices	363
3001	Employee standards of conduct	367

SUBCHAPTER B—SEEKING INFORMATION FROM THE COMMISSION

3005	Privacy Act rules	370
3006	Public records and Freedom of Information Act	371
3007	Commission meetings	382

SUBCHAPTER C—GENERAL RULES OF PRACTICE FOR PROCEEDINGS BEFORE THE COMMISSION

3010	Rules of practice and procedure	387
3011	Non-public materials provided to the Commission	423
3012	Ex parte communications	435
3013	Procedures for compelling production of information by the Postal Service	438

SUBCHAPTER D—SPECIAL RULES OF PRACTICE FOR SPECIFIC PROCEEDING TYPES

3020	Rules applicable to postal service requests for changes in the nature of postal services	446
3021	Rules for appeals of Postal Service determinations to close or consolidate post offices	455
3022	Rules for complaints	458
3023	Rules for rate or service inquiries	461
3024	Special rules for complaints alleging violations of 39 U.S.C. 404a	462
3025	Procedures related to Commission views submitted to the Secretary of State	463

SUBCHAPTER E—REGULATIONS GOVERNING MARKET DOMINANT PRODUCTS, COMPETITIVE PRODUCTS, PRODUCT LISTS, AND MARKET TESTS

3030	Regulation of rates for market dominant products	465
3035	Regulation of rates for competitive products	486

39 CFR Ch. III (7–1–23 Edition)

<i>Part</i>		<i>Page</i>
3040	Product lists and the mail classification schedule	488
3045	Rules for market tests of experimental products	507
SUBCHAPTER F—PERIODIC REPORTING, ACCOUNTING PRACTICES, AND TAX RULES		
3050	Periodic reporting	513
3055	Service performance and customer satisfaction re- porting	528
3060	Accounting practices and tax rules for the theo- retical competitive products enterprise	540
3065	Rules for letters carried out of the mail	545
3066–3099	[Reserved]	

SUBCHAPTER A—THE COMMISSION

PART 3000—THE COMMISSION AND ITS OFFICES

Sec.

- 3000.101 Purpose.
- 3000.102 Statutory functions.
- 3000.103 Official seal.
- 3000.104–3000.109 [Reserved]
- 3000.110 The Commission and its offices.
- 3000.111 Office of Secretary and Administration.
- 3000.112 Office of Accountability and Compliance.
- 3000.113 Office of the General Counsel.
- 3000.114 The Public Representative.
- 3000.115 Office of Public Affairs and Government Relations.
- 3000.116 Office of Inspector General.

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

SOURCE: 78 FR 27045, May 9, 2013, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

§ 3000.101 Purpose.

This part is published in compliance with 5 U.S.C. 552(a)(1) and constitutes a general description of the Postal Regulatory Commission.

[78 FR 27045, May 9, 2013. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3000.102 Statutory functions.

(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 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 proceedings before the Commission as described in part 3010, subpart C of this chapter. Pursuant to 39 U.S.C. 3662(a) and part 3022 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 3021 of this chapter.

[78 FR 27045, May 9, 2013. Redesignated and amended at 85 FR 9615, 9616, Feb. 19, 2020]

§ 3000.103 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.*

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

(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.

[78 FR 27045, May 9, 2013. Redesignated at 85 FR 9615, Feb. 19, 2020]

§§ 3000.104–3000.109 [Reserved]

§ 3000.110 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 busi-

ness of the Commission to the other Commissioners and to the offices and employees of the Commission. The Chairman 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) *Commission offices.* 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 part

Postal Regulatory Commission

§ 3000.112

3010, subpart B 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 proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the internet, on its website at <http://www.prc.gov>.

[78 FR 27045, May 9, 2013. Redesignated and amended at 85 FR 9615, 9616, Feb. 19, 2020]

§ 3000.111 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, website, reference materials, and inter-agency reporting. 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 technology and other support services essential to the efficient and effective conduct of operations; acquires and assigns office space; and manages procurement and supply.

[78 FR 27045, May 9, 2013, as amended at 84 FR 53056, Oct. 4, 2019. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3000.112 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.

§ 3000.113

(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.

[78 FR 27045, May 9, 2013. Redesignated and amended at 85 FR 9615, 9616, Feb. 19, 2020]

§ 3000.113 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, requests made under the Freedom of Information Act, and policies on procurement, contracting, personnel matters, ethics, and other internal legal matters.

[78 FR 27045, May 9, 2013, as amended at 84 FR 53056, Oct. 4, 2019. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3000.114 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.

[78 FR 27045, May 9, 2013. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3000.115 Office of Public Affairs and Government Relations.

(a) The Office of Public Affairs and Government Relations facilitates prompt and responsive communica-

39 CFR Ch. III (7–1–23 Edition)

tions 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 3023 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 website.

(3) *Communication.* The Office of Public Affairs and Government Relations also develops public outreach strategies for the Commission, responds to

Postal Regulatory Commission

§ 3001.105

media inquiries, and disseminates information concerning Commission decisions and activities to the public.

[78 FR 27045, May 9, 2013. Redesignated and amended at 85 FR 9615, 9616, 9660, Feb. 19, 2020]

§ 3000.116 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]

[78 FR 27045, May 9, 2013. Redesignated at 85 FR 9615, Feb. 19, 2020]

PART 3001—EMPLOYEE STANDARDS OF CONDUCT

Subpart A—General Provisions

Sec.

3001.105 Post-employment restrictions.

3001.110 Additional required notification of disqualification when seeking employment.

3001.115 Additional restriction on acceptance of anything of value.

3001.120 [Reserved]

Subpart B—Ex Parte Communications

3001.150 Ex parte communications prohibited.

3001.155 [Reserved]

APPENDIX A TO PART 3001—CODE OF ETHICS FOR GOVERNMENT SERVICE

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. Redesignated at 85 FR 9615, Feb. 19, 2020.

Subpart A—General Provisions

SOURCE: 82 FR 50321, Oct. 31, 2017, unless otherwise noted.

§ 3001.105 Post-employment restrictions.

All former employees of the Postal Regulatory Commission (Commission) are subject to the following restrictions on appearance and practice before the Commission on behalf of any participant, including the United States Postal Service (Postal Service):

(a) No former employee of the Commission may practice or act as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that the former employee has handled, advised, or participated in the consideration of while in the service of the Commission.

(b) No former employee of the Commission may within one year after the

§ 3001.110

individual's employment has ceased, practice before or act as an attorney, expert witness, or representative in connection with any proceeding or matter before the Commission that was under the official responsibility of such individual, as defined in 18 U.S.C. 202(b), while in the service of the Commission.

[82 FR 50321, Oct. 31, 2017. Redesignated and amended at 85 FR 9615, 9616, Feb. 19, 2020]

§ 3001.110 Additional required notification of disqualification when seeking employment.

(a) Notwithstanding 5 CFR 2635.603(a), an employee that seeks employment with the Postal Service must provide written notice of disqualification to the Designated Agency Ethics Official (DAEO) consistent with 5 CFR 5601.103(a). The DAEO will inform the employee and the employee's supervisor in writing of each matter from which the employee is disqualified from participating.

(b) An employee may withdraw written notice under paragraph (a) of this section consistent with 5 CFR 5601.103(b).

[82 FR 50321, Oct. 31, 2017. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3001.115 Additional limitation on acceptance of anything of value.

Regardless of 5 CFR 2635.203(b)(7), a Commission employee may not accept a gift from the Postal Service, unless another exception or exclusion to 5 CFR 2635.203 applies or a waiver is granted by the DAEO.

[82 FR 50321, Oct. 31, 2017. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3001.120 [Reserved]

Subpart B—Ex Parte Communications

SOURCE: 81 FR 42540, June 30, 2016, unless otherwise noted.

§ 3001.150 Ex parte communications prohibited.

(a) The Commission maintains a written employee policy regarding ex parte communications applicable to all interactions, oral or in writing (includ-

39 CFR Ch. III (7–1–23 Edition)

ing 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 website at www.prc.gov.

(b) Additional ex parte communications requirements, applicable to specific docket types, are described in part 3012 of this chapter.

[81 FR 42540, June 30, 2016. Redesignated and amended at 85 FR 9615, 9616, 9660, Feb. 19, 2020]

§ 3001.155 [Reserved]

APPENDIX A TO PART 3001—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

Postal Regulatory Commission

Pt. 3001, App. A

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.

SUBCHAPTER B—SEEKING INFORMATION FROM THE COMMISSION

PART 3005—PRIVACY ACT RULES

Sec.

3005.101 Purpose and scope.

3005.102 Definitions.

3005.103 Procedures for requesting inspection, copying, or correction.

3005.104 Response to a request.

3005.105 Appeals of denials of access or amendment.

3005.106 Fees.

3005.107 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. Redesignated at 85 FR 9615, Feb. 19, 2020.

EDITORIAL NOTE: Nomenclature changes to part 3005, formerly part 3003, appear at 70 FR 48277, Aug. 17, 2005.

§ 3005.101 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.

[64 FR 57982, Oct. 28, 1999. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3005.102 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. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3005.103 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 the individual,

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

(3) Seeks to amend a record about the individual 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, employee 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 the individual's record in the presence of that individual;

(4) Who files a request by mail must include the individual's 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.

[64 FR 57982, Oct. 28, 1999. Redesignated and amended at 85 FR 9615, 9616, Feb. 19, 2020]

§ 3005.104 Response to a request.

(a) In the case of a request for notice of the existence of a record, the chief

Postal Regulatory Commission

Pt. 3006

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

(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.

[64 FR 57982, Oct. 28, 1999. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3005.105 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.

[64 FR 57982, Oct. 28, 1999. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3005.106 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.

[64 FR 57982, Oct. 28, 1999. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3005.107 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. Redesignated at 85 FR 9615, Feb. 19, 2020]

PART 3006—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

Sec.

3006.1 Purpose.

3006.2 Presumption of openness.

3006.3 How to make a request.

3006.10 Public records.

3006.11 Use of exemptions.

3006.12 Reading room.

3006.13 Notice and publication of public information.

3006.20 Commission procedure when served a subpoena.

3006.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for accord-ing appropriate confidentiality.

3006.35 Consultation, referral, and coordination.

3006.40 Hard copy requests for records and for expedited processing.

3006.41 Electronic requests for records and for expedited processing.

3006.42 Tracking of requests.

3006.43 Response to requests.

3006.44 Appeals.

3006.45 Extension of response time limit.

3006.50 Fees—definitions as used in this part.

3006.51 Fees—request category.

3006.52 Fees—general provisions.

3006.53 Fee schedule.

Part 3006, Nt.

39 CFR Ch. III (7–1–23 Edition)

3006.54 Procedure for assessing and collecting fees.

3006.60 Chief Freedom of Information Act Officer.

3006.61 Freedom of Information Act Public Liaison.

3006.70 Submission of non-public materials by a person other than the Postal Service.

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

SOURCE: 74 FR 57256, Nov. 5, 2009, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

EFFECTIVE DATE NOTE: At 88 FR 37153, June 7, 2023, the authority citation for part 3006 was revised, effective July 7, 2023. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 5 U.S.C. 552; 39 U.S.C. 407, 503, 504.

§ 3006.1 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 part 3000 of this chapter, and on the Commission's website 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 website.

(c) Section 3006.10 identifies records that the Commission has determined to be public.

[74 FR 57256, Nov. 5, 2009, as amended at 85 FR 9617, 9660, Feb. 19, 2020]

§ 3006.2 Presumption of openness.

(a) The Commission shall be proactive and timely in identifying and posting public records and other frequently requested records to its website.

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness. The Commission will only withhold information if it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption, as enumerated in § 3006.11, or disclosure is otherwise prohibited by law.

[82 FR 12507, Mar. 6, 2017, as amended at 85 FR 9617, 9660, Feb. 19, 2020]

§ 3006.3 How to make a request.

(a) To request Commission records, please contact the Commission via letter or use the online request form provided on the Commission's website at <http://www.prc.gov/foia/onlinerequest>.

(b) Requests must describe the records sought in sufficient detail to enable the Commission to locate them with a reasonable amount of effort. To the extent possible, the requests should provide any specific information that might assist the Commission in responding to the request.

(c) Requesters must provide contact information to assist the Commission in communicating with them concerning requests and responding to the request.

[82 FR 12507, Mar. 6, 2017, as amended at 84 FR 53056, Oct. 4, 2019]

§ 3006.10 Public records.

(a) Except as provided in § 3006.11 and in § 3011.200 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;

Postal Regulatory Commission

§ 3006.11

(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 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.

[74 FR 57256, Nov. 5, 2009, as amended at 85 FR 9617, Feb. 19, 2020]

§ 3006.11 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 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

§ 3006.12

39 CFR Ch. III (7–1–23 Edition)

(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 that would not be available by law to a party other than an agency in litigation with the agency. This exemption shall not apply to records created 25 years or more before the date on which the records were requested.

(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 reasonably 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 ex-

empt 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.

[74 FR 57256, Nov. 5, 2009, as amended at 82 FR 12507, Mar. 6, 2017]

§ 3006.12 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.

(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 § 3006.10 relating to any matter or proceeding before the Commission.

(c) The Commission shall make available, in an electronic and physical reading room, records previously released under FOIA and which the Commission determines are or are likely to become of significant public interest, including agency records that have been requested three or more times.

[74 FR 57256, Nov. 5, 2009, as amended at 82 FR 12508, Mar. 6, 2017; 85 FR 9617, Feb. 19, 2020]

Postal Regulatory Commission

§ 3006.30, Nt.

§ 3006.13 Notice and publication of public information.

(a) Decisions, advisory opinions, orders, public reports, and agency records that have been requested three or more times will be made available to the public by posting on the Commission's website 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 website, <http://www.prc.gov>.

[74 FR 57256, Nov. 5, 2009, as amended at 82 FR 12508, Mar. 6, 2017; 85 FR 9660, Feb. 19, 2020]

§ 3006.20 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.

§ 3006.30 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 the individual's own records contained in a system of records is governed by the Privacy Act. Release will first be considered under the Privacy Act pursuant to part 3005 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 individ-

uals 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. In all instances that the Postal Service submits materials to the Commission that the Postal Service reasonably believes to be exempt from public disclosure, the Postal Service shall follow the procedures described in subpart B of part 3011 of this chapter.

(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 3011 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 record submitted under seal by a person other than the Postal Service.* The Commission maintains records of a confidential nature submitted by persons other than the Postal Service as non-public materials.

(1) A request made pursuant to FOIA for records designated as non-public by a person other than the Postal Service shall be considered in light of all applicable exemptions; and

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by a person other than the Postal Service shall be considered under the applicable standards set forth in that part.

[74 FR 57256, Nov. 5, 2009, as amended at 83 FR 31281, July 3, 2018; 85 FR 9617, Feb. 19, 2020]

EFFECTIVE DATE NOTE: At 88 FR 37153, June 7, 2023, § 3006.30 was amended by revising paragraphs (d) and (e), effective July 7, 2023.

§ 3006.35

39 CFR Ch. III (7–1–23 Edition)

For the convenience of the user, the revised text is set forth as follows:

§ 3006.30 Relationship among the Freedom of Information Act, the Privacy Act, and the Commission's procedures for acceding appropriate confidentiality.

* * * * *

(d) *Requesting a Postal Service record.* The Commission maintains custody of records that are both Commission and Postal Service records. Except when the Postal Service submits materials to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A), in all other instances that the Postal Service submits materials to the Commission that the Postal Service reasonably believes to be exempt from public disclosure, the Postal Service shall follow the procedures described in part 3011, subpart B of this chapter.

(1) A request made pursuant to FOIA for Postal Service records shall be referred to the Postal Service; and

(2) A request made pursuant to part 3011 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 record submitted by a person other than the Postal Service.* The Commission maintains records of a confidential nature submitted by persons other than the Postal Service as non-public materials.

(1) A request made pursuant to FOIA for records submitted by a person other than the Postal Service shall adhere to the applicable procedures of § 3006.35. If such a FOIA request is not referred to a different Federal agency pursuant to § 3006.35(b), the Commission shall consider it in light of all applicable exemptions and in accordance with the following procedures:

(i) If such materials are designated as non-public, the Commission shall follow the procedures appearing in § 3006.70(b)–(d) in determining the FOIA request; or

(ii) In all other instances, the Commission shall determine the FOIA request after notifying the person of the FOIA request and providing the person with an opportunity to respond within seven days of the date of the notice under the following circumstances:

(A) The records sought contain confidential commercial information that may be protected from disclosure under 5 U.S.C. 552(b)(4); and

(B) The Commission determines that it may be required to disclose the records, provided that at least one of the following applies:

(1) The requested information has been designated in good faith by the submitter as information considered protected from disclosure under 5 U.S.C. 552(b)(4); or

(2) The Commission has a reason to believe that the requested information may be protected from disclosure under 5 U.S.C. 552(b)(4), but has not yet determined whether the information is protected from disclosure; and

(2) A request made pursuant to part 3011 of this chapter for records designated as non-public by a person other than the Postal Service shall be considered under the applicable standards set forth in that part.

§ 3006.35 Consultation, referral, and coordination.

(a) *Consultation.* If records originated with the Commission but contain within them information of significance to another Federal agency or office, the Commission will typically consult with that other entity prior to making a release determination.

(b) *Referral.* In addition to referring all requests made pursuant to FOIA for Postal Service records to the Postal Service as specified by § 3006.30(d)(1), if the Commission believes that a different Federal agency is best able to determine whether to disclose the record, the Commission will typically refer responsibility for responding to the request regarding that record to that agency. Ordinarily, the agency that originated the record is presumed to be the best agency to make the disclosure determination. Whenever the Commission refers any part of the responsibility for responding to a request to another agency, the Commission will notify the requester of the referral, including the name of the agency and that agency's FOIA contact information.

(c) *Coordination.* The standard referral procedure is not appropriate where disclosure of the identity of the Federal agency to which the referral would be made could harm an interest protected by an applicable exemption, such as the exemptions that protect personal privacy or national security interests. For example, if a non-law enforcement agency responding to a request for records on a living third party locates within its files records originating with a law enforcement agency, and if the existence of that law enforcement interest in the third party was not publicly known, then to disclose that law enforcement interest could cause an unwarranted invasion of

Postal Regulatory Commission

§ 3006.41

the personal privacy of the third party. Similarly, if the Commission locates within its files material originating with an Intelligence Community agency, and the involvement of that agency in the matter is classified and not publicly acknowledged, then to disclose or give attribution to the involvement of that Intelligence Community agency could cause national security harms. In such instances, in order to avoid harm to an interest protected by an applicable exemption, the Commission will coordinate with the originating agency to seek its views on disclosure of the record. The Commission then will notify the requester of the release determination for the record that is the subject of the coordination.

(d) *Classified information.* On receipt of any request involving classified information, the Commission will determine whether the information is currently and properly classified in accordance with applicable classification rules. Whenever a request involves a record containing information that has been classified or may be appropriate for classification by another agency under any applicable executive order concerning the classification of records, the Commission must refer the responsibility for responding to the request regarding that information to the agency that classified the information, or that should consider the information for classification. Whenever an agency's record contains information that has been derivatively classified (for example, when it contains information classified by another agency), the Commission must refer the responsibility for responding to that portion of the request to the agency that classified the underlying information.

(e) *Timing of responses to consultations and referrals.* All consultations and referrals received by the Commission will be handled according to the date that the first agency received the perfected FOIA request.

(f) *Agreements regarding consultations and referrals.* The Commission may establish agreements with other agencies to eliminate the need for consultations or referrals with respect to particular types of records.

[88 FR 37154, June 7, 2023]

EFFECTIVE DATE NOTE: At 88 FR 37154, June 7, 2023, § 3006.35 was added, effective July 7, 2023.

§ 3006.40 Hard copy requests for records and for expedited processing.

(a) A hard copy request for records must:

- (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 § 3006.51; and
- (7) Be submitted to 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.

[74 FR 57256, Nov. 5, 2009, as amended at 84 FR 53056, Oct. 4, 2019; 85 FR 9617, Feb. 19, 2020]

§ 3006.41 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;

§ 3006.42

(3) Include a daytime telephone number and valid e-mail address; and

(4) Identify the request category under § 3006.51; and

(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.

[74 FR 57256, Nov. 5, 2009, as amended at 85 FR 9617, Feb. 19, 2020]

§ 3006.42 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 or called at 202-789-6800.

§ 3006.43 Response to requests.

(a) *Determination.* Within 20 days (excluding Saturdays, Sundays, and legal holidays) after receipt of a request for a Commission record, the Chief FOIA Officer or his/her designee will notify the requester of its determination to grant or deny the request and the right to seek assistance from the Commission’s FOIA Public Liaison. In the case of an adverse determination, the Commission will notify the requester of his/her right to appeal and right to seek dispute resolution services from the Commission’s FOIA Public Liaison or the Office of Government Information Services.

(b) *Granting request.* If granting the request, the Chief FOIA Officer or his/

39 CFR Ch. III (7–1–23 Edition)

her designee 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 Chief FOIA Officer or his/her designee will notify the requester of any fees that must be paid.

(d) *Denying request.* If denying the request, in whole or in part, the Chief FOIA Officer or his/her designee 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;

(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 Chief FOIA Officer or his/her designee 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.

Postal Regulatory Commission

§ 3006.50

(f) Where a compelling need is not shown in an expedited request as specified in § 3006.41(b)(1), the Commission may grant requests for expedited processing at its discretion.

[74 FR 57256, Nov. 5, 2009, as amended at 82 FR 12508, Mar. 6, 2017; 84 FR 53056, Oct. 4, 2019; 85 FR 9617, Feb. 19, 2020]

§ 3006.44 Appeals.

(a) The Commission may review any decision of the Chief FOIA Officer or his/her designee on its own initiative.

(b) A requester who seeks to appeal any adverse determination must file an appeal with the Commission within 1 year of the date of the Commission's response.

(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 adverse determination is upheld, the Commission will notify the requester of the availability of dispute resolution services from the Office of Government Information Services as a voluntary, non-exclusive alternative to litigation and the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c).

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

[74 FR 57256, Nov. 5, 2009, as amended at 82 FR 12508, Mar. 6, 2017; 84 FR 53057, Oct. 4, 2019]

§ 3006.45 Extension of response time limit.

(a) The Commission may extend the time limit for a response to a request or appeal for up to 10 business days due to unusual circumstances, as specified in 5 U.S.C. 552(a)(6)(B)(iii). In such a case, the Commission will notify the requester in writing of the unusual circumstance causing the extension and the date by which the Commission estimates that the request can be processed.

(b) If an extension will exceed 10 business days, the Commission will:

(1) 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; and

(2) Make its FOIA Public Liaison available to the requester and apprise the requester of their right to seek dispute resolution services from the Office of Government Information Services.

[82 FR 12508, Mar. 6, 2017]

§ 3006.50 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 pre-school, 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.

§ 3006.51 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 the individual’s own records in a system of records will be charged fees as provided under the Commission’s Privacy Act regulations in part 3005 of this chapter.

[74 FR 57256, Nov. 5, 2009, as amended at 85 FR 9617, Feb. 19, 2020]

§ 3006.52 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.

(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

Postal Regulatory Commission

§ 3006.54

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 §§ 3006.43 and 3006.44, unless:

(1) The Commission extends the time limit for its response due to unusual circumstances, pursuant to § 3006.45(a), and the Commission completes its response within the extension of time provided under that section; or

(2) The Commission extends the time limit for its response due to unusual circumstances and more than 5,000 pages are necessary to respond to the request and the Commission has discussed with the requester how they could effectively limit the scope of the request or made at least three good faith attempts to do so; or

(3) A court has determined that exceptional circumstances exist and excused the Commission from responding by court order.

(f) The Commission may, however, charge fees for review, and in some cases duplication, for a partial grant of a request while it reviews records that may be exempt and may be responsive to the request, so long as the partial grant is made within the applicable time limits.

[74 FR 57256, Nov. 5, 2009, as amended at 82 FR 12508, Mar. 6, 2017; 85 FR 9617, Feb. 19, 2020]

§ 3006.53 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 § 3006.52(d), fees may be waived at the discretion of the Commission.

[74 FR 57256, Nov. 5, 2009, as amended at 85 FR 9618, Feb. 19, 2020]

§ 3006.54 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) (§ 3006.43) 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.

[74 FR 57256, Nov. 5, 2009, as amended at 85 FR 9618, Feb. 19, 2020]

§ 3006.60

§ 3006.60 Chief Freedom of Information Act Officer.

The Commission designates the General Counsel 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.

[84 FR 53057, Oct. 4, 2019]

§ 3006.61 Freedom of Information Act Public Liaison.

The Commission designates the Director of the Office of Public Affairs and Government Relations or the individual's 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 email at *PRC-PAGR@prc.gov* or telephone at 202-789-6800.

[85 FR 9618, Feb. 19, 2020]

§ 3006.70 Submission of non-public materials by a person other than the Postal Service.

(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 shall follow the procedures described in subpart B of part 3011 of this chapter.

(b) *Notice of request.* Except as provided in §3006.30(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 materials submitted by a person other than the Postal Service are possibly exempt from disclosure and 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 seven 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 non-public treatment

39 CFR Ch. III (7–1–23 Edition)

pursuant to §3011.201 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.

[74 FR 57256, Nov. 5, 2009, as amended at 83 FR 31281, July 3, 2018; 85 FR 9618, Feb. 19, 2020]

EFFECTIVE DATE NOTE: At 88 FR 37154, June 7, 2023, §3006.70 was amended by revising paragraph (a), effective July 7, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 3006.70 Submission of non-public materials by a person other than the Postal Service.

(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 shall follow the procedures described in part 3011, subpart B of this chapter, except when the submitter submits materials to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A).

* * * * *

PART 3007—COMMISSION MEETINGS

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

SOURCE: 85 FR 9618, Feb. 19, 2020, unless otherwise noted.

§ 3007.100 Public access to Commission meetings.

(a) *Definition.* *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.

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

Postal Regulatory Commission

§ 3007.100

(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.

(c) *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.

(d) *Closed Commission meetings.* Except in a case where the Commission finds that the public interest requires otherwise, the second sentence of paragraph (b)(1) of this section shall not apply to any portion of a Commission meeting, and the requirements of paragraphs (f) and (g) of this section 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:

(i) Are specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy; and

(ii) Are 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 5 U.S.C. 552), provided that such statute:

(i) Requires the matter to 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 implementation of a proposed Commission action, except that this paragraph (d)(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 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

(e) *Procedures for closing meetings.* (1) Action under paragraph (d) 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 (d) of this section, or with respect to any information which is proposed to be withheld under paragraph (d) 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 (d)(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 one day of any vote taken pursuant to paragraph (e)(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 one day of the vote taken pursuant to paragraph (e)(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 ex-

pected to attend the meeting and their affiliation.

(4) Any person may protest a Commission decision to hold a closed meeting under paragraph (e)(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 (d)(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 (d)(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 (e)(1) through (3) and (f) of this section shall not apply to any portion of a meeting to which paragraph (e)(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 (d) 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.

(f) *Scheduling and public announcement.* (1) In the case of each meeting, the Commission shall make public announcement, at least one 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

Postal Regulatory Commission

§ 3007.100

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 (f)(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 (f)(1) of this section 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 this paragraph (f), 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:

(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.

(g) *Certification of closed meetings; transcripts, electronic recordings, and minutes.* (1) Before any meeting to be closed pursuant to paragraphs (d)(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 the individual's 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 (d)(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 (g)(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 contains information which may be withheld under paragraph (d) of this section, and 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 two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(h) *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 ten 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 (e)(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 (e) and (f) 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 Section, 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.

SUBCHAPTER C—GENERAL RULES OF PRACTICE FOR PROCEEDINGS BEFORE THE COMMISSION

PART 3010—RULES OF PRACTICE AND PROCEDURE

Subpart A—General Provisions

Sec.

- 3010.100 Applicability and scope.
- 3010.101 Definitions.
- 3010.102 Commission dockets.
- 3010.103 Procedural schedules in docketed proceedings.
- 3010.104 Consolidation and severance of proceedings.
- 3010.105 Consideration of matters before the Commission.
- 3010.106 Presiding officers.
- 3010.107 Appeals from interlocutory rulings by presiding officers.
- 3010.108 Computation of time.
- 3010.109 Automatic closure of inactive dockets.

Subpart B—Filing Requirements

- 3010.120 Filing material with the Commission.
- 3010.121 Filing Online system.
- 3010.122 Material filed using method other than the Filing Online system.
- 3010.123 Rejected filings.
- 3010.124 Form and content of text-based documents filed with the Commission.
- 3010.125 Library references.
- 3010.126 Subscription.
- 3010.127 Service.

Subpart C—Participation in Commission Proceedings

- 3010.140 Opportunity for comment.
- 3010.141 Appeals of Postal Service determinations to close or consolidate post offices.
- 3010.142 Parties to hearings on the record.
- 3010.143 Representation of persons.
- 3010.144 Limitation of participation by investigative or prosecuting officers.

Subpart D—Notices, Motions, and Information Requests

- 3010.150 Notices.
- 3010.151 Notices and orders initiating proceeding.
- 3010.152 Notices initiating dockets for consideration of negotiated service agreements.
- 3010.160 Motions.
- 3010.161 Motions for waiver.
- 3010.162 Motions for continuances and extensions of time.

- 3010.163 Motions for late acceptance.
- 3010.164 Motions to strike.
- 3010.165 Motions for reconsideration.
- 3010.170 Information requests.

Subpart E—Proceedings Using Notice and Comment Procedures

- 3010.200 Applicability.
- 3010.201 Initiation of a proceeding.
- 3010.202 Participation in notice and comment proceedings.
- 3010.203 Commission action.

Subpart F—Proceedings With an Opportunity for a Hearing on the Record

- 3010.300 Applicability.
- 3010.301 Notice of proceeding.
- 3010.302 Prehearing conferences.
- 3010.303 Hearing format.
- 3010.304 Scheduling order.
- 3010.310 Discovery—general policy.
- 3010.311 Interrogatories for purpose of discovery.
- 3010.312 Requests for production of documents or things for purpose of discovery.
- 3010.313 Requests for admissions for purpose of discovery.
- 3010.320 Settlement conferences.
- 3010.321 Hearings.
- 3010.322 Evidence—general.
- 3010.323 Evidence—introduction and reliance upon studies and analyses.
- 3010.324 In camera orders.
- 3010.325 Depositions.
- 3010.330 Briefs.
- 3010.331 Proposed findings and conclusions.
- 3010.332 Oral argument before the presiding officer.
- 3010.333 Oral argument before the Commission.
- 3010.334 Commission decisions.
- 3010.335 Intermediate decisions.
- 3010.336 Exceptions to intermediate decisions.

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

SOURCE: 85 FR 9620, Feb. 19, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 3010.100 Applicability and scope.

- (a) The rules in this part apply to practice before the Postal Regulatory Commission.
- (b) When a general rule conflicts with a rule governing a specific practice

area, the rule governing the specific practice area shall take precedence.

(c) The rules in this part shall be liberally construed to secure a just and speedy determination of issues. They permit the informal disposition of any matter for which formal procedures are not specifically required by statute.

(d) Except when specifically required by statute, the rules in this part may be waived for good cause and appropriate alternative procedures may be prescribed.

(e) The rules in this part shall be referred to as the “rules of practice.” Rules are to be cited using only the numbers and letters to the right of the decimal point. For example, paragraph (a) of “§3010.120 Filing material with the Commission” shall be referred to as “section 120(a) of the rules of practice (39 CFR 3–1–.120(a))” or as “rule 120(a)” (39 CFR 3010.120(a)).

§3010.101 Definitions.

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

(b) *Commission* or *Commissioner* means, respectively, the Postal Regulatory Commission established by the Act or a member thereof. The Commission is located at 901 New York Avenue NW, Suite 200, Washington, DC 20268–0001. The Commission’s regular business hours are from 8 a.m. to 4:30 p.m. Eastern Time, except for Saturdays, Sundays, and Federal holidays.

(c) *Complainant* means a person who files a complaint with the Commission pursuant to section 3662 of the Act in the form and manner hereinafter prescribed.

(d) *Effective date*, when used with respect to a notice, order, ruling, or other document issued by the Commission or an officer thereof (excluding documents issued for publication in the FEDERAL REGISTER), means the date the filing is posted on the Daily Listing page of the Commission’s website unless otherwise specifically provided.

(e) *Hearing on the record* means a hearing conducted 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 for a hearing on the record.

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

(g) *Participant* means any person who participates, or seeks to participate, in a proceeding before the Commission.

(h) *Party* means the Postal Service, the Public Representative, a complainant, or a person who has intervened in a proceeding docketed for a hearing on the record before the Commission.

(i) *Person* means an individual, a partnership, corporation, limited liability company, trust, unincorporated association, public or private organization, or governmental entity.

(j) *Petitioner* means a person who is permitted by section 404(d)(5) of the Act to appeal to the Commission a determination of the Postal Service to close or consolidate a post office.

(k) *Postal Service* means the United States Postal Service established by the Act.

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

(m) *Presiding officer* means a person designated by the Chairman of the Commission or the Commission to preside over a Commission proceeding or over a hearing held on the record before the Commission.

(n) *Proceeding* means a Commission process initiated by the issuance of a notice or order that establishes a docket for the consideration of a matter before the Commission.

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

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

(q) *Rate or class of general applicability* means a rate or class that is available

Postal Regulatory Commission

§ 3010.102

to all mailers equally on the same terms and conditions.

(r) *Record* means all documents and other material in a docket, including pleadings, testimony, exhibits, library references, transcripts of oral testimony or statements given or made during a hearing, comments, briefs, and *in camera* material, whether or not relied upon by the Commission or presiding officer in reaching a decision.

(s) *Secretary* means the Secretary of the Commission, the Acting Secretary, or the Secretary's designee.

(t) *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.

(u) *Website* means the Commission's website located at <https://www.prc.gov>.

§ 3010.102 Commission dockets.

(a) The Commission may initiate a proceeding by issuing a notice or order that establishes a docket in which a proceeding is to be conducted.

(b) When permitted by statute or regulation, any person may seek the initiation of a proceeding by filing a request with the Commission that complies with the rules governing the type of proceeding being requested.

(c) The Secretary shall maintain a docket for all matters that come before the Commission.

(d)(1) The Secretary shall assign docket designations to each matter that comes before the Commission that reflect the nature of the matter, set forth the fiscal year in which the matter came before the Commission, and where applicable, the sequential num-

ber of the docket type within the fiscal year. Available docket types are:

(i) Appeal of a Post Office Closing (A);

(ii) Annual Compliance Report (ACR);

(iii) Complaint (C);

(iv) Competitive Product Rates (CP);

(v) General (G);

(vi) International Mail (IM);

(vii) Mail Classification (MC);

(viii) Market Test (MT);

(ix) Change in the Nature of Postal Services (N);

(x) Public Inquiry (PI);

(xi) Market Dominant Rates (R);

(xii) Rulemaking (RM);

(xiii) Special Studies (SS); and

(xiv) Annual Review of Tax Calculation (T).

(2) The Commission may modify the list of docket types and document formats without prior notice.

(e) The Secretary's assignment of a docket designation does not, by itself, establish a docket or initiate a proceeding. A docket is formally established and proceedings initiated only by the issuance of a Commission notice or order except for certain negotiated service agreements for which the authority to establish a docket and initiate a proceeding by issuance of a Secretary's notice has been delegated to the Secretary.

(f) The substance of the matter presented to the Commission, not the assigned docket type, shall govern the procedural requirements for the docket.

(g) Material filed with the Commission following the Secretary's assignment of a docket designation shall include the assigned docket designation.

(h) Public material filed within a docket may be viewed at the Commission's Docket Section during regular business hours. Public documents filed in a docket that appear in electronic format may also be accessed remotely via the Commission's website. Confidential material filed under seal in a docket may only be accessed with prior authorization. Part 3011 of this chapter sets forth the procedures for obtaining such authorization. Persons who wish to access confidential material should

§ 3010.103

contact the Commission's Docket Section for the appropriate mode for transmitting material filed under seal.

(i) Active dockets may only be closed by the Commission.

§ 3010.103 Procedural schedules in docketed proceedings.

Procedural schedules shall be established and may be periodically modified for each matter that is assigned a docket designation.

§ 3010.104 Consolidation and severance of proceedings.

The Commission may order proceedings involving related issues or facts to be consolidated for consideration of any or all matters at 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.

§ 3010.105 Consideration of matters before the Commission.

(a) Unless it orders otherwise, the Commission shall sit *en banc* in all matters that come before it. In those proceedings in which a presiding officer is appointed, the Commission will continue to sit *en banc*, unless modified by Commission notice or order, with the presiding officer responsible for those matters within the scope of the presiding officer's authority.

(b) A decision to establish a docket (other than certain negotiated service agreement dockets), close an active docket, or reach a final decision in any docket shall be by majority vote of the Commissioners then in office.

§ 3010.106 Presiding officers.

(a) *Designation of presiding officers.* The Chairman, in consultation with all other Commissioners then in office, may designate any Commissioner, including the Chairman, to act as presiding officer over any matter before the Commission. Subject to approval by majority vote of all Commissioners then in office, the Chairman may also designate any member of the Commission's staff, an Administrative Law Judge employed by the Commission for

39 CFR Ch. III (7-1-23 Edition)

a specific proceeding, or any person under contract with the Commission to serve as presiding officer over any matter before the Commission. Contracts between the Commission and any person who is to serve as a presiding officer must include provisions that incorporate the ethical requirements and standards applicable to Commission employees who serve as presiding officers.

(b) *Notice of designation.* The Secretary shall issue a notice of any decision to designate a presiding officer. The notice shall identify the presiding officer and the date of appointment. Any expansion or limitation on the presiding officer's authority, or specific direction to a presiding officer (such as specific direction to issue an intermediate decision for the Commission's consideration) not specified in this section shall be included in the notice.

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

(1) Regulate the course of a proceeding before the Commission, including ruling on all matters not specifically reserved for the Commission, either orally during a hearing or by issuing written presiding officer rulings;

(2) Regulate the course of a public hearing, including the recessing, reconvening, and adjournment thereof;

(3) Issue presiding officer information requests;

(4) Administer oaths and affirmations;

(5) Issue subpoenas authorized by law (limited to Commissioners and Administrative Law Judges designated as presiding officers);

(6) Rule upon offers of proof and receive relevant evidence;

(7) Take or authorize that depositions be taken as provided in § 3010.324;

(8) Hold appropriate conferences before or during hearings and to rule on matters raised at such conferences, including prehearing conferences held pursuant to § 3010.302;

(9) Dispose of procedural requests or similar matters except for motions to dismiss or to otherwise make a final determination of a proceeding prior to

the issuance of an intermediate decision as provided in paragraph (c)(11) of this section;

(10) Certify, within their discretion, or upon direction of the Commission, any question to the Commission for its consideration and disposition including, without limitation, motions to dismiss or to otherwise make a final determination of a proceeding prior to the issuance of an intermediate decision as provided in paragraph (c)(11) of this section;

(11) Submit an intermediate decision in accordance with § 3010.335, when directed; and

(12) 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.

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

(e) *Disqualification.* A presiding officer may withdraw from a proceeding when necessary due to disqualification, or may be removed by the Commission for good cause.

§ 3010.107 Appeals from interlocutory rulings by presiding officers.

(a) *General policy.* The Commission will not review interlocutory rulings of a presiding officer except in extraordinary circumstances.

(b) *Appeals certified by the presiding officer.* (1) Rulings of the presiding officer may be appealed to the Commission 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 by motion within five 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 to the Commission.

(c) *Appeals not certified by the presiding officer.* A participant may request Commission review of a presiding officer's decision denying certification of an appeal by motion within five days of the decision. If the presiding officer fails to act on a request for certification within 15 days of the issuance of the ruling in question, the participant seeking certification may apply for review by the Commission within 20 days of the ruling in question. Unless the Commission directs otherwise, its review of the application for review 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:

§ 3010.108

(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) When the presiding officer declines to certify an appeal, the Commission will not permit an interlocutory appeal 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) If the Commission fails to issue an order permitting an interlocutory appeal within 15 days after the presiding officer certifies the appeal or a participant files an application for review, the appeal shall be deemed denied. If the Commission issues an order permitting 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 the Commission does not entertain an interlocutory appeal of a presiding officer's ruling, objection to the ruling may be raised:

(1) In briefs to the presiding officer or the Commission at the conclusion of hearings on the record; or

(2) By the deadline for submission of comments or reply comments, whichever is later, in all other proceedings in which a hearing on the record is not held.

§ 3010.108 Computation of time.

(a) In computing time periods, the term "day" shall mean calendar day.

(b) Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule, presiding officer ruling, or regulation of the Commission or a presiding officer, the day of the act, event, or default after which

39 CFR Ch. III (7–1–23 Edition)

a designated period of time begins to run is not to be included.

(c) The last day of the period so computed is to be included unless it is a Saturday, Sunday, Federal holiday, or a day on which the Commission is not continuously open from 8 a.m. to 4:30 p.m. or on which the Commission's docketing system is not accessible continuously during that time. In any such case, the applicable time period shall run until the end of the next full business day that the Commission is open and its docketing system is accessible.

(d) Except in proceedings to consider changes in the nature of postal services conducted under part 3020 of this chapter, in computing a period of time which is five days or less, all Saturdays, Sundays, Federal holidays, or days on which the Commission is not continuously open from 8 a.m. to 4:30 p.m. or on which the Commission's docketing system is not accessible continuously during that time are to be excluded.

§ 3010.109 Automatic closure of inactive dockets.

(a) *Automatic closure.* The Commission shall automatically close a docket in which there has been no activity of record by any person for 12 consecutive months, except dockets in which further action by the Commission is required by statute or regulation, or dockets for which the Commission finds good cause to remain open.

(b) *Notice of closure.* Each month, the Commission shall post on its website a list of dockets that will be subject to automatic closure during the following calendar month and will include the date on which the docket will automatically close.

(c) *Motions to stay automatic closure.*

(1) Persons, including the Postal Service or a Public Representative, may file a motion to stay automatic closure of a docket 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

Postal Regulatory Commission

§3010.121

file such order at least 15 days prior to the automatic closure date.

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

(2) The Commission may order a closed docket to be reopened, and must set forth the basis for reopening the docket.

Subpart B—Filing Requirements

§3010.120 Filing material with the Commission.

(a) All material filed with the Commission shall be transmitted to the Commission in electronic format using the Filing Online system available over the internet through the Commission's website at <http://www.prc.gov>. The material must satisfy the Filing Online system compatibility requirements specified by the Secretary in the Filing Online User Guide, which shall also be accessible on the Commission's website. The exceptions to this rule are:

(1) Material that cannot reasonably be converted to electronic format;

(2) Confidential material filed under seal pursuant to part 3011 of this chapter shall not be transmitted electronically using the Filing Online system or any other electronic filing system unless authorized in advance by the Secretary;

(3) Hardcopy material filed by persons who do not have the ability to submit material using the Filing Online system and who files not more than ten pages of material with the Commission in any one calendar year;

(4) Hardcopy material filed by persons participating in proceedings that consider the appeal of a Postal Service determination to close or consolidate a post office, other than the Postal Service, that do not have the ability to submit material using the internet; and

(5) Hardcopy material filed in docketed proceedings with the approval of the Secretary for good cause shown.

(b) Material subject to the exceptions specified in paragraph (a) of this sec-

tion may be filed either by mailing or by hand delivery during regular business hours to the Office of Secretary and Administration, Postal Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001. The Secretary has authority to approve the use of secure alternative electronic filing systems pursuant to §3011.203(c)(2) of this chapter for confidential material filed under seal. The Secretary also has authority to approve the use of alternative electronic filing systems for non-confidential material on a case-by-case basis when necessary to facilitate efficient docketing operations.

§3010.121 Filing Online system.

(a) Only registered users of the Filing Online system may file material using the Filing Online system. Both temporary and permanent account registrations are available. Information for establishing a Filing Online account may be obtained on the Commission's website at <http://www.prc.gov>.

(b) A temporary account allows a user to file materials immediately, but expires after 35 days. The purpose of a temporary account is to permit persons to file comments solicited by the Commission on a one-time or infrequent basis, or to file notices of intervention where there is limited time in which to establish a permanent account. A temporary account also may be used on an extraordinary basis for good cause shown.

(c) A permanent account requires the authorization of the Secretary prior to use, but remains active until cancelled. Registration can be in the form of a principal account holder or as an agent of the principal account holder. When a principal account holder is representing the interests of another person, the authority of the principal account holder to represent the person on whose behalf the document is filed must be valid and current, in conformance with §3010.143. 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 the principal account holder's authority to represent participants in a proceeding

§ 3010.122

or any change in the authority delegated to an agent account holder to submit documents on the principal account holder's behalf.

(d) Only such material that conforms to the requirements of this part and any other applicable Commission rule or order shall be accepted for filing. In order for material to be accepted using the Filing Online system, it must be submitted to the Commission by a temporary or permanent account holder. Material submitted through the Filing Online system is considered to have been filed on the date indicated on the receipt issued by the Secretary. A filing is accepted when the Secretary, after review, posts the filing on the Daily Listing page of the Commission's website. Material received after the close of regular business hours or on a Saturday, Sunday, Federal holiday or other day on which the Commission is closed shall be deemed to be filed on the next regular business day.

§ 3010.122 Material filed using method other than the Filing Online system.

(a) *Hardcopy and other forms of material.* A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, posts the document on the Daily Listing page of the Commission's website. Any other form of material filed with the Commission must be accompanied by a hardcopy notice of filing, which describes the material being filed, identifies the person filing the material, and specifies the docket caption and docket number under which the material is being filed. This material is accepted when the Secretary, after review, posts the notice of filing on the Daily Listing page of the Commission's website. Material 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.

(b) *Computer media.* With the prior approval of the Secretary, a participant may submit a document on a compact disk or other media or method approved in advance by the Secretary, simultaneously with the filing of one printed original hardcopy, provided that the stored document is a file gen-

39 CFR Ch. III (7-1-23 Edition)

erated in either Acrobat (pdf), Word, WordPerfect, or Rich Text Format (rtf).

§ 3010.123 Rejected filings.

Any filing that does not comply with an applicable Commission rule or order 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 will attempt to 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. Any controversies concerning the acceptability of a filing shall be resolved after review by the Office of General Counsel.

§ 3010.124 Form and content of text-based documents filed with the Commission.

(a) *Equivalent paper size.* Each document filed in paper form shall 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 0.75 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. For a multiple page document, the preference is for the document to be not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent. If the document is bound, it shall be bound on the left side. Each document filed in electronic form must be capable of meeting the above requirements when-printed from a text-based pdf formatted file version of the document. Consideration may be given to alternative file formats where necessary.

(b) *Line spacing and font.* The text of documents filed with the Commission shall be formatted in not less than one and one-half spaced lines except that tables of content, captions, tables, footnotes and quotations may be single-spaced. Documents shall be submitted in a san-serif font such as Arial (or substantially equivalent). Body

text shall be 12 point, except that footnotes and quotations may appear as small as 10 point. Where necessary, special text such as in tables or charts, may appear as small as 9 point. These requirements may be waived on a case-by-case basis, based on both substantial compliance and the readability of the document.

(c) *Caption, title, page numbering, and table of contents.* 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). Each page, after the first page, of a document shall be consecutively numbered. Unique page numbers are permissible for introductory material such as cover pages and table of contents, and for appendixes. Each document filed with the Commission consisting of 20 or more pages shall include a table of contents with page references. For briefs also see § 3010.330.

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

(e) *Exception for appeals of post office closings and consolidations.* The requirements of paragraphs (a) through (c) of this section are encouraged, but optional, for participants other than the Postal Service in proceedings to consider the appeal of a Postal Service determination to close or consolidate a post office conducted pursuant to part 3021 of this chapter.

§ 3010.125 Library references.

(a) *In general.* A library reference is a special type of filing, which is accepted by the Commission for the convenience of the person filing material that is not conducive to typical text based filings. The filing of a document as a library reference is appropriate when interest in the material is limited, when the material constitutes a secondary source that provides background or

support for a position or matter, or when references to, or identification of, the material filed as a library reference would be facilitated. Examples of materials that are appropriate for filing as library references include electronic spreadsheets, workpapers in support of primary documents, pre-existing materials, secondary sources such as books or materials that are not readily available elsewhere, or other foundational materials filed in support of a primary document. Whenever possible, library references are to be filed in electronic format. The Commission reserves the right to refuse acceptance of any library reference material in its docket room and its right to take other action to ensure all persons' ability to obtain access to the material.

(b) *Categorization of library references.* To the extent possible, material filed as a library reference shall be identified and referred to by participants in terms of the following categories:

(1) Category 1—Reporting Systems Material (consisting of library references relating to the Postal Service's statistical cost and revenue reporting systems, and their primary outputs);

(2) 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);

(3) 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);

(4) Category 4—Material Provided in Response to Discovery (consisting of material provided in response to discovery requests);

(5) 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);

(6) Category 6—All Other Material (consisting of library references not fitting any of the other categories).

(c) *Labeling.* Material filed as a library reference shall be labeled in a

manner consistent with standard Commission notation and any other conditions the Commission or presiding officer establishes. Each library reference shall be identified by a unique identification number. The standard format for an identification number shall be “[abbreviated name of person filing]-LR-[docket identification]-[optional: NP][sequential number by person filing].” For example, “PRC-LR-CP2010-1-NP8” read right to left would be the eighth (8) non-public (NP) item filed in Docket No. (CP2010-1) as a library reference (LR) by the Postal Regulatory Commission (PRC). Alternative formats may be used when required for clear identification of the material being filed.

(d) *Filing procedure.* Participants filing material as a library reference shall file contemporaneous written notice of this action. The notice shall:

(1) Set forth the reason(s) why the material is being designated as a library reference;

(2) 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;

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

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

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

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

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

(8) To the extent feasible, for proceedings scheduled for a hearing on the record, 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). To the extent feasible, in all other proceeding types, identify portions relevant to the proceeding.

(e) *Optional preface or summary.* Inclusion of a preface or summary in a library reference addressing the matters set out in paragraphs (d)(1) through (8) of this section is encouraged, but optional.

§ 3010.126 Subscription.

(a) Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that the person filing the document has read the document being filed; that the person filing the document knows the contents thereof; that if executed in any representative capacity, the document has been subscribed in the capacity specified in the document with full power and authority so to do; that to the best of the person’s 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. This requirement extends to notices of filing for library references or other material, including the underlying library references or other material to the extent referenced in the notice of filing.

(b) For a document or notice of filing filed via the Filing Online system, the subscription requirement is met when the document or notice of filing is filed with the Commission.

(c) For a hardcopy document or hardcopy notice of filing, the subscription requirement is met by signing in ink, by affixing an electronic signature, or by including the typed name of the individual, authorized office, employee, attorney, or other representative who files the document or notice.

§ 3010.127 Service.

(a) Material filed by a person participating in a docket shall be deemed served on all other persons (except those served by the Secretary pursuant to paragraph (b) of this section) who are participating in the docket as of the date the material, or notice of the material’s filing is posted by the Secretary on the Commission’s website.

Postal Regulatory Commission

§ 3010.142

(b) The Secretary shall provide service by First-Class Mail, which is deemed complete upon mailing, to the following persons upon a demonstration of the inability to effectively utilize the Filing Online system (until alternative arrangements are established):

(1) Petitioners in dockets appealing Postal Service determinations to close or consolidate post offices conducted pursuant to part 3021 of this chapter;

(2) Parties that have intervened in proceedings docketed for a hearing on the record; and

(3) Where necessary for fairness and protection of due process, an active participant in a proceeding affecting the substantial rights of that participant.

(c) The Secretary shall maintain a current service list in each proceeding docketed for a hearing on the record which shall include the parties that have intervened in that proceeding and up to two individuals designated for physical service of documents, if necessary, by each party. The service list for each current proceeding will be available on the Commission's website at <http://www.prc.gov>. Each party who has internet access shall be responsible for ensuring that its listing on the Commission's website is accurate and should promptly notify the Secretary of any errors. The Secretary or the Secretary's designee shall be responsible for ensuring the accuracy of listings of any parties who lack internet access.

Subpart C—Participation in Commission Proceedings

§ 3010.140 Opportunity for comment.

Except for proceedings involving an appeal of a Postal Service determination to close or consolidate a post office, any person may submit comments in proceedings before the Commission. An opportunity to provide a reply to comments shall be at the discretion of the Commission, or the presiding officer if one is appointed. The scope and timing of comments and reply comments may be specified by notice, order, or presiding officer's ruling. There is no requirement to intervene in

a proceeding as a party in order to submit comments.

§ 3010.141 Appeals of Postal Service determinations to close or consolidate post offices.

(a) Only a person served by the post office in which the Postal Service has issued a decision to close or consolidate a post office may file an appeal of the decision with the Commission.

(b) Any other person served by the same post office under review who desires to participate in the proceeding, or any Postmaster, counsel, agent, or other person authorized or recognized by the Postal Service as such person's representative, may participate in an appeal by submitting comments.

(c) Except for persons identified in paragraph (a) or (b) of this section, the designated Public Representative, and the Postal Service, no other person may participate in a proceeding to consider the appeal of a Postal Service determination to close or consolidate a post office.

(d) Opposition to a person asserting eligibility for participation shall be made within three days of that person's first filing in the proceeding.

§ 3010.142 Parties to hearings on the record.

(a) *Parties to a proceeding.* Any interested person may become a party to proceedings docketed for a hearing on the record by filing a notice of intervention. The Postal Service, and the Public Representative are automatically deemed parties in such proceedings without the need to file a notice of intervention. Persons who file a complaint are also automatically deemed a party to a complaint proceeding without the need to file a notice of intervention. Parties may be provided an opportunity to participate in discovery, file testimony, participate in the written or oral examination of witnesses, file briefs, or present oral argument before the Commission or the presiding officer. Persons that have not intervened may participate in a proceeding docketed for a hearing on the record, but such participation shall be limited to providing comments pursuant to § 3010.140 unless otherwise directed.

(b) *Notices of intervention.* 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 postal services utilized by the intervenor giving rise to the intervenor's 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, when necessary, 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 by the Commission or its Secretary, unless for good cause shown, the Commission authorizes a late filing. Without a showing for good cause, late intervenors shall be subject to and may not challenge decisions by the Commission or presiding officer made prior to acceptance of the request for late intervention.

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

(2) Oppositions to notices of interventions in proceedings considering the change in the nature of a postal service pursuant to part 3020 of this chapter may be filed by any party in the proceeding no later than three days after the notice of intervention is filed.

(3) Pending Commission action, an opposition to intervention shall, in all proceedings except those considering the change in the nature of a postal service pursuant to part 3020 of this chapter, 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 § 3010.104 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.

§ 3010.143 Representation of persons.

(a) *By whom.* An individual may participate on the individual's own behalf; a member of a partnership may represent the partnership; and an officer may represent a corporation, limited liability company, trust, unincorporated association, or governmental entity. A 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 or an attorney acting in a representative capacity appears in person, submits a document to the Commission using the Filing Online system as a principal account holder, or signs a paper filed with the Commission, the personal appearance, online submission, or signature, shall constitute a representation to the Commission that that individual is authorized to represent the particular person on whose behalf the individual acts. Any individual 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 the individual's 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 in a proceeding before the Commission 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 person whom the individual represents as the individual to whom communications from the Commission in regard to the filing are to be addressed. An individual whose authority to represent a person 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 by the District of Columbia Rules of Professional Conduct.

(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 improper professional conduct. Contumacious conduct at any hearing before the Commission or its presiding officer shall be grounds 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.

§ 3010.144 Limitation of participation by investigative or prosecuting officers.

No officer, employee, or agent of the Commission who participates 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.

Subpart D—Notices, Motions, and Information Requests

§ 3010.150 Notices.

(a) *Purpose.* A notice is a document that announces a past, present, or future, event or occurrence. A notice shall not be combined with a request for any order or ruling that otherwise should be presented by motion. The Commission or presiding officer shall not combine a notice with a Commission order or a presiding officer's ruling, unless the title of the document clearly states the intent of document being issued.

(b) *Filing requirements.* The title of any document filed as a notice shall contain the word "notice." Additional requirements for the content of specific forms of notices are provided throughout chapter III of this title, where appropriate.

§ 3010.151 Notices and orders initiating proceeding.

(a) Upon a finding that a matter is properly before the Commission, the Commission shall issue a notice and order initiating the proceeding to consider that matter. The rules in this section apply to all proceedings except for:

(1) Proceedings to consider certain negotiated service agreements, which are noticed pursuant to § 3010.152; and

(2) Proceedings to consider the appeal of a Postal Service determination to close or consolidate post office, pursuant to part 3021 of this chapter.

(b) The notice and order shall:

(1) Describe the general nature of the proceeding, *i.e.*, a complaint, a rule-making, a change in rates, a change in the product lists, a change in the nature of postal services, etc.;

(2) Identify the person(s) requesting the initiation of the docket, if applicable;

(3) Refer to the legal authority under which the proceeding is to be conducted;

(4) Provide a sufficient description of the matter being considered such that the reader is informed of the substance of the proceeding, and provide direction as to where further information may be obtained;

§ 3010.152

39 CFR Ch. III (7–1–23 Edition)

(5) Establish the docket under which the proceeding will be conducted;

(6) Assign a Public Representative to represent the interests of the public, when required;

(7) Describe how interested persons may participate in the proceeding;

(8) Establish procedural deadlines, if known; and

(9) Include such other information as the Commission deems appropriate.

(c) For proceedings docketed for a hearing on the record pursuant to subpart F of this part, the notice and order shall also:

(1) Specify the date by which notices of intervention and requests for hearing must be filed;

(2) Specify the date, time, and place of a prehearing conference or first public hearing, if known; and

(3) Include the procedural schedule provided for under § 3020.110 of this chapter in proceedings to consider changes in the nature of postal services pursuant to part 3020 of this chapter.

(d) The document shall be published in the FEDERAL REGISTER.

§ 3010.152 Notices initiating dockets for consideration of negotiated service agreements.

(a) The Secretary shall issue a notice to initiate a docket for each Postal Service request which proposes the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list. Multiple requests may be combined into a single notice.

(b) The document shall specify:

(1) The docket number associated with each Postal Service request;

(2) The title of each Postal Service request;

(3) The request's acceptance date;

(4) The legal authority cited by the Postal Service for each request;

(5) The appointment of an officer of the Commission to represent the interests of the general public in the proceeding; and

(6) The comment deadline pertaining to each request.

(c) The document shall be published in the FEDERAL REGISTER.

§ 3010.160 Motions.

(a) *Motions.* A motion is an application for a Commission order or ruling by a presiding officer. Motions may be presented by any person who participates in, or who seeks to participate in, a proceeding before the Commission. Motions may be supported by declarations, exhibits, library references, attachments, and other submissions. Motions shall set forth with particularity the ruling or relief sought, the grounds therefore and the statutory and other authorities relied upon. Motions shall be in writing, except that after a hearing has convened, motions may be made orally to the Commission or to the presiding officer if one has been appointed.

(b) *Responses to motions.* A response to a motion may be presented by any person who participates in, or who seeks to participate in, a proceeding before the Commission. Responses shall state with particularity the position of the person submitting the response with regard to the relief or ruling requested in the motion and the grounds therefore and the statutory and other authorities relied upon. Responses to written motions must be filed within seven days after the motion is filed and posted on the Commission's website, or such other deadline as the rules of practice provide or as the Commission or presiding officer may establish. Responses to oral motions made during a hearing may be made orally to the Commission or to the presiding officer if one has been appointed, unless directed to reduce the response to writing for subsequent consideration.

(c) *Replies.* Unless the Commission or presiding officer otherwise provides, no reply to a response or any further responsive document may be filed.

(d) *Rulings.* The Commission or the presiding officer may rule on a motion in writing, or orally during a hearing. A ruling may be issued immediately, without waiting for a response, whenever the person propounding the motion asserts that all affected persons have been contacted and agree not to oppose the motion or when the Commission in its discretion determines that immediate action is appropriate.

Postal Regulatory Commission

§ 3010.170

§ 3010.161 Motions for waiver.

(a) Any person may file a motion requesting that any requirement imposed by regulation, order, ruling, or Commission, Chairman, or presiding officer request be waived.

(b) Motions for waiver will not be entertained unless timely filed so as to permit disposition of the motion prior to the date specified for the requirement for which waiver is requested. The pendency of a motion for waiver does not excuse any person from timely meeting the requirement for which the waiver is requested.

(c) Motions for waiver may be granted in whole or in part to the extent permitted by law upon a showing of good cause and that such waiver will be consistent with the public interest and will not unduly prejudice the interests of other participants.

§ 3010.162 Motions for continuances and extensions of time.

(a) Any person may file a motion requesting the continuance of a hearing or the extension of time for any deadline.

(b) The motion should be filed before the expiration of the specified time for the deadline for performing the act for which the continuance or extension is requested.

(c) The motion shall only be granted upon consideration of the potential adverse impact, if any, on other participants and the overall impact on the procedural schedule.

§ 3010.163 Motions for late acceptance.

(a) Any person may file a motion requesting that the Commission or the presiding officer accept any material filed by that person after an established filing deadline.

(b) The motion should be filed prior to or concurrent with the filing of any material filed after the established deadline.

(c) The Commission or the presiding officer are under no obligation to further consider any material filed after an established deadline, unless late acceptance is approved by the Commission or presiding officer. Posting late filed material to the Commission's website alone is not an indication that the material will be considered.

§ 3010.164 Motions to strike.

(a) Any person may, by motion, request that any material be stricken from consideration in any proceeding.

(b) Motions to strike are requests for extraordinary relief that must be supported with justification for why the material should be stricken from consideration. Motions to strike shall not be used as a substitute for rebuttal testimony, briefs, comments, or any other form of pleading.

§ 3010.165 Motions for reconsideration.

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

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

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

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

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

[87 FR 43214, July 20, 2022]

§ 3010.170 Information requests.

(a) An information request is an informal discovery mechanism used at the discretion of the Commission, the Chairman of the Commission, or a presiding officer to obtain information that is likely to materially assist the Commission in the conduct of its proceedings, in the preparation of its reports, or in the performance of its functions under title 39 of the United States Code.

(b) Information requests may be used to:

(1) Require the Postal Service in any proceeding, or any party to a Commission hearing on the record, to provide any information, and associated documents or things in its possession or control, or any information, and any associated documents or things that it

can obtain through reasonable effort and expense; or

(2) Request that any person other than the Postal Service or a party to a Commission hearing on the record provide any information, and any associated documents or things that it can obtain through reasonable effort and expense.

(c) Information that can be sought by information request includes, but is not limited to, explanations, confirmations, factual descriptions, data, documents, and other materials. Documents refer to hard copy or electronic conveyance of information and may be stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form. Documents include, but are not limited to, writings, notes, graphs, charts, data files, emails, drawings, photographs, and images. Materials include all matter, other than documents, that convey information.

(d) Information requests shall describe the information, documents, or things sought; shall briefly explain the reason for the request; and shall specify a date by which the response(s) shall be due.

(e) Any person may request the issuance of an information request by motion. The motion shall list the information, documents, or things sought; shall explain the reasons the information request should be issued; and shall demonstrate why the information sought is relevant and material to the Commission's duties under title 39 of the United States Code. Upon consideration of the motion and any responses, the Commission, the Chairman of the Commission, or presiding officer may issue an information request that includes some or all of the proposed questions or modified versions of some or all of the proposed questions. Motions that do not result in the issuance of an information request prior to the Commission's final decision in the docket shall be deemed denied.

Subpart E—Proceedings Using Notice and Comment Procedures

§ 3010.200 Applicability.

(a) Except as otherwise provided in this section, the Commission shall conduct proceedings in conformance with the notice and comment procedures of this subpart whenever:

(1) The Commission is considering the issuance, amendment, or repeal of any Commission rule or regulation;

(2) The Commission is seeking information to inform potential future Commission action with or without the issuance of a final decision; or

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

(b) Unless the Commission orders otherwise, the rules in this subpart shall not apply to proceedings governed by subpart F of this part (Proceedings with an Opportunity for a Hearing on the Record). The rules in this subpart also shall not apply to the following parts of subchapter D of chapter III (Special Rules of Practice for Specific Proceeding Types) of this title: part 3020 (Rules Applicable to Requests for Changes in the Nature of Postal Services) of this chapter, part 3021 (Rules for Appeals of Postal Service Determinations to Close or Consolidate Post Offices) of this chapter, part 3022 (Rules for Complaints) of this chapter, part 3023 (Rules for Rate or Service Inquiries) of this chapter, and part 3024 (Special Rules for Complaints Alleging Violations of 39 U.S.C. 404a) of this chapter.

§ 3010.201 Initiation of a proceeding.

(a) The Commission may on its own motion initiate a proceeding under this subpart by issuing a notice and order initiating proceeding pursuant to § 3010.151.

(b)(1) Any person may request the initiation of a proceeding under this subpart by filing a petition with the Commission pursuant to the filing requirements of subpart B of this part. The petition shall:

(i) Provide the name, address, phone number and other pertinent contact information of the requesting person;

(ii) Identify the subject matter of the petition;

Postal Regulatory Commission

§ 3010.300

(iii) Provide specific proposals, including specific language, in regard to the subject matter of the petition;

(iv) Provide all facts, views, arguments, and data deemed to support the action requested; and

(v) Describe the impact of the proposal on the person filing the petition, the Postal Service, the mailing community, and the Commission, as applicable.

(2) Upon consideration of the petition, the Commission in its discretion may initiate a proceeding under this subpart by issuing a notice and order initiating proceeding pursuant to § 3010.151, reject the petition, or defer a decision whether to grant or reject the petition. The Commission shall provide an explanation for the rejection or delay in consideration of any petition.

(c) Subparts A, B, C, and D of this part apply to the initiation and conduct of proceedings under this subpart E.

§ 3010.202 Participation in notice and comment proceedings.

(a) *Comments.* The primary method for participating in notice and comment proceedings is through the filing of comments in accordance with § 3010.140. The notice and order initiating proceeding filed pursuant to § 3010.151 shall provide the deadline for filing comments, and if provided for, reply comments.

(b) *Information requests.* The Commission, Chairman, or presiding officer may in its or their own discretion or, if requested by an interested person by motion, issue information requests pursuant to § 3010.170.

(c) *Technical conferences.* The Commission, Chairman, or presiding officer may in its or their own discretion or, if requested by an interested person by motion, convene one or more off the record technical conferences to consider the matters being considered.

(d) *Oral presentations.* The Commission, Chairman, or presiding officer may in its or their own discretion or, if requested by an interested person by motion, permit oral presentations regarding the matters being considered.

(e) *Other procedures.* The Commission, the Chairman, or presiding officer may

order additional procedures as appropriate.

§ 3010.203 Commission action.

(a) The Commission shall consider all relevant comments and material of record before taking any final action. Any final decision which includes the issuance, amendment, or repeal of a rule or regulation, shall, at a minimum, publish the final rule or regulation in the FEDERAL REGISTER.

(b) Any issuance, amendment, or repeal of a rule or regulation will be made effective not less than 30 days from the time it is published in the FEDERAL REGISTER except as otherwise specified in paragraph (c) of this section. If the order issuing, amending, or repealing a rule does not specify an effective date, the effective date shall be 30 days after the date on which the Commission's order is published in the FEDERAL REGISTER, unless a later date is required by statute or is otherwise specified by the Commission.

(c) For good cause shown by publication with the rule, any issuance, amendment, or repeal of a rule may be made effective in less than 30 days from the time the Commission's order is published in the FEDERAL REGISTER.

(d) Rules involving any military, naval or foreign affairs function of the United States; matters relating to agency management or personnel, public property, loans, grants, benefits or contracts; rules granting or recognizing exemption or relieving restriction; rules of organization, procedure or practice; or interpretative rules; and statements of policy may be made effective without regard to the 30-day requirement.

Subpart F—Proceedings With an Opportunity for a Hearing on the Record.

§ 3010.300 Applicability.

The Commission shall conduct proceedings on the record with the opportunity for a hearing subject to this subpart whenever:

(a) The Commission determines that a complaint filed under part 3022 of this chapter raises one or more material issues of fact or law in accordance with

§ 3010.301

§ 3022.30 of this chapter and a proceeding on the record with the opportunity for a hearing is necessary;

(b) The Commission determines that the streamlined procedures in part 3020 of this chapter applicable to a Postal Service request to change the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis are not appropriate; or

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

§ 3010.301 Notice of proceeding.

Whenever the Commission determines that a proceeding will be held on the record with an opportunity for a hearing under this part, it shall publish notice of the proceeding in the FEDERAL REGISTER pursuant to § 3010.151.

§ 3010.302 Prehearing conferences.

(a) *Initiation and purposes.* The Commission or the presiding officer, if one has been appointed, may direct the parties 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 (e) of this section. Prehearing conference procedures shall be rigorously pursued by all parties.

(b) *Who presides.* The presiding officer, if one has been designated, shall preside over prehearing conferences. If a presiding officer has not been designated or is otherwise unavailable for a prehearing conference, then the ranking Commissioner in attendance shall be considered the presiding officer for that conference. The presiding officer shall open and close each prehearing conference session and shall be responsible for controlling the conduct of the conference.

(c) *Informal off-the-record procedures.* In order to make the prehearing conference as effective as possible, the presiding officer may direct that conferences be held off the record, without the presiding officer present. Informal off-the-record conferences shall be presided over by the Public Representative or such other person as the parties may select. At off-the-record conferences, parties shall be expected to reach agreement on those matters,

39 CFR Ch. III (7–1–23 Edition)

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 (e) of this section. A report on the results of off-the-record conferences shall be made to the presiding officer on the record at a time specified by the presiding officer. The presiding officer shall then determine the further prehearing procedures, if any, to be followed.

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

(e) *Matters to be pursued.* At the prehearing conference, the presiding officer and the parties shall consider and resolve such matters as:

(1) The definition and simplification of the issues, including any appropriate explanation, clarification, or amendment of any proposal, filing, evidence,

Postal Regulatory Commission

§ 3010.303

complaint or other pleading filed by any party;

(2) Arrangements for timely completion of discovery from the Postal Service or any other party of information regarding any issues in the proceeding, prior filings, evidence or pleadings of any party;

(3) Procedures for timely discovery with regard to any future evidentiary filings of any party;

(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) The possible grouping of 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 in order 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 required for oral cross-examination of witnesses;

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

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

(11) The 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

parties to the conduct of the entire proceedings off the record.

(f) *Rulings by presiding officer.* (1) The presiding officer at a prehearing conference, shall, irrespective of the consent of the parties, dispose of by ruling:

(i) Any of the procedural matters itemized in paragraph (e) of this section; and

(ii) Such other procedural matters on which the presiding officer is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding.

(2) 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 parties, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified during the hearing to prevent manifest injustice.

§ 3010.303 Hearing format.

(a) In any case noticed for a proceeding to be determined on the record, the Commission or the presiding officer, if one has been appointed, may determine whether to hold a public hearing, or to hold a hearing by written submission of material only. A public hearing may be held if a hearing is requested by any party to the proceeding or if the Commission determines that a hearing is in the public interest. Generally, public hearings provide an opportunity for oral cross-examination of witnesses whereas hearings held by written submission of material only do not.

(b) Once established, requests to change the hearing format may be proposed by motion, or by the Commission's or presiding officer's own motion.

(c) Only representatives of the Commission, parties that have intervened in a proceeding, or persons intending to intervene prior to the deadline for notices of intervention may participate in a public hearing. However, public hearings are generally open to the public for observation. Public hearings may be closed to the public for good cause, or when confidential material is being presented.

§ 3010.304 Scheduling order.

(a) *When issued.* Upon consideration of the outcome of the prehearing conference, if held, and a determination of the need for a public hearing, the Commission, or the presiding officer if one has been appointed, shall issue a scheduling order. The scheduling order may be combined with any other order or ruling that the Commission or the presiding officer may issue. The scheduling order may be periodically modified as warranted.

(b) *Content of scheduling order.* The content of the scheduling order shall be tailored to the specifics of the matter before the Commission, including any requirement for a public hearing. The Commission or the presiding officer shall consider scheduling the following:

- (1) A deadline for conclusion of discovery on proponent's direct case;
- (2) A deadline to request oral cross-examination of proponent's witnesses;
- (3) A deadline for designation of written cross-examination on proponent's direct case;
- (4) The time and date for a public hearing on proponent's direct case, or the date and procedures for entering a proponent's direct case into evidence in a hearing by written submission of material only;
- (5) A deadline for parties other than the proponent to file testimony in support of, or in rebuttal to, the proponent's direct case;
- (6) A deadline for conclusion of discovery on testimony supporting or rebutting the proponent's direct case;
- (7) A deadline to request oral cross-examination of other parties' witnesses;
- (8) A deadline for designation of written cross-examination on other parties' testimony;
- (9) The time and date for a public hearing on other parties' testimony, or the date and procedures for entering other parties' testimony in a hearing by written submission of material only;
- (10) A deadline for the proponent to file surrebuttal testimony to other parties' direct cases;
- (11) A deadline for conclusion of discovery on any proponent's surrebuttal rebuttal testimony;

(12) A deadline to request oral cross-examination of proponent's surrebuttal witnesses;

(13) A deadline for designation of written cross-examination on proponent's surrebuttal testimony;

(14) The time and date for a public hearing on a proponent's surrebuttal testimony, or the date and procedures for entering a proponent's surrebuttal testimony in a hearing by written submission of material only;

(15) A deadline for filing briefs;

(16) A deadline for filing reply briefs; and

(17) A deadline for requesting oral argument.

(c) *Witness availability.* Parties shall promptly file notice of potential witness unavailability to appear at any public hearing as soon as known. Witness unavailability will be considered when establishing the initial, or any subsequent, procedural schedules. Once the initial scheduling order is issued, but no later than ten calendar days prior to a scheduled hearing, parties may file notice of preferences for dates and times of witness appearance at any public hearing.

(d) *Subsequent scheduling of public hearings.* At the adjournment of any public hearing (including prehearing conferences), the Commission, or the presiding officer if appointed, shall announce when the hearing will reconvene. If an announcement is not made, the Commission or the presiding officer shall announce the time, date, and location of the subsequent hearing, or prehearing conference in writing by notice, order, or presiding officer ruling.

§ 3010.310 Discovery—general policy.

(a) Sections 3010.311 through 3010.313 allow discovery reasonably calculated to lead to admissible evidence during a proceeding noticed for hearing on the record. In general, discovery against a party will be scheduled to end prior to the receipt into evidence of that party's direct case. An exception to this procedure shall operate in all proceedings set for hearing when a party needs to obtain information (such as operating procedures or data) available only from the Postal Service. Such discovery requests 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 §§3010.311 through 3010.313 are not exclusive. Parties 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 party or an officer or agent of a party fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§3010.311 through 3010.313, 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 parties obtaining the order, or prohibit the disobedient party from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

§3010.311 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 party may propound to any other party in a proceeding written, sequentially numbered interrogatories, by witness, requesting non-privileged information relevant to the subject matter and reasonably calculated to lead to the discovery of admissible evidence in such proceeding, to be answered by the party served, who shall furnish such information as is available to the requesting party. A party through interrogatories may require any other party to identify each person whom the other

party expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The party propounding the interrogatories shall file them with the Commission and serve them on the answering party. 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 party 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 party responding to the interrogatories shall file the answers with the Commission and serve them on the requesting party 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 grounds for every objection shall be clearly and fully stated. If an objection is made to part of an interrogatory, the part shall be specified. A party claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A party 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

§ 3010.312

answered until a prehearing conference or other later time. Objections shall be filed with the Commission and served on the requesting party within ten days of the filing of the interrogatories. Any ground not stated in a timely objection is waived unless excused by the Commission or presiding officer for good cause shown.

(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. Parties 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 party 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 overruled, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be filed with the Commission and served on the compelling party 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 party who has answered interrogatories is under the duty to seasonably amend a prior answer if the individual or party obtains information upon the basis of which the individual or party knows that the answer was incorrect when made or is no longer true. Parties 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. Parties filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether

39 CFR Ch. III (7–1–23 Edition)

it is a complete replacement for the previous answer.

(g) *Orders.* The Commission or the presiding officer may order that any party 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 party or person from undue annoyance, embarrassment, oppression, or expense.

§ 3010.312 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 party may serve on any other party to the proceeding a request to produce and permit the party making the request, or someone acting on behalf of the requesting party or the requesting party's agent 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 or reasonably calculated to lead to the discovery of admissible evidence and that are in the custody or control of the party 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 party requesting the production of documents or things shall file its request with the Commission and serve the request on the responding party.

(b) *Answers.* The party responding to the request shall file an answer with the Commission and serve the answer on the requesting party within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The responding party may produce copies of

documents or of electronically stored information in lieu of permitting inspection. Production must be completed no later than the time for inspection specified in the request unless good cause is shown.

(c) *Objections.* In the interest of expedition, the grounds for objection shall be clearly and fully stated. If an objection is made to part of an item or category, the part shall be specified. Any objection must state whether any responsive materials are being withheld on the basis of that objection. A party claiming privilege shall identify the specific evidentiary privilege asserted and state with particularity the reasons for its applicability. A party 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 and served on the requesting party within ten days of the request for production. The responding party may state an objection to a request to produce electronically stored information. If it objects to the form of the documents or things requested (or if no form was specified in the request), the responding party must state the form or forms it intends to use to produce the requested information.

(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. Parties 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 party 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 overruled. Such compelled documents or

things shall be made available to the party 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.

(f) *Orders and rulings.* The Commission or the presiding officer may direct any party or person to respond to a request for inspection on such terms and conditions as are just and may for good cause impose any protective conditions, including limitations or preconditions for inspections, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

§3010.313 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any party may serve upon any other party 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. Each requested admission shall be set forth separately and shall be deemed admitted unless within 14 days after the request is filed (or such other period as may be fixed by the Commission or presiding officer) the party to whom the request is directed files a written answer denying the requested admission pursuant to paragraph (c) of this section or objecting pursuant to paragraph (d) of this section. The party requesting an admission shall file its request with the Commission and serve the request on the responding party.

(b) *Answers.* Answers that fail to admit a matter as requested shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission. When a party qualifies an answer or denies only a part of the admission requested, the party shall specify so much of the requested admission as is true and qualify or deny the remainder. A failure to admit or deny for lack of information or knowledge shall not be made unless the responding party

§ 3010.320

states that it has made a reasonable inquiry and that information known or readily obtainable by the party is insufficient to enable the party to admit or deny. A party who answers a request for admission shall file its answer with the Commission and serve the answer on the requesting party.

(c) *Objections.* If an objection is made, the grounds for such objection shall be clearly and fully stated. If an objection is made to part of an item, the part to which an objection is made shall be specified. A party claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A party 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 and served on the requesting party, within ten days of the request for admissions.

(d) *Motions to compel responses to requests for admissions.* The party who has requested an admission may move to determine the sufficiency of the answers or objections. 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 request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Parties who have objected to requests for admissions which are the subject of a motion to compel shall have seven days to file a response. Responses will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* 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 overruled. Such compelled answers shall be filed with the Commission and served on the requesting party 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

39 CFR Ch. III (7–1–23 Edition)

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.

§ 3010.320 Settlement conferences.

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

§ 3010.321 Hearings.

(a) *How convened.* (1) Hearings shall be convened by the issuance of a notice, order, or presiding officer's ruling that is published in the FEDERAL REGISTER. Only the first session of a public hearing need be noticed and published in the FEDERAL REGISTER. All subsequent sessions within a docket are to be considered part of the same hearing. If there is a prehearing conference, the prehearing conference is to be considered the first hearing session in that docket.

(2) At the adjournment of each hearing session, the presiding officer responsible for the conduct of that hearing session shall announce if and when the hearing will reconvene. If an announcement is not made at the adjournment of the hearing session, the Commission or presiding officer shall announce the time, date, and location of any subsequent hearing, or prehearing conference, in writing by notice, order, or presiding officer ruling.

(b) *Who presides.* The presiding officer, if designated, shall preside over a public hearing. If a presiding officer has not been designated or is otherwise unavailable for a hearing, then the ranking Commissioner in attendance shall be considered the presiding officer for that hearing. The presiding officer shall open and close each session of

Postal Regulatory Commission

§ 3010.321

the hearing, and shall be responsible for controlling the conduct of the hearing.

(c) *Entering of appearances.* 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) *Witnesses.* All witnesses are expected to be available for public hearings. Unless otherwise ordered by the presiding officer, a witness need only attend a hearing on those days scheduled for entering that witness's testimony. Subject to the discretion and prior approval of the presiding officer, a witness may be excused from appearing at a hearing and may have the witness's written testimony and cross-examination entered into evidence by counsel.

(e) *Order of presentations.* (1) The proponent of a matter before the Commission shall present the proponent's direct case first. In matters initiated by the Postal Service, the Postal Service shall be considered the proponent. In complaint proceedings under section 3662 of the Act, the complainant shall be considered the proponent. The proponent also shall be provided an opportunity to respond to any rebuttal to the proponent's direct case. In all other instances, the Commission or the presiding officer shall determine the order of presentation.

(2) The order of presentations by parties other than the proponent shall be determined by the Commission or the presiding officer.

(3) The Commission or presiding officer shall announce the order of presentation of parties and individual witnesses prior to hearing sessions and shall issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing. Parties may present their preferences for order of appearance to the Commission or the presiding officer orally at a hearing or by filing a notice prior to the scheduled hearing date. Parties who disagree with a proposed order of appearances may move for a revised order of appearances either orally at a hearing or by filing a written motion pursuant to § 3010.160.

(f) *Swearing in of witnesses.* (1) Witnesses attending a hearing 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. The witness shall be sworn by means of the following (or an equivalent): "Please raise your right hand. Do you solemnly swear (or affirm), that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth? Please state your full name."

(2) The oath shall be given upon the first appearance of the witness providing testimony. Upon subsequent appearances, the witness is to be reminded by the presiding officer that the witness remains under oath for the duration of the proceeding.

(3) Witnesses not attending a hearing whose testimony is entered by counsel during a hearing shall attach a signed declaration that the testimony being submitted is that of the witness. A declaration shall be included with each piece of written testimony, and each set of written cross-examination. The declaration shall state the following (or an equivalent): "Declaration of [witness name]. I, [witness name], hereby declare under penalty of perjury that: The [testimony, designated responses to written cross-examination] filed under my name were prepared by me or under my direction; and were I to [provide oral testimony, respond orally to the questions appearing in the interrogatories], my answers would be the same."

(4) Hearings that are conducted by the written submission of testimony only shall also attach written declarations to testimony and cross-examination as described above.

(g) *Presentation of the evidence—(1) Presentations by parties.* Each party shall have the right to present evidence, cross-examine witnesses (limited to testimony adverse to the party conducting the cross-examination), and to present objections, motions, and arguments. The case-in-chief of parties other than the proponent shall be in writing and shall include the party's direct case and rebuttal, if any, to the initial proponent's case-in-chief. A party's presentation may be accompanied

by a trial brief or legal memoranda. Legal memoranda on matters at issue are generally welcome at any stage of the proceeding. Parties will be given an opportunity to rebut presentations of other parties, including an opportunity for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another party'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 testimony.* (i) Written testimony shall be offered in evidence by motion. The motion shall be made orally during a hearing, or in writing when the hearing is conducted by the written submission of testimony only. When a party moves to enter testimony into the record, three hard copies of the document shall simultaneously be submitted to the Commission for the record. The copies are to be printed single-sided, and not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent.

(ii) Witnesses shall be provided an opportunity to verify that the written testimony they are sponsoring is their testimony and that it would be the same if given orally. The witness, or counsel, shall state the original filing date of the testimony and identify all subsequent filings that amended the original testimony. If there are any final corrections to the testimony, the corrections may be noted on the hard copies submitted to the Commission. However, the witness shall be required to file errata to the testimony within seven days of the hearing, making corrections only to the extent as identified during the hearing. Any other changes shall be requested separately by motion to amend the record.

(iii) Parties shall be provided an opportunity to object to all or part of a witness's written testimony prior to entering that testimony into the record. Objections that have not previously been made in writing at least 14 days prior to the hearing date shall

be granted only under extraordinary circumstances.

(iv) After resolution of all objections, the presiding officer shall order the testimony entered into the record as evidence. Unless otherwise ordered by the presiding officer, the written testimony shall not be copied into the hearing transcript.

(3) *Library references.* (i) Library references sponsored by a witness and associated with the witness's written testimony or written cross-examination may be offered in evidence by motion. The motion shall be made orally during a public hearing, or in writing for a hearing that is conducted by the written submission of testimony only.

(ii) Witnesses shall be provided an opportunity to verify that the library reference is their library reference and to affirm that they are in fact sponsoring the library reference. If a witness inadvertently fails to verify and affirm that the witness is sponsoring a library reference that is cited in written testimony or in response to written cross-examination, it will be presumed that the library reference is to be included in the record to the extent specified in the notice of the filing of the library reference.

(iii) Parties shall be provided an opportunity to object to all or any part of the library reference being entered into the record. Objections that have not been made in writing at least 14 days prior to the hearing date shall be granted only under extraordinary circumstances.

(iv) After resolution of all objections, the presiding officer shall order the library reference be entered into the record as evidence. Unless ordered by the presiding officer, library references shall not be copied into the hearing transcript.

(4) *Written cross-examination.* (i) Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Written cross-examination may be offered in evidence by motion. The motion shall be made orally during a public hearing, or in writing for a hearing that is conducted by the written submission of testimony only. Written cross-examination proposed by parties

other than the party associated with the witness shall be considered first, followed by that of the party of the witness.

(ii) Designations of written cross-examination should be filed with the Commission and served on the answering party 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 party 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 party designates written cross-examination, three hard copies of the documents to be included shall simultaneously be submitted to the Secretary. The documents are to be printed single-sided, and not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent. The Secretary 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.

(iii) A witness shall be provided an opportunity to verify that the written cross-examination is that of the witness and to assert that if the written cross-examination were being provided orally at the hearing it would be that of the witness. If there are any final corrections to the written cross-examination, the corrections may be noted on the hard copies before submission to the Commission.

(iv) Parties shall be provided an opportunity to object to all or any part of the written cross-examination prior to entering the testimony into the record.

(v) After resolution of all objections, the presiding officer shall order the written cross-examination entered into the record as evidence. The presiding officer shall direct that the written cross-examination be copied into the hearing transcript.

(5) *Oral cross-examination.* (i) Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions, or other opinion evidence.

(ii) 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. If no notices are filed, and the Commission or presiding officer has no other reason for the witness to appear, the Commission or the presiding officer, in their discretion, may excuse the witness from appearing at the hearing and direct that the witness's testimony be entered by counsel.

(iii) A party 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 full business days 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 party. When presented, examination exhibits are not to be considered record evidence. They are to be transcribed into the record for reference only. If adopted by the witness, the examination exhibit may be offered in evidence by motion.

(iv) At the conclusion of oral cross-examination, the witness shall be given an opportunity to consult with counsel. Counsel shall then be provided an opportunity to examine the witness for the purpose of clarifying statements previously made during oral cross-examination.

(h) *Institutional testimony.* (1) This paragraph (h) is applicable to testimony offered in evidence that is not sponsored by an individual witness. This typically occurs when discovery questions are answered by the institution, and not by an individual witness.

(2) When institutional responses are offered in evidence by any party, the responding party shall make available at the hearing an officer of the institution that has the authority to attest to

§ 3010.322

the authenticity and truthfulness of the responses, and that has the knowledge to be subject to oral cross-examination in regard to the responses. Section 3010.321 applies as if the officer of the institution were an individual witness.

(i) *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 the number of witnesses to be heard upon any issue, the examination by any party to specific issues, and 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.

(j) *Motions during hearing.* After a hearing has commenced, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall specify 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 party shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(k) *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 a presiding officer's intermediate decision. This section shall not preclude a presiding officer, within the presiding officer's discretion, from referring any motion made in hearing

39 CFR Ch. III (7–1–23 Edition)

to the Commission for ultimate determination.

(l) *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. Any request to correct a transcript shall be by motion filed no later than seven days after the transcript, or notice of the availability of a confidential transcript, is posted to the Commission's website. Corrections or changes to actual testimony shall not be allowed.

§ 3010.322 Evidence—general.

(a) *Form and admissibility.* In all hearings, 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 party 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 party offering the same to the other parties 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) *Status of library references.* Designation of material as a library reference and acceptance in the Commission's docket section do not confer evidentiary status. The evidentiary status of the material is governed by § 3010.321(g)(3).

(c) *Commission's files.* Except as otherwise provided in paragraph (e) of this section, any matter contained in a report or other document on file with the Commission may be offered in evidence by specifying the report, document, or other file containing the matter so offered and the report or other document need not be produced or marked for identification.

(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.

tifying the document and the relevant parts thereof.

(e) *Designation of evidence from other Commission dockets.* (1) Parties 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 to consider the appeal of a Postal Service determination to close or consolidate a post office conducted pursuant to part 3021 of this chapter, these requests must be made at least six days before the date for filing the party's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within three days. Oppositions to requests for counter-designations are due within two 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 party'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 seven days.

(4) In all proceedings subject to this section, the moving party 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 § 3010.124(a) and (b).

(g) *Copies to parties.* Except as otherwise provided in these rules, copies of exhibits shall be furnished to the presiding officer and to the parties or counsel during a hearing, unless the presiding officer otherwise directs.

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

§ 3010.323 Evidence—introduction and reliance upon studies and analyses.

(a) *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, the procedures undertaken, and references from the academic literature supporting the procedures undertaken. Machine-readable data files, program files, workbooks, and all other necessary materials to enable independent replication of the results or program output if requested by the Commission or parties shall be provided in the form of a compact disk or other media or method approved in advance by the Secretary. Where a computer analysis is employed to obtain the result of a statistical study, all of the submissions required by paragraph (b) of this section shall be furnished, upon request. In addition, for each of the following types of statistical studies, the following information should be provided:

(1) *Market research.* The following information shall be provided:

(i) A clear and detailed description of the sample, observational, and data preparation designs, including definitions of the target population, sampling frame, units of analysis, questionnaires or data collection instruments, survey variables, and the possible values;

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

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

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

(v) A complete description and assessment of the effects of all editing and imputation employed;

(vi) Identification of all applicable statistical models considered and the reasons the model based procedures and/or models were selected over other models or procedures, when model-based procedures are employed; and

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

(2) *Other sample surveys.* The following information shall be provided:

(i) 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 that can be placed on major estimates; and

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

(3) *Experimental analyses.* The following information shall be provided:

(i) A complete description of the experimental design, including a specification of the controlled conditions and how the controls were realized; and

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

(4) *Econometric studies.* The following information shall be provided:

(i) A presentation of the economic theory and assumptions underlying the study;

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

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

(iv) 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;

(v) 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;

(vi) Summary descriptions and source citations for all input data and, upon request, a complete listing of the data. Complete descriptions of any alterations, adjustments, or transformations made to the data as received from the original sources, and the reasons for making the alterations, adjustments, or transformations;

(vii) A complete report of the econometric results including, where applicable coefficient estimates, standard errors and t-values, goodness-of-fit statistics, other appropriate test statistics, the variance/covariance matrix of the estimates, and computed residuals for results computed from samples composed of fewer than 250 observations, and, upon request, other computed residuals; and

(viii) Descriptions of all statistical tests of hypotheses and the results of such tests.

(5) *All other studies involving statistical methodology.* The following information shall be provided:

(i) The formula used for statistical estimates;

(ii) The standard errors of each component estimated;

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

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

(b) *Computer analyses.* (1) 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 (b)(3) 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 party, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing. The following information shall be provided:

(i) 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;

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

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

(iv) 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;

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

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

(vii) 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; and

(viii) Computer simulation models offered in evidence or relied upon as support for other evidence, shall be bound by all applicable provisions of this paragraph (b) and the separate requirements of paragraph (a) 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.

(2) Upon timely and otherwise proper request of a party, or *sua sponte*, the Commission or the presiding officer may rule that matters other than those listed in paragraphs (b)(1)(i) through (viii) of this section are necessary to establish the foundation for reception of the evidence concerned and must be furnished.

(3) When the requestor is other than the Commission or the presiding officer, the cost of producing the material required in paragraphs (b)(1)(iv), (vi), and (vii) 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 requester.

(4) If the recipient of a request for materials pursuant to this paragraph (b) 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 (b). 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 (b)(3) 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 (b) cannot be provided, the presiding officer shall determine, in the presiding officer's discretion, whether evidence that relies upon the materials not provided shall be admissible or afforded limited weight.

(c) *Other studies and analyses.* 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 (a) and (b) 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 and the steps taken to ensure the validity, accuracy, and reliability of the evidence. Tabulations of input data, workbooks, and all other materials necessary to replicate results shall be made available upon request at the offices of the Commission.

(d) *Expedition.* The party who offers studies or analyses in evidence shall expedite responses to requests made pursuant to this section for data or other information. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in

Postal Regulatory Commission

§ 3010.325

accordance with the provisions of § 3010.127 no later than 3 days after a request is made under § 3010.322(e)(2) or no later than 14 days after a request is made under § 3010.322(e)(3).

§ 3010.324 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.* (1) 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:

(i) A description of the documents and testimony;

(ii) A full statement of the reasons for granting *in camera* treatment; and

(iii) A full statement of the reasons for the date on which *in camera* treatment expires.

(2) 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 § 3010.323," 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 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.

§ 3010.325 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition when authorized by the Commission or the presiding officer on application of any party 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;

(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 party and will not result in undue delay or an undue burden to other parties.

§ 3010.330

39 CFR Ch. III (7–1–23 Edition)

(b) *Application.* An application for authorization to take testimony by deposition shall be filed 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 parties 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, 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 party 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 someone acting under the officer's direction and in the officer's presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3010.124(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 re-

quired 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 party 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. Parties shall have the right for cross-examination and objection. In lieu of participation in the oral examination, parties 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 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 party, any other party may require the party to introduce all of it which is relevant to the part introduced, and any party 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 party or parties on whose application the deposition was taken.

§ 3010.330 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. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and

Postal Regulatory Commission

§ 3010.333

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 may direct each party to file its brief simultaneously with the filing of briefs by other parties. In cases where, because of the nature of the issues and the record or the limited number of parties 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 parties may be directed to file more than one brief and at different times rather than a single brief filed simultaneously with briefs filed by other parties. The Commission or presiding officer 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 possible, 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 party;

(3) A clear, concise, and definitive statement of the position of the filing party as to the matter before the Commission and the 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 with the Commission and served on all parties as required pursuant to subpart B of this part.

§ 3010.331 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.

§ 3010.332 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 the presiding officer's 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 party. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

§ 3010.333 Oral argument before the Commission.

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any party 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 party in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion. 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.

(c) *Notice of oral argument.* The Commission shall rule on requests for oral

§ 3010.334

argument, and if argument is allowed, the Commission shall notify the parties of the time and place set for argument, the amount of time allowed each party, 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 seven 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.

§ 3010.334 Commission decisions.

(a) At the conclusion of a proceeding on the record with the opportunity for a hearing, the Commission shall issue a final decision which either:

(1) Adopts an intermediate decision prepared by a presiding officer; or

(2) Rules upon the matters that are before the Commission, or provides explanation for why such rulings are not being provided.

(b) Commission decisions shall be based on the evidence entered into the record, and consider the arguments filed on brief. Argument provided in comments may further inform the Commission's decision, but have no evidentiary standing and are not required to be addressed in the final decision.

(c) An intermediate decision may be adopted by the Commission in whole or in part. When an intermediate decision is adopted in part, the Commission shall explain its decisions regarding both what is and is not adopted.

(d) When exceptions, or objections to exceptions, to an intermediate decision are filed pursuant to § 3010.336 by any party to the proceeding, the Commission shall consider and rule upon such exceptions, or objections to exceptions in its final decision.

(e) Commission decisions shall be filed in the docket and served on all

39 CFR Ch. III (7–1–23 Edition)

parties. Commission decisions shall be part of the record of the proceeding.

§ 3010.335 Intermediate decisions.

(a) An intermediate decision shall be issued by the presiding officer which rules upon the matters that are before the Commission, or provides explanation for why such rulings are not being provided, in a proceeding on the record with the opportunity for a hearing when:

(1) The Commission is not sitting *en banc*; or

(2) The presiding officer has been directed to issue an intermediate decision by Commission notice or order.

(b) Intermediate decisions shall be based on the evidence entered into the record, and shall consider the arguments filed on brief. Arguments provided in comments may further inform the presiding officer's decision, but are not required to be addressed in the intermediate decision.

(c) Intermediate decisions shall be filed in the docket and served on all parties. Intermediate decisions shall be part of the record of the proceeding.

(d) Intermediate decisions are subject to review by the Commission and subject to challenge by parties to the proceeding through the filing of exceptions pursuant to § 3010.336. After review and consideration of the exceptions filed, intermediate decisions may be adopted by the Commission, in whole or in part, as part of the final decision in the proceeding.

(e)(1) The Commission may, at any time, direct the omission of an intermediate decision and the certification of the record for the Commission's consideration sitting *en banc*. Parties to a proceeding may, by motion, request the omission of an intermediate decision and the certification of the record for the Commission's consideration sitting *en banc*. Motions shall specify:

(i) The concurrence of other parties; and

(ii) Whether opportunity for filing briefs or presenting oral argument to the Commission is desired or waived.

(2) Failure of any party to object to such request shall constitute a waiver of any objections. Motions shall be filed no later than the deadline for the filing of briefs. In either instance, the

Postal Regulatory Commission

Pt. 3011

decision to omit an intermediate decision shall be based upon the consideration of the novelty of the matters before the Commission, and the timely and efficient operation of the docket.

§3010.336 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any party in a proceeding may file exceptions to any intermediate decision by first filing a notice of intent to file a brief on exceptions with the Commission within seven days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. The brief on exceptions shall be filed 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 party to a proceeding may file a response to a brief 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 §3010.330. 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 party to which reference is made.

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

PART 3011—NON-PUBLIC MATERIALS PROVIDED TO THE COMMISSION

Subpart A—General Provisions

Sec.

3011.100 Applicability and Scope.

3011.101 Definitions.

3011.102 Treatment of non-public materials.

3011.103 Commission action to determine non-public treatment.

3011.104 Standard for public disclosure of materials claimed to contain non-public information.

Subpart B—Submitting Non-public Materials and Seeking Non-public Treatment

3011.200 General requirements for submitting non-public materials and seeking non-public treatment.

3011.201 Application for non-public treatment.

3011.202 Redacted version of the non-public materials.

3011.203 Unredacted version of the non-public materials.

3011.204 Protections for any person other than the submitter with a proprietary interest.

3011.205 Non-public materials inadvertently submitted publicly.

Subpart C—Seeking Access to Non-public Materials

3011.300 Eligibility for access to non-public materials.

3011.301 Motion for access to non-public materials.

3011.302 Non-dissemination, use, and care of non-public materials.

3011.303 Sanctions for violating protective conditions.

3011.304 Termination and amendment of access to non-public materials.

3011.305 Producing non-public materials in non-Commission proceedings.

APPENDIX A TO SUBPART C OF PART 3011—
TEMPLATE FORMS PROTECTIVE CONDITIONS
STATEMENT

Subpart D—Seeking Public Disclosure of Non-public Materials

3011.400 Motion for disclosure of non-public materials.

3011.401 Materials for which non-public treatment has expired.

APPENDIX A TO SUBPART D OF PART 3011—
TEMPLATE FORM

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

Part 3011, Nt.

39 CFR Ch. III (7–1–23 Edition)

SOURCE: 83 FR 31281, July 3, 2018, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

EFFECTIVE DATE NOTE: At 88 FR 37154, June 7, 2023, the authority citation for part 3011 was revised, effective July 7, 2023. For the convenience of the user, the revised text is set forth as follows:

AUTHORITY: 39 U.S.C. 407, 503, 504.

Subpart A—General Provisions

§ 3011.100 Applicability and Scope.

(a) *Applicability.* The rules in this part apply whenever:

(1) The Postal Service claims that any materials it provides to the Commission in connection with any proceeding or other purpose under title 39 of the U.S. Code, contain non-public information;

(2) Any person other than the Postal Service claims that any materials it provides to the Commission contain non-public information;

(3) The Commission is in the process of determining the appropriate degree of confidentiality to be accorded materials identified by any person to contain non-public information in accordance with these rules; or

(4) The Commission is in the process of determining how to ensure appropriate confidentiality for materials identified to contain non-public information that is furnished to any person in accordance with these rules.

(b) *Scope.* Information includes, but is not limited to, explanations, confirmations, factual descriptions, and data. Document refers to a hard copy or electronic conveyance of information and may be stored in any medium from which information can be obtained either directly or, if necessary, after translation into a reasonably usable form. Documents include, but are not limited to, writings, notes, graphs, charts, data files, emails, drawings, photographs, and images. Things include all matter, other than documents, that convey information. Documents and things shall collectively be referred to as materials.

EFFECTIVE DATE NOTE: At 88 FR 37154, June 7, 2023, § 3011.100 was amended by adding paragraph (c), effective July 7, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 3011.100 Applicability and scope.

* * * * *

(c) *Exemption.* Except for the circumstances described in paragraphs (c)(1) through (3) of this section, the rules in this part do not apply to any non-public materials (and the non-public information contained therein) provided to the Commission by any person in connection with activities under 39 U.S.C. 407(b)(2)(A).

(1) The following persons shall adhere to the requirements of § 3011.302 regarding the non-dissemination, use, and care of the non-public materials (and the non-public information contained therein) provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A).

(i) Members of the Commission;

(ii) Commission employees; and

(iii) Non-employees who have executed appropriate non-disclosure agreements (such as contractors, attorneys, or subject matter experts) assisting the Commission in carrying out its duties.

(2) Any person that discovers that non-public materials provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) have been inadvertently included within materials that are accessible to the public shall follow the procedures of § 3011.205.

(3) Non-public materials provided to the Commission in connection with activities under 39 U.S.C. 407(b)(2)(A) are construed to exclude each of the following:

(i) Non-public materials provided by the Postal Service to the Commission pursuant to a subpoena issued in accordance with part 3013 of this chapter;

(ii) Non-public materials filed in response to an information request issued in accordance with § 3010.170 of this chapter;

(iii) Non-public materials filed in compliance with any applicable Postal Service reporting required under part 3050 or part 3055 of this chapter; and

(iv) Non-public materials filed in a Commission docket.

§ 3011.101 Definitions.

(a) *Non-public materials* means any documents or things that are provided to the Commission and identified as containing non-public information. The Postal Service may claim that information that would be exempt from disclosure pursuant to 39 U.S.C. 410(c), 504(g), 3652(f), or 3654(f) is non-public information. Any person other than the Postal Service with a proprietary interest in the materials may claim that information that would be protectable under Federal Rule of Civil Procedure

Postal Regulatory Commission

§ 3011.103, Nt.

26(c) is non-public information. Any person may claim that information that is exempt from public disclosure under 5 U.S.C. 552(b) is non-public information. Non-public materials cease to be non-public if the status has expired or has been terminated by the Commission pursuant to this part. Except as provided by § 3011.205, non-public materials cease to be non-public if the submitter publicly discloses the materials with the consent of each affected person with a propriety interest in the materials (if applicable). The cessation of non-public status applies to the particular document or thing and the particular information contained therein (in whole or in part, as applicable).

(b) *Submitter* means any natural or legal person, including the Postal Service, that provides non-public materials to the Commission and seeks non-public treatment in accordance with the rules of this part.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9641, Feb. 19, 2020]

§ 3011.102 Treatment of non-public materials.

(a) Except as described in part 3011 or part 3006 of this chapter, the Commission will neither disclose nor grant access to any non-public materials (and the non-public information contained therein).

(b) To accord appropriate confidentiality to non-public information and 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):

(1) Prohibit the public disclosure of the non-public information and non-public materials;

(2) Specify terms for public disclosure of the non-public information and non-public materials;

(3) Order a specific method for disclosing the non-public information and non-public materials;

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

(5) Restrict who may access the non-public information and non-public materials;

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

(7) Order other relief as appropriate including sealing a deposition or part of a proceeding.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9641, Feb. 19, 2020]

§ 3011.103 Commission action to determine non-public treatment.

(a) Information requests as described in § 3010.170 of this chapter, preliminary notices, or interim orders may be issued to help the Commission determine the non-public treatment, if any, to be accorded to the materials claimed by any person to be non-public.

(b) Upon motion by any person, the Commission may issue an order containing a description of and timeframe for the non-public treatment, if any, to be accorded to materials claimed by any person to be non-public.

(c) Upon its own motion, the Commission may issue notice of its preliminary determination concerning the appropriate degree of protection, if any, to be accorded to materials claimed by any person to be non-public. A response is due within seven calendar days of issuance of the preliminary determination, unless the Commission otherwise provides. No reply to a response shall be filed, unless the Commission otherwise provides. Pending the Commission's resolution of the preliminary determination, information designated as non-public will be accorded non-public treatment. The Commission will enter an order determining what non-public treatment, if any, will be accorded to the materials after the response period described in this paragraph has expired. The determination of the Commission shall follow the applicable standard described in § 3011.104.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9641, Feb. 19, 2020]

EFFECTIVE DATE NOTE: At 88 FR 37154, June 7, 2023, § 3011.103 was amended by revising paragraph (a), effective July 7, 2023. For the convenience of the user, the revised text is set forth as follows:

§ 3011.104

39 CFR Ch. III (7–1–23 Edition)

§ 3011.103 Commission action to determine non-public treatment.

(a) The inadvertent failure of a submitter to concomitantly provide all documents required by § 3011.200(a) does not prevent the Commission from according appropriate confidentiality to non-public information contained with any materials provided to the Commission. Information requests as described in § 3010.170 of this chapter, preliminary notices, or interim orders may be issued to help the Commission determine the non-public treatment, if any, to be accorded to the materials claimed by any person to be non-public.

* * * * *

§ 3011.104 Standard for public disclosure of materials claimed to contain non-public information.

(a) In determining whether to publicly disclose materials claimed by the Postal Service to contain non-public information, the Commission shall balance the nature and extent of the likely commercial injury identified 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 materials in which the Commission determines any person other than the Postal Service has a proprietary interest, the Commission shall balance the interests of the parties consistent with the analysis undertaken by a federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c).

Subpart B—Submitting Non-Public Materials and Seeking Non-Public Treatment

§ 3011.200 General requirements for submitting non-public materials and seeking non-public treatment.

(a) Whenever providing non-public materials to the Commission, the submitter shall concomitantly provide the following: 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 in accordance with § 3011.201, a redacted (public) version of the non-public materials in accordance with § 3011.202, and an

unredacted (sealed) version of the non-public materials in accordance with § 3011.203.

(b) Before submitting non-public materials to the Commission, if the submitter has reason to believe that any person other than the submitter has a proprietary interest in the information contained within the non-public materials, the submitter shall inform each affected person of the nature and scope of the submission to the Commission, including the pertinent docket designation(s) (to the extent practicable) and that the affected person may address any confidentiality concerns directly with the Commission.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9641, Feb. 19, 2020]

§ 3011.201 Application for non-public treatment.

(a) *Burden of persuasion.* An application for non-public treatment shall fulfill the burden of persuasion that the materials designated as non-public should be withheld from the public.

(b) *Contents of application.* An application for non-public treatment shall include a specific and detailed statement setting forth the information specified in paragraphs (b)(1) through (8) of this section:

(1) The rationale for claiming that the materials are non-public, including the specific statutory provision(s) supporting the claim, and an explanation justifying application of the provision(s) to the materials.

(2) A statement of whether the submitter, any person other than the submitter, or both have a proprietary interest in the information contained within the non-public materials, and the identification(s) specified in paragraphs (b)(2)(i) through (iii) of this section (whichever is applicable). For purposes of this paragraph, identification means the name, phone number, and email address of an individual.

(i) If the submitter has a proprietary interest in the information contained within the materials, identification of an individual designated by the submitter to accept actual notice of a motion related to the non-public materials or notice of the pendency of a subpoena or order requiring production of the materials.

(ii) If any person other than the submitter has a proprietary interest in the information contained within the materials, identification of each person who is known to have a proprietary interest in the information. If such an identification is sensitive or impracticable, an explanation shall be provided along with the identification of an individual designated by the submitter to provide notice to each affected person.

(iii) If both the submitter and any person other than the submitter have a proprietary interest in the information contained within the non-public materials, identification in accordance with both paragraphs (b)(2)(i) and (ii) of this section shall be provided. The submitter may designate the same individual to fulfill the requirements of paragraphs (b)(2)(i) and (ii) of this section.

(3) A description of the information contained within the materials claimed to be non-public in a manner that, without revealing the information at issue, would allow the Commission to thoroughly evaluate the basis for the claim that the information contained within the materials are non-public.

(4) Particular identification of the nature and extent of the harm alleged and the likelihood of each harm alleged to result from disclosure.

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

(6) The extent of the protection from public disclosure alleged to be necessary.

(7) The length of time for which non-public treatment is alleged to be necessary with justification thereof.

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

(c) *Incorporation by reference.* If the material designated as non-public has been previously claimed to be non-public material by a prior application for non-public treatment, the submitter may incorporate by reference the prior application. Any application that incorporates by reference a prior application that is accessible through the Commission's website (<http://www.prc.gov>) shall state the date, docket number, and the name of the filer of the prior application. In all other circumstances, the application that incor-

porates by reference a prior application shall attach the prior application.

§ 3011.202 Redacted version of the non-public materials.

(a) Except as allowed under paragraph (b) of this section, the submitter shall use the graphical redaction (blackout) method to redact non-public information from the materials. The submitter shall blackout only the information that is claimed to be non-public.

(b) The submitter shall justify using any other redaction method. The application for non-public treatment shall state with particularity the competitive harm or practical difficulty alleged to result from using the blackout method. The submitter shall specifically identify any alterations made to the unredacted version, including the location and number of lines or pages removed.

(c) If electronic, the redacted version shall be filed in a searchable format, unless the submitter certifies that doing so would be impracticable.

§ 3011.203 Unredacted version of the non-public materials.

(a) Each page or portion of the unredacted version of the materials for which non-public treatment is sought shall be marked in a manner reasonably calculated to alert custodians to the confidential nature of the materials.

(b) The Filing Online method that results in posting a document that is available to the public, which is accessible through the Commission's website (<http://www.prc.gov>) described under part 3010, subpart B of this chapter may not be used to submit the unredacted version of non-public materials.

(c) The filing of the unredacted version of the non-public materials shall be made in accordance with the following requirements.

(1) Except if using an alternative system approved by the Commission under paragraph (c)(2) of this section, the unredacted version of the non-public materials shall be filed in a sealed envelope clearly marked "Confidential. Do Not Post on Web" to the Office of Secretary and Administration, Postal

§ 3011.204

Regulatory Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001. The unredacted version of the non-public materials may not be password protected. Two copies of the unredacted version of a non-public document shall be filed using an electronic format such as compact discs (CDs), or digital video discs or digital versatile discs (DVDs) that shall be clearly marked "Confidential. Do Not Post on Web." If making an electronic unredacted version of a non-public document is impracticable, two hard copies (paper) versions of the non-public document may be filed.

(2) The Secretary of the Commission has authority to approve the use of a secure alternative system to file non-public materials. The Secretary may set forth any minimum requirements associated with using an alternative system. If a filer using the alternative system fails to comply with any of the Secretary's requirements, the Secretary has discretion to revoke the filer's eligibility to use the alternative system or impose requirements specific to the filer as necessary to ensure secure transmission of non-public materials.

(d) The unredacted version of a spreadsheet shall display the formulas used and their links to related spreadsheets. The unredacted version of 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.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9641, Feb. 19, 2020]

§ 3011.204 Protections for any person other than the submitter with a proprietary interest.

Any person other than the submitter with a proprietary interest in materials that have been or will be submitted to the Commission may address any confidentiality concerns directly with the Commission by seeking non-public treatment in accordance with the requirements of this subpart, responding to a motion for access to non-public materials in accordance with the requirements of subpart C of this part, or responding to a motion for disclosure of non-public materials in ac-

39 CFR Ch. III (7-1-23 Edition)

cordance with the requirements of subpart D of this part.

§ 3011.205 Non-public materials inadvertently submitted publicly.

(a) Any filer or person with a proprietary interest that discovers the inclusion of materials that could have been subject to a claim for non-public treatment are contained within a public filing made in accordance with subpart B to part 3010 of this chapter shall telephone Dockets personnel immediately to request that the non-public materials be removed from the publicly available materials. Upon receipt of that telephone request, Dockets personnel will remove from the publicly available materials those materials for which non-public treatment are being requested until the end of the next business day in order to provide the filer or person with a proprietary interest an opportunity to file an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any filer makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this filer as necessary to ensure secure filing of non-public materials.

(b) Any submitter or person with a proprietary interest that discovers the inclusion of materials that could have been subject to a claim for non-public treatment are contained within a publicly available submission made to the Commission in circumstances other than through a public filing made in accordance with subpart B to part 3010 of this chapter shall telephone the Commission personnel to whom the submission was directed immediately to request that the non-public materials be removed from the publicly available materials. Upon receipt of that telephone request, the Commission personnel will remove from the publicly available materials those materials for which non-public treatment are being requested until the end of the next business day in order to provide the submitter or person with a proprietary interest an opportunity to submit an application for non-public treatment and the non-public materials in accordance with the requirements of this subpart. If any submitter

Postal Regulatory Commission

§3011.301

makes repeated use of this rule, the Secretary has discretion to impose additional requirements on this submitter as necessary to ensure secure submission of non-public materials.

(c) An application for non-public treatment made under paragraph (a) or (b) of this section shall also clearly indicate if any special relief is sought. Examples of special relief include a request that any person not granted access to the materials under §3011.300 or §3011.301 perform any or all of the following actions:

(1) Immediately destroy or return all versions of the materials that are claimed to have been inadvertently submitted publicly;

(2) Refrain from disclosing or using the materials, and the information contained therein, that are claimed to be non-public; and

(3) Take reasonable steps to retrieve any materials, and the information contained therein, that are claimed to be non-public and were disclosed to any person not granted access to the materials under §3011.300 or §3011.301 prior to the submission of application for non-public treatment.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9641, Feb. 19, 2020]

Subpart C—Seeking Access to Non-Public Materials

§3011.300 Eligibility for access to non-public materials.

(a) The following persons may access non-public materials without an order issued pursuant to §3011.301(e):

(1) Members of the Commission;

(2) Commission employees, including Public Representatives, carrying out their official responsibilities;

(3) Non-employees who have executed appropriate non-disclosure agreements (such as contractors, attorneys, or subject matter experts), assisting the Commission in carrying out its duties;

(4) Reviewing courts and their staffs; and

(5) Court reporters, stenographers, or persons operating audio or video recording equipment for such court reporters or stenographers at hearings or depositions.

(b) No person involved in competitive decision-making for any individual or

entity that might gain competitive advantage from using non-public materials shall be granted access to non-public 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 an individual or entity having a proprietary interest in the protected material.

(c) Any person not described in paragraph (a) or (b) of this section may request access to non-public materials as described in §3011.301, for the purpose of aiding participation in a pending Commission proceeding (including compliance proceedings) or aiding the initiation of a proceeding before the Commission.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9642, Feb. 19, 2020; 86 FR 48503, Aug. 31, 2021]

§3011.301 Motion for access to non-public materials.

(a) *Filing requirements.* A request for access to non-public materials shall be made by filing a motion with the Commission. Any part of the motion revealing non-public information shall be filed in accordance with subpart B of this part. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(b) *Content requirements.* The motion shall:

(1) Identify the particular non-public materials to which the movant seeks access;

(2) Include a detailed statement justifying the request for access:

(i) If access is sought to aid participation in any pending Commission proceeding, the motion shall identify all proceedings (including compliance proceedings) in which the movant proposes to use the materials and how those materials are relevant to those proceedings, or

(ii) If access is sought to aid initiation of a proceeding before the Commission, the motion shall describe the subject of the proposed proceeding, how the materials sought are relevant to that proposed proceeding, and when the movant anticipates initiating the proposed proceeding;

(3) List all relevant affiliations, including employment or other relationship (including agent, consultant or contractor) with the movant, and whether the movant is affiliated with the delivery services, communications or mailing industries;

(4) Specify if actual notice of the motion has been provided to each person identified in the application pursuant to §3011.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person;

(5) Attach a description of protective conditions completed and signed by the movant's attorney or non-attorney representative, who may use and modify the template Protective Conditions Statement in Appendix A to this subpart; and

(6) Attach a certification to comply with protective conditions executed by each person (and any individual working on behalf of that person) seeking access, who may use and modify the template Certification to Comply with Protective Conditions in Appendix A to this subpart.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to §3011.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within three business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within seven calendar days of fil-

ing the motion, unless the Commission otherwise provides.

(d) *Reply.* No reply to a response shall be filed, unless the Commission otherwise provides.

(e) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that actual notice has been given to each person identified pursuant to §3011.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining if access will be granted after the response period described in paragraph (c) of this section has expired. If no opposition to the motion has been filed by the submitter or any person other than the submitter with a proprietary interest before the expiration of the response period described in paragraph (c) of this section, the Commission may issue an order granting access, subject to the agreed protective conditions. In determining whether to grant access to non-public materials, the Commission shall balance the interests of the parties consistent with the analysis undertaken by a Federal court when applying the protective conditions appearing in Federal Rule of Civil Procedure 26(c). If access is granted, access shall commence following the issuance of the appropriate order setting forth all protective conditions.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9642, Feb. 19, 2020]

§ 3011.302 Non-dissemination, use, and care of non-public materials.

(a) No person who has been granted access to non-public materials in accordance with §3011.300 or §3011.301 may disseminate the materials or the information contained therein, in whole or in part, to any person not allowed access pursuant to §3011.300 or §3011.301.

(b) Persons with access to non-public materials under §3011.300 or §3011.301 shall use non-public materials only for the purposes for which the non-public materials are supplied.

(c) Persons with access to non-public materials under §3011.300 or §3011.301 shall protect the non-public materials from any person not granted access

under § 3011.300 or § 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials 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.

[85 FR 9642, Feb. 19, 2020]

§ 3011.303 Sanctions for violating protective conditions.

(a) If a person who has been granted access to non-public materials under § 3011.301 violates the terms of the order granting access, the Commission may impose sanctions on the person who violated the order, the persons or entities on whose behalf the person was acting, or both. The sanctions may include any or all of the following:

(1) Dismissing the proceeding in whole or in part;

(2) Ruling by default against the person who violated the order or the persons or entities on whose behalf the person was acting;

(3) Revoking access to non-public materials;

(4) Restricting access to non-public materials in the future; or

(5) Such other sanctions, as deemed appropriate by the Commission.

(b) This rule does not prevent any person, including the Postal Service, whose interests are damaged by the violation of an order granting access subject to protective conditions, from pursuing any remedies available under the law against the person who violated the order, the persons or entities on whose behalf the person was acting, or both.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9642, Feb. 19, 2020]

§ 3011.304 Termination and amendment of access to non-public materials.

(a) *Termination of access.* (1) Except as provided in paragraph (b) of this section, access to non-public materials granted under § 3011.301 terminates either when the Commission issues the final order or report concluding the proceeding(s) in which the participant

who filed the motion seeking access represented that the non-public materials would be used, or when the person granted access withdraws or is otherwise no longer involved in the proceeding(s), whichever occurs first. For purposes of this paragraph, an order or report is not considered final until after the possibility of judicial review expires (including the completion of any Commission response to judicial review, if applicable).

(2) Upon termination of access, all non-public materials, and any duplicates, in the possession of each person (and any individual working on behalf of that person) granted access shall be destroyed or returned to the Commission. The participant who filed the motion seeking access shall file with the Commission a notice of termination of access and attach a certification of compliance with protective conditions executed by each person (and any individual working on behalf of that person) granted access to the non-public materials. The template Certification of Compliance with Protective Conditions and Termination of Access in Appendix A to this subpart may be used and modified to comply with this requirement.

(b) *Amendment of access.* Any person may file a motion seeking to amend any protective conditions related to access of non-public materials, including extending the timeframe for which access is granted or expanding the persons to whom access is to be granted, in accordance with § 3011.301.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9643, Feb. 19, 2020]

§ 3011.305 Producing non-public materials in non-Commission proceedings.

(a) If a court or other administrative agency issues a subpoena or orders production of non-public materials that a person obtained under protective conditions ordered by the Commission, the target of the subpoena or order shall, within two days of receipt of the subpoena or order, notify each person identified pursuant to § 3011.201(b)(2) of the pendency of the subpoena or order to allow time to object to that production or to seek a protective order or other relief.

(b) Any person that has obtained non-public materials under protective conditions ordered by the Commission and seeks to disclose the non-public materials in a court or other administrative proceeding 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) Unless overridden by the reviewing court or other administrative agency, protective conditions ordered by the Commission will remain in effect.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9643, Feb. 19, 2020]

APPENDIX A TO SUBPART C OF PART 3011—TEMPLATE FORMS PROTECTIVE CONDITIONS STATEMENT

____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as _____ (non-confidential description of non-public materials) (hereinafter “these materials”) in Commission Docket No(s) _____ (designation of docket(s) in which these materials were filed).

____ (name of participant filing motion) (hereinafter “the movant”) requests access to these materials related to _____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter “this matter”).

The movant has provided to each person seeking access to these materials:

- This Protective Conditions Statement;
- the Certification to Comply with Protective Conditions;
- the Certification of Compliance with Protective Conditions and Termination of Access; and
- the Commission’s rules applicable to access to non-public materials filed in Commission proceedings (subpart C of part 3011 of the U.S. Code of Federal Regulations).

Each person (and any individual working on behalf of that person) seeking access to these materials has executed a Certification to Comply with Protective Conditions by signing in ink or by typing/s/before his or her name in the signature block. The movant attaches the Protective Conditions Statement and the executed Certification(s) to Comply with Protective Conditions to the motion for access filed with the Commission.

The movant and each person seeking access to these materials agree to comply with the following protective conditions:

In accordance with 39 CFR 3011.303, the Commission may impose sanctions on any person who violates these protective condi-

tions, the persons or entities on whose behalf the person was acting, or both.

2. In accordance with 39 CFR 3011.300(b), no person involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials 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 an individual or entity having a proprietary interest in the protected material.

3. In accordance with 39 CFR 3011.302(a), a person granted access to these materials may not disseminate these materials in whole or in part to any person not allowed access pursuant to 39 CFR 3011.300(a) (Commission and court personnel) or 3011.301 (other persons granted access by Commission order) except in compliance with:

- a. Specific Commission order,
- b. Subpart B of 39 CFR 3011 (procedure for filing these materials in Commission proceedings), or
- c. 39 CFR 3011.305 (production of these materials in a court or other administrative proceeding).

4. In accordance with 39 CFR 3011.302(b) and (c), all persons granted access to these materials:

- a. Must use these materials only related to this matter; and
- b. must protect these materials from any person not authorized to obtain access under 39 CFR 3011.300 or 3011.301 by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized disclosure of these materials 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.

5. The duties of each person granted access to these materials apply to all:

- a. Disclosures or duplications of these materials in writing, orally, electronically, or otherwise, by any means, format, or medium;
- b. Excerpts from, parts of, or the entirety of these materials;
- c. Written materials that quote or contain these materials; and
- d. Revised, amended, or supplemental versions of these materials.

6. All copies of these materials will be clearly marked as “Confidential” and bear the name of the person granted access.

7. Immediately after access has terminated pursuant to 39 CFR 3011.304(a)(1), each person

Postal Regulatory Commission

§ 3011.400

(and any individual working on behalf of that person) who has obtained a copy of these materials must execute the Certification of Compliance with Protective Conditions and Termination of Access. In compliance with 39 CFR 3011.304(a)(2), the movant will attach the executed Certification(s) of Compliance with Protective Conditions and Termination of Access to the notice of termination of access filed with the Commission.

8. Each person granted access to these materials consents to these or such other conditions as the Commission may approve. Respectfully submitted,

(signature of representative)

/s/

(print name of representative)

(address line 1 of representative)

(address line 2 of representative)

(telephone number of representative)

(e-mail address of representative)

(choose the appropriate response)

Attorney/Non-Attorney Representative for

(name of the movant)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(5).

CERTIFICATION TO COMPLY WITH PROTECTIVE CONDITIONS

____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as ____ (non-confidential description of non-public materials) (hereinafter “these materials”) filed in Commission Docket No(s). ____ (designation of docket(s) in which these materials were filed).

____ (name of participant filing motion) requests that the Commission grant me access to these materials to use related to ____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter “this matter”).

I certify that:

☐ I have read and understand the Protective Conditions Statement and this Certification to Comply with Protective Conditions;

☐ I am eligible to receive access to these materials because I am not involved in competitive decision-making for any individual or entity that might gain competitive advantage from using these materials; and

☐ I will comply with all protective conditions established by the Commission.

(signature of individual receiving access)

/s/

(print name of individual receiving access)

(title of individual receiving access)

(employer of individual receiving access)

(name of the participant filing the motion)

(date)

You may delete the instructional text to complete this form. This form may be filed as an attachment to the motion for access to non-public materials under 39 CFR 3011.301(b)(6).

CERTIFICATION OF COMPLIANCE WITH PROTECTIVE CONDITIONS AND TERMINATION OF ACCESS

____ (name of submitter of non-public materials) requests confidential treatment of non-public materials identified as ____ (non-confidential description of non-public materials) (hereinafter “these materials”) filed in Commission Docket No(s). ____ (designation of docket(s) in which these materials were filed).

The Commission granted the request by ____ (name of participant filing notice) to grant me access to these materials to use related to ____ (designation of docket(s) or description of proposed proceeding(s) in which these materials are to be used) (hereinafter “this matter”).

I certify that:

☐ I accessed, maintained, and used these materials in accordance with the protective conditions established by the Commission;

☐ Effective ____ (date), my access to these materials was terminated; and

☐ Effective ____ (date), I no longer have any of these materials or any duplicates.

(signature of individual granted access)

/s/

(print name of individual granted access)

(title of individual granted access)

(employer of individual granted access)

(name of participant filing notice)

(date)

You may delete the instructional text to complete this form. This form should be filed as an attachment to the notice of termination of access to non-public materials under 39 CFR 3011.304(a)(2).

[85 FR 9643, Feb. 19, 2020]

Subpart D—Seeking Public Disclosure of Non-Public Materials

§ 3011.400 Motion for disclosure of non-public materials.

(a) *Application of this section.* This section applies to non-public materials during the initial duration of non-public status, up to ten years, and any non-public materials for which the Commission enters an order extending

§ 3011.401

39 CFR Ch. III (7–1–23 Edition)

the duration of that status under § 3011.401(a).

(b) *Motion for disclosure of non-public materials.* Any person may file a motion with the Commission requesting that non-public materials be publicly disclosed. Any part of the motion revealing non-public information shall be filed in accordance with subpart B of this part. The motion shall justify why the non-public materials should be made public and specifically address any pertinent rationale(s) provided in the application for non-public treatment. The motion shall specify whether actual notice of the motion has been provided to each person identified in the application pursuant to § 3011.201(b)(2). If the motion states that actual notice has been provided, the motion shall identify the individual(s) to whom actual notice was provided, the date(s) and approximate time(s) of actual notice, the method(s) of actual notice (by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages), and whether the movant is authorized to represent that the motion (in whole or in part) has been resolved or is contested by the submitter or any other affected person. The motion shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the motion shall be filed in the G docket for the applicable fiscal year.

(c) *Response.* If actual notice of the motion was provided in advance of the filing to each person identified pursuant to § 3011.201(b)(2) by telephone conversation, face-to-face conversation, or an exchange of telephone or email messages, a response to the motion is due within three business days of the filing of the motion, unless the Commission otherwise provides. In all other circumstances, a response to the motion is due within seven calendar days of filing the motion, unless the Commission otherwise provides.

(d) *Reply.* No reply to a response shall be filed, unless the Commission otherwise provides.

(e) *Non-public treatment pending resolution.* Pending the Commission's resolution of the motion, information des-

ignated as non-public will be accorded non-public treatment.

(f) *Commission ruling.* The Commission may enter an order at any time after receiving a motion if the movant states that actual notice has been given to each person identified pursuant to § 3011.201(b)(2) and that the movant is authorized to represent that the motion is uncontested. In all other circumstances, the Commission will enter an order determining what non-public treatment, if any, will be accorded to the materials after the response period described in paragraph (c) of this section has expired. The determination of the Commission shall follow the applicable standard described in § 3011.104.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9644, Feb. 19, 2020]

§ 3011.401 Materials for which non-public treatment has expired.

(a) *Expiration of non-public treatment.* Ten years after the date of submission to the Commission, non-public materials shall lose non-public status unless otherwise provided by the Commission.

(b) *Request for Disclosure of Materials for Which Non-Public Treatment Has Expired.* Any person may request that materials for which non-public treatment has expired under paragraph (a) of this section be publicly disclosed. Any part of the request revealing non-public information shall be filed in accordance with subpart B of this part. The request shall identify the materials requested and date(s) that materials were originally submitted under seal. The template Request for Materials for Which Non-public Treatment Has Expired in appendix A to this subpart may be used and modified to comply with this requirement. The request shall be filed in the docket in which the materials were filed or in the docket in which the materials will be used; in all other circumstances, the request shall be filed in the G docket for the applicable fiscal year. All documents are treated in accordance with the Commission's record retention schedule, which may reduce the availability of some non-public information.

(c) *Response.* A response to the request is due within seven calendar days of the filing of the request, unless the Commission otherwise provides. Any

Postal Regulatory Commission

§ 3012.1

response opposing the request shall seek an extension of non-public status by including an application for non-public treatment compliant with §3011.201. This extension application shall also include specific facts in support of any assertion that commercial injury is likely to occur if the information contained in the materials is publicly disclosed despite the passage of ten years or the timeframe established by Commission order.

(d) *Reply*. Within 7 calendar days of the filing of a response, any person (including the requestor) may file a reply, unless the Commission otherwise provides.

(e) *Non-public treatment pending resolution*. Pending the resolution of the request by the Commission, information designated as non-public will be accorded non-public treatment.

(f) *Ruling*. The Commission may grant the request at any time after the response period described in paragraph (c) of this section has expired. The Commission may deny the request and enter an order extending the duration of non-public status at any time after the reply period described in paragraph (d) of this section has expired. The determination of the Commission shall follow the applicable standard described in §3011.104.

[83 FR 31281, July 3, 2018, as amended at 85 FR 9644, Feb. 19, 2020; 88 FR 37474, June 8, 2023]

APPENDIX A TO SUBPART D OF PART
3011—TEMPLATE FORMS

Before the POSTAL REGULATORY
COMMISSION WASHINGTON, DC 20268-0001

(Caption) _____
Docket No. _____

REQUEST FOR MATERIALS FOR WHICH
NON-PUBLIC TREATMENT HAS EXPIRED

_____, 20____ (date)
On _____ (date non-public materials were initially submitted), non-public treatment was requested for the materials identified as _____ (non-confidential description of non-public materials) (hereinafter “these materials”). Because the non-public treatment of these materials has expired, I request that these materials be disclosed to the public.

Respectfully submitted,
(signature of representative)

/s/ _____
(print name of representative)
(address line 1 of representative)
(address line 2 of representative)
(telephone number of representative)
(e-mail address of representative)
(choose the appropriate response)
Attorney/Non-Attorney Representative for
(name of the requestor)

You may delete the instructional text to complete this form and file a request under 39 CFR 3011.401(b).

[85 FR 9644, Feb. 19, 2020]

PART 3012—EX PARTE
COMMUNICATIONS

Sec.

3012.1 Applicability.

3012.2 Definition of ex parte communications.

3012.3 Definition of a matter before the Commission.

3012.4 Definitions of persons subject to ex parte communication rules.

3012.5 Prohibitions.

3012.6 Required action upon ex parte communication.

3012.7 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. Redesignated at 85 FR 9615, Feb. 19, 2020.

§ 3012.1 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 3025 of this chapter.

(d) The rules in this section are not applicable to specifically identified proceedings upon written directive from the Commission.

[81 FR 42541, June 30, 2016, as amended at 85 FR 9645, Feb. 19, 2020]

§ 3012.2

39 CFR Ch. III (7–1–23 Edition)

§ 3012.2 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 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 § 3020.111 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.

[81 FR 42541, June 30, 2016, as amended at 85 FR 9645, Feb. 19, 2020]

§ 3012.3 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;

(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.

§ 3012.4 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

Postal Regulatory Commission

§ 3012.7

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:

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

(2) Commission personnel not participating in the decisional process owing to the prohibitions of §3010.144 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).

[81 FR 42541, June 30, 2016, as amended at 85 FR 9645, Feb. 19, 2020]

§ 3012.5 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.

§ 3012.6 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 determina-

tion. 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.

§ 3012.7 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 §3012.5(a), the Commission or presiding officer may, to the extent

Pt. 3013

consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why the participant's 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 §3012.5(a) sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

[81 FR 42541, June 30, 2016, as amended at 85 FR 9645, Feb. 19, 2020]

PART 3013—PROCEDURES FOR COMPELLING PRODUCTION OF INFORMATION BY THE POSTAL SERVICE

Subpart A—General

Sec.

3013.1 Scope and applicability of other parts of this title.

3013.2 Terms defined for purposes of this part.

Subpart B—Subpoenas

3013.11 General rule—subpoenas.

3013.12 Subpoenas issued without receipt of a third-party request.

3013.13 Subpoenas issued in response to a third-party request.

3013.14 Service of subpoenas.

3013.15 Duties in responding to a subpoena.

3013.16 Enforcement of subpoenas.

Subpart C—Depositions and Written Interrogatories

3013.21 Authority to order depositions and responses to written interrogatories.

APPENDIX A TO PART 3013—SUBPOENA FORM

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

SOURCE: 75 FR 22107, Apr. 27, 2010, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

39 CFR Ch. III (7–1–23 Edition)

Subpart A—General

§ 3013.1 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) Subparts A, B, and D to part 3010 of this chapter apply unless otherwise stated in this part or otherwise ordered by the Commission.

[75 FR 22107, Apr. 27, 2010, as amended at 85 FR 9645, Feb. 19, 2020]

§ 3013.2 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.

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

Subpart B—Subpoenas

§ 3013.11 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

Postal Regulatory Commission

§ 3013.13

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 3011 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 § 3013.14.

[75 FR 22107, Apr. 27, 2010, as amended at 85 FR 9645, Feb. 19, 2020]

§ 3013.12 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 § 3013.11 without a request having been made by a third party under § 3013.13.

(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 § 3010.160(a) of this chapter to quash the subpoena, to limit the scope of the subpoena, or to condition the subpoena as provided in § 3013.11(d). Such motion shall include any objections to the sub-

poena 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 § 3010.160(b) of this chapter. Pending the resolution of any such motion, the covered person shall secure and maintain the requested information.

[75 FR 22107, Apr. 27, 2010, as amended at 85 FR 9645, Feb. 19, 2020]

§ 3013.13 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 § 3013.11.

(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 § 3010.160 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 § 3010.160(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

§ 3013.13

39 CFR Ch. III (7–1–23 Edition)

presiding officer's recommendation shall be served in accordance with § 3010.127 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 § 3013.11 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 § 3010.160 of this chapter. A copy of the request shall be served upon the Postal Service as provided by § 3010.127 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 filing of proof of service and 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 objec-

tions, including allegations of undue burden or cost, must state with particularity the basis for such claims. Answers shall be filed as required by § 3010.160(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 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

Postal Regulatory Commission

§ 3013.14

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.

[75 FR 22107, Apr. 27, 2010, as amended at 85 FR 9645, Feb. 19, 2020]

§ 3013.14 Service of subpoenas.

(a) *Manner of service*—(1) *Existing Postal Service officers and employees.* In addition to electronic service as provided by § 3010.127(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 § 3010.127(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 paragraph (a)(1) of this section or upon former Postal Service officers, employees, agents, or contractors under paragraph (a)(3) of this section 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 paragraph (a) of this section must be filed with the Secretary within two 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.

(2) *Proof of transmission.* The Postal Service shall within two business days of transmission of a subpoena by the Postal Service to an existing Postal Service officer, employee, agent, or contractor pursuant to paragraph (a)(1) or (2) of this section, 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 website which specifies the return date of the subpoena.

[75 FR 22107, Apr. 27, 2010, as amended at 85 FR 9646, 9660, Feb. 19, 2020]

§ 3013.15

§ 3013.15 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 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.

(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

39 CFR Ch. III (7–1–23 Edition)

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 3011 of this chapter.

[75 FR 22107, Apr. 27, 2010, as amended at 85 FR 9646, Feb. 19, 2020]

§ 3013.16 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

§ 3013.21 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.

Postal Regulatory Commission

Pt. 3013, App. A

APPENDIX A TO PART 3013—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.

Pt. 3013, App. A

39 CFR Ch. III (7–1–23 Edition)

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): <input type="checkbox"/> CHAIRMAN <input type="checkbox"/> COMMISSIONER DESIGNATED BY THE CHAIRMAN <input type="checkbox"/> ADMINISTRATIVE LAW JUDGE APPOINTED UNDER 5 U.S.C. 3105	

Postal Regulatory Commission

Pt. 3013, App. A

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 § 3013.15:

(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 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.

[85 FR 9646, Feb. 19, 2020]

SUBCHAPTER D—SPECIAL RULES OF PRACTICE FOR SPECIFIC PROCEEDING TYPES

PART 3020—RULES APPLICABLE TO POSTAL SERVICE REQUESTS FOR CHANGES IN THE NATURE OF POSTAL SERVICES

Sec.	
3020.101	Applicability.
3020.102	Advisory opinion and special studies.
3020.103	Computation of time.
3020.104	Service by the Postal Service.
3020.105	Motions.
3020.106–3020.109	[Reserved]
3020.110	Procedural schedule.
3020.111	Pre-filing requirements.
3020.112	Filing of formal requests.
3020.113	Contents of formal requests.
3020.114	Filing of prepared direct evidence.
3020.115	Mandatory technical conference.
3020.116	Discovery—in general.
3020.117	Interrogatories.
3020.118	Production of documents.
3020.119	Admissions.
3020.120	Rebuttal testimony.
3020.121	Surrebuttal testimony.
3020.122	Hearings.
3020.123	Initial and reply briefs.

APPENDIX A TO PART 3020—PRO FORMA N- CASE PROCEDURAL SCHEDULE

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

SOURCE: 85 FR 9649, Feb. 19, 2020, unless otherwise noted.

§ 3020.101 Applicability.

The rules in this part 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 part 3010 of this chapter are also applicable to proceedings conducted pursuant to this subpart except that §§ 3010.160 through 3010.164 (Motions); § 3010.310 (Discovery—general policy); § 3010.311 (Interrogatories for purposes of discovery); § 3010.312 (Requests for production of documents or things for the purpose of discovery); § 3010.321 (Hearings); § 3010.325 (Depositions); and § 3010.330 (Briefs) of this chapter do not apply in proceedings conducted under this part.

§ 3020.102 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 studies, public inquiry proceedings, or other appropriate means.

§ 3020.103 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.

§ 3020.104 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 § 3020.111. 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 website.

§ 3020.105 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 subpart B to part 3010 of this chapter. A motion to dismiss proceedings or any other motion that involves a final determination of the proceeding, any motion under § 3020.121, 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 3011 of this chapter, shall be addressed to the presiding officer.

(2) Within five 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 subpart B to part 3010 of this chapter. 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 three 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 two 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 subpart B to part 3010 of this chapter within three 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 three days before the scheduled appearance of a witness, unless good cause is shown. Responses to motions to strike are due within two days.

(d) *Motions for leave to file surrebuttal testimony.* Motions for leave to file surrebuttal testimony submitted pursuant to § 3020.121 and any answers thereto must be filed on or before the dates provided in the procedural schedule established by the Commission.

§ § 3020.106–3020.109 [Reserved]**§ 3020.110 Procedural schedule.**

(a) *Notice.* Subject to paragraph (b) of this section, the Commission shall include in the notice of proceeding issued under § 3010.151 of this chapter 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 in 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;
- (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.

§ 3020.111 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 ten 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 § 3020.113(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.

§ 3020.112 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

Postal Regulatory Commission

§ 3020.115

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 subpart B to part 3010 of this chapter and § 3020.113. 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 five 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.

§ 3020.113 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 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 § 3020.111, 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 § 3020.114;

(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 § 3020.115.

(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.

§ 3020.114 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 §§ 3010.322 and 3010.323 of this chapter.

§ 3020.115 Mandatory technical conference.

(a) *Date.* A date for a mandatory technical conference shall be included in the procedural schedule required by § 3020.110. The date for this technical conference shall be set based upon the pro forma schedule set forth in appendix A to this part. The conference shall be held at the offices of the Commission.

(b) *Witnesses.* The Postal Service shall make available at the technical

§ 3020.116

39 CFR Ch. III (7–1–23 Edition)

conference each witness whose prepared direct testimony was filed pursuant to § 3020.114. 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 mechanisms provided for in §§ 3020.116 through 3020.119.

(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 § 3010.322(a) of this chapter.

§ 3020.116 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 § 3020.110 shall provide that discovery will be scheduled to end at least three days prior to the commencement of hearings.

(b) *Informal discovery.* The discovery procedures in this section and §§ 3020.117 through 3020.119 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 dis-

covery 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 §§ 3020.117 through 3020.119, 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.

§ 3020.117 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 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 part 3010, subpart B, of this chapter. Follow-up interrogatories that 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 seven days of receipt of the answer to the previous interrogatory. In extraordinary circumstances, follow-up interrogatories may be filed not less than six 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 subpart B to part 3010 of this chapter within seven 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 § 3020.105(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.

§ 3020.118 Production of documents.

(a) *Service and contents.* (1) In the interest of expedition and limited to in-

formation 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 part 3010, subpart B, of this chapter.

(b) *Answers.* (1) The respondent shall file an answer to a request under paragraph (a) of this section with the Commission in conformance with subpart B to part 3010 of this chapter within seven 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 § 3020.105(b) to be excused from answering.

§ 3020.119 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

§ 3020.120

admission shall file its request with the Commission in conformance with subpart B to part 3010 of this chapter.

(b) *Answers.* (1) A matter for which admission is requested shall be separately set forth in the request and is deemed admitted unless, within seven 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 subpart B to part 3010 of this chapter.

(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 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 §3020.105(b) to be excused from answering.

§ 3020.120 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 §3020.110. 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

39 CFR Ch. III (7–1–23 Edition)

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 §3020.110, the Commission may adjust other dates in the procedural schedule as it deems to be necessary and appropriate.

§ 3020.121 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 prior approval by filing with the Commission a motion for leave to file surrebuttal pursuant to §3020.105(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 §3020.105(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 §3020.110.

(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.

§ 3020.122 Hearings.

(a) *Initiation.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice and scheduling order pursuant to § 3020.110.

(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) *Presentation of the evidence—(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 memorandum. (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 part 3010, subpart B, of this chapter no

later than three 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) are to be included and 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 three 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 two 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 shall be delivered to counsel for that participant and served three or more working days before the announced appearance of the witness. Cross-examination exhibits shall be delivered to counsel for the witness at least two 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 exploration of the Postal Service's proposal, disposition of the proceeding, and the avoidance of irrelevant, immaterial, or unduly repetitious testimony.

(g) *Motions during hearing.* Except as provided in § 3020.105(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 § 3020.105(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.

§ 3020.123 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 § 3020.110. 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

Postal Regulatory Commission

Pt. 3021

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 subpart B to part 3010 of this chapter.

(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.

APPENDIX A TO PART 3020—PRO FORMA N-CASE PROCEDURAL SCHEDULE

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

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

² This order would appoint a Public Representative.

³ 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.

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

⁵ If no surrebuttal cases are requested, hearings begin on Day 49.

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

PART 3021—RULES FOR APPEALS OF POSTAL SERVICE DETERMINA- TIONS TO CLOSE OR CONSOLI- DATE POST OFFICES

Sec.

3021.1 Definitions.

3021.2 Applicability.

3021.3 Notice by the Postal Service.

3021.10 Starting an appeal.

3021.11 Submitting an appeal and other documents.

3021.12 Duplicate appeals.

3021.13 Deadlines for appeals.

3021.14 Participation by others.

3021.20 The record on review.

3021.21 Filing of the administrative record.

3021.22 Making documents available for inspection by the public.

3021.30 Suspension pending review.

3021.40 Participant statement.

3021.41 Due date for participant statement.

3021.42 Due date for Postal Service response.

3021.43 Due date for replies to the Postal Service.

AUTHORITY: 39 U.S.C. 404(d).

§ 3021.1

SOURCE: 77 FR 6679, Feb. 9, 2012, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

§ 3021.1 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.

§ 3021.2 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.

(b) Subparts A through D to part 3010 of this chapter apply to appeals of post office closings or consolidations.

(c) Answers to motions filed by the Postal Service are due within 10 days.

[77 FR 6679, Feb. 9, 2012, as amended at 85 FR 9655, Feb. 19, 2020]

§ 3021.3 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.

§ 3021.10 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

39 CFR Ch. III (7–1–23 Edition)

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.

§ 3021.11 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 website, <http://www.prc.gov>, or by delivery to the Commission's offices at 901 New York Avenue NW., Suite 200, Washington, DC 20268-0001.

[77 FR 6679, Feb. 9, 2012, as amended at 85 FR 9660, Feb. 19, 2020]

§ 3021.12 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.

§ 3021.13 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 § 3021.3(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

Postal Regulatory Commission

§ 3021.40

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.

[77 FR 6679, Feb. 9, 2012, as amended at 85 FR 9655, Feb. 19, 2020]

§ 3021.14 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 § 3021.11.

(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 §§ 3021.41 through 3021.43. Commenters may use PRC Form 61, which is available on the Commission's website, <http://www.prc.gov>.

[85 FR 9655, Feb. 19, 2020]

§ 3021.20 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.

§ 3021.21 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 website. 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.

[77 FR 6679, Feb. 9, 2012, as amended at 85 FR 9660, Feb. 19, 2020]

§ 3021.22 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.

§ 3021.30 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.

§ 3021.40 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 the petitioner's arguments in support of the petition.

§ 3021.41

(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.

[77 FR 6679, Feb. 9, 2012, as amended at 85 FR 9655, Feb. 19, 2020]

§ 3021.41 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.

§ 3021.42 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 more than 14 days after the date for filing of petitioner's statement.

§ 3021.43 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 3022—RULES FOR COMPLAINTS

Subpart A—General

Sec.

3022.1 Applicability.

3022.2 Scope and nature of complaints.

Subpart B—Form and Manner Requirements of Initial Pleadings

3022.10 Complaint contents.

3022.11 Service.

39 CFR Ch. III (7–1–23 Edition)

3022.12 Pleadings filed in response to a complaint.

3022.13 Conditions for applying rate or service inquiry procedures to complaints.

3022.14 Answer contents.

Subpart C—Supplemental Information

3022.20 Sufficiency of information.

3022.21 Investigator.

Subpart D—Proceedings

3022.30 Beginning proceedings on complaints.

Subpart E—Settlement

3022.40 Policy on settlement.

3022.41 Satisfaction.

Subpart F—Commission Determinations and Relief

3022.50 Remedies.

AUTHORITY: 39 U.S.C. 503; 3662.

SOURCE: 74 FR 16744, Apr. 10, 2009, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

Subpart A—General

§ 3022.1 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 3010 of this chapter applies unless otherwise stated in this part or otherwise ordered by the Commission.

(b) Subpart E to part 3010 of this chapter does not apply to this part unless and until the Commission makes a finding under § 3022.30(a)(1) that the complaint raises material issues of fact or law and that the issues shall be considered through a hearing on the record.

[85 FR 9655, Feb. 19, 2020]

§ 3022.2 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:

Postal Regulatory Commission

§ 3022.12

(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

§ 3022.10 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 § 3022.11.

(b) The Commission may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.

[74 FR 16744, Apr. 10, 2009, as amended at 85 FR 9655, Feb. 19, 2020]

§ 3022.11 Service.

Any person filing a complaint must simultaneously serve a copy of the complaint on the Postal Service at this address: *PRCCOMPLAINTS@usps.gov*. A person without internet access may contact the Secretary to obtain approval for alternative methods of service.

[85 FR 9655, Feb. 19, 2020]

§ 3022.12 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 § 3022.13 to the complaint, the answer is due contemporaneously with the Postal Service's report under § 3023.11 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.

[74 FR 16744, Apr. 10, 2009, as amended at 85 FR 9656, Feb. 19, 2020]

§ 3022.13

§ 3022.13 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 § 3023.11 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 § 3023.11 of this chapter prior to the due date for the Postal Service answer set forth in § 3022.12.

(c) If the Commission determines that application of paragraph (a) of this section is appropriate and the 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 § 3022.12(b)(2).

[74 FR 16744, Apr. 10, 2009, as amended at 85 FR 9656, Feb. 19, 2020]

§ 3022.14 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 an-

39 CFR Ch. III (7–1–23 Edition)

swered 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

§ 3022.20 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the 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 § 3022.21, or do both.

[85 FR 9656, Feb. 19, 2020]

§ 3022.21 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**§ 3022.30 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 § 3010.151 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.

[74 FR 16744, Apr. 10, 2009, as amended at 85 FR 9656, Feb. 19, 2020]

Subpart E—Settlement**§ 3022.40 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.

§ 3022.41 Satisfaction.

(a) If a complaint is resolved informally, in whole or in part, subsequent to Commission action under § 3022.30(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 Com-

mission will take into consideration whether the issues raised by the complaint may continue to impact a significant segment of the mailing community.

[74 FR 16744, Apr. 10, 2009, as amended at 85 FR 9656, Feb. 19, 2020]

Subpart F—Commission Determinations and Relief**§ 3022.50 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 3023—RULES FOR RATE OR SERVICE INQUIRIES**Subpart A—Rate or Service Inquiry Forms and Procedures**

Sec.

3023.10 Rate or service inquiry contents.

3023.11 Rate or service inquiry procedures.

3023.12 Treatment as a complaint.

Subpart B [Reserved]

AUTHORITY: 39 U.S.C. 503, 3662.

SOURCE: 74 FR 16746, Apr. 10, 2009, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

§ 3023.10

Subpart A—Rate or Service Inquiry Forms and Procedures

§ 3023.10 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.

§ 3023.11 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 § 3023.12 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.

[74 FR 16746, Apr. 10, 2009, as amended at 85 FR 9656, Feb. 19, 2020]

§ 3023.12 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 § 3022.21 of this chapter or appoint a Public Representative representing the interests of the general public to pursue the matter.

[85 FR 9656, Feb. 19, 2020]

39 CFR Ch. III (7–1–23 Edition)

Subpart B [Reserved]

PART 3024—SPECIAL RULES FOR COMPLAINTS ALLEGING VIOLATIONS OF 39 U.S.C. 404a

Subpart A—General

Sec.

3024.1 Applicability.

3024.2–3024.4 [Reserved]

Subpart B—Requirements and Defenses

3024.5 Postal Service rules that create an unfair competitive advantage.

3024.6 Disclosure, transfer, and licensing of intellectual property.

3024.7 Unlawfully obtaining information.

3024.8 Statutorily authorized affirmative defense.

AUTHORITY: 39 U.S.C. 404a; 3662.

SOURCE: 79 FR 62294, Oct. 16, 2014, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

Subpart A—General

§ 3024.1 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 §§ 3022.2 and 3022.10 of this chapter.

[85 FR 9656, Feb. 19, 2020]

§§ 3024.2–3024.4 [Reserved]

Subpart B—Requirements and Defenses

§ 3024.5 Postal Service rules that create an unfair competitive advantage.

(a) A complaint alleging a violation of 39 U.S.C. 404a(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.

Postal Regulatory Commission

§ 3025.102

(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.

[79 FR 62294, Oct. 16, 2014, as amended at 85 FR 9656, Feb. 19, 2020]

§ 3024.6 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.

§ 3024.7 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) 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.

§ 3024.8 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 3025—PROCEDURES RELATED TO COMMISSION VIEWS SUBMITTED TO THE SECRETARY OF STATE

Sec.

3025.101 Definitions in this part.

3025.102 Purpose.

3025.103 Establishment and scope of docket.

3025.104 Comment deadline(s).

3025.105 Issuance of Commission views.

AUTHORITY: 39 U.S.C. 407; 503.

SOURCE: 85 FR 13054, Mar. 6, 2020, unless otherwise noted.

§ 3025.101 Definitions in this part.

(a) *Commission 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 of a relevant proposal with modern rate regulation.

(b) *Modern rate regulation* refers to the standards and criteria the Commission has established pursuant to 39 U.S.C. 3622.

(c) *Relevant proposal* means a proposed change to a treaty, convention, or amendment that establishes a market dominant rate or classification.

§ 3025.102 Purpose.

The rules in this part are intended to facilitate public participation in, and promote the transparency of, the development of Commission views.

§ 3025.103 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 shall establish a docket in order to solicit public comments as part of the development of Commission views.

(b) The Commission shall post relevant proposals in the applicable docket established pursuant to paragraph (a) of this section and may also include other materials related to the development of Commission views, such as other documents or related actions.

(c) Public comments should focus on the specific relevant proposals posted by the Commission and the general principles that should guide the development of Commission views as well as any other materials posted in the applicable docket pursuant to paragraph (b) of this section.

(d) The Commission shall arrange for publication in the FEDERAL REGISTER of the notice establishing each docket authorized under this part.

§ 3025.104 Comment deadline(s).

(a) The Commission shall establish a deadline for comments upon establishment of the docket that is consistent with timely submission of Commission 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.

§ 3025.105 Issuance of Commission views.

(a) The Commission will review timely filed comments responding to a Commission solicitation pursuant to § 3025.103(a) prior to submitting its views to the Secretary of State.

(b) After Commission views are developed, the Commission shall post Commission views in the applicable docket established pursuant to § 3025.103(a) and submit Commission views to the Secretary of State pursuant to 39 U.S.C. 407(c)(1).

SUBCHAPTER E—REGULATIONS GOVERNING MARKET DOMINANT PRODUCTS, COMPETITIVE PRODUCTS, PRODUCT LISTS, AND MARKET TESTS

PART 3030—REGULATION OF RATES FOR MARKET DOMINANT PRODUCTS

Subpart A—General Provisions

- Sec.
3030.100 Applicability.
3030.101 Definitions.
3030.102 Schedule for regular and predictable rate adjustments.

Subpart B—Rate Adjustments

- 3030.120 General.
3030.121 Postal Service rate adjustment filing.
3030.122 Contents of a rate adjustment filing.
3030.123 Supporting technical documentation.
3030.124 Docket and notice.
3030.125 Opportunity for comments.
3030.126 Proceedings.
3030.127 Maximum rate adjustment authority.
3030.128 Calculation of percentage change in rates.
3030.129 Exceptions for de minimis rate increases.

Subpart C—Consumer Price Index Rate Authority

- 3030.140 Applicability.
3030.141 CPI-U data source.
3030.142 CPI-U rate authority when rate adjustment filings are 12 or more months apart.
3030.143 CPI-U rate authority when rate adjustment filings are less than 12 months apart.

Subpart D—Density Rate Authority

- 3030.160 Applicability.
3030.161 Density calculation data sources.
3030.162 Calculation of density rate authority.

Subpart E—Retirement Obligation Rate Authority

- 3030.180 Definitions.
3030.181 Applicability.
3030.182 Retirement obligation data sources.
3030.183 Calculation of retirement obligation rate authority.
3030.184 Required minimum remittances.
3030.185 Forfeiture.

Subpart F—[Reserved]

Subpart G—Non-Compensatory Classes or Products

- 3030.220 Applicability.
3030.221 Individual product requirement.
3030.222 Class requirement and additional class rate authority.

Subpart H—Accumulation of Unused and Disbursement of Banked Rate Adjustment Authority

- 3030.240 General.
3030.241 Schedule of banked rate adjustment authority.
3030.242 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed 12 months apart or less.
3030.243 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed more than 12 months apart.
3030.244 Calculation of unused rate adjustment authority for rate adjustments that only include rate decreases.
3030.245 Application of banked rate authority.

Subpart I—Rate Adjustments Due to Extraordinary and Exceptional Circumstances

- 3030.260 General.
3030.261 Contents of a rate adjustment filing.
3030.262 Supplemental information.
3030.263 Docket and notice.
3030.264 Public hearing.
3030.265 Opportunity for comments.
3030.266 Deadline for Commission decision.
3030.267 Treatment of banked rate adjustment authority.

Subpart J—Workshare Discounts

- 3030.280 Applicability.
3030.281 Calculation of passthroughs for workshare discounts.
3030.282 Increased pricing efficiency.
3030.283 Limitations on excessive discounts.
3030.284 Limitations on discounts below avoided cost.
3030.285 Proposal to adjust a rate associated with a workshare discount.
3030.286 Application for waiver.

AUTHORITY: 39 U.S.C. 503; 3622.

§ 3030.100

39 CFR Ch. III (7–1–23 Edition)

SOURCE: 85 FR 81126, Dec. 15, 2020, unless otherwise noted.

Subpart A—General Provisions

§ 3030.100 Applicability.

(a) The rules in this part implement provisions in 39 U.S.C. chapter 36, subchapter I, establishing the modern system of ratemaking for regulating rates and classes for market dominant products. The rules in this part are applicable whenever the Postal Service proposes to adjust a rate of general applicability for any market dominant product, which includes the addition of a new rate, the removal of an existing rate, or a change to an existing rate. Current rates may be found in the Mail Classification Schedule appearing on the Commission's website at www.prc.gov.

(b) Rates may be adjusted either subject to the rules appearing in subpart B of this part, which includes a limitation on rate increases, or subject to the rules appearing in subpart I of this part, which does not include a limitation on rate increases but requires either extraordinary or exceptional circumstances. The rules applicable to the calculation of the limitations on rate increases appear in subparts C through H of this part. The rules for workshare discounts, which are applicable whenever market dominant rates are adjusted, appear in subpart J of this part.

§ 3030.101 Definitions.

(a) The definitions in paragraphs (b) through (l) of this section apply to this part.

(b) *Annual limitation* means the annual limitation on the percentage change in rates equal to the change in the Consumer Price Index for all Urban Consumers (CPI-U) unadjusted for seasonal variation over the most recently available 12-month period preceding the date the Postal Service files a request to review its notice of rate adjustment, as determined by the Commission.

(c) *Banked rate authority* means unused rate adjustment authority accumulated for future use pursuant to the rules in this part.

(d) A *class* of mail means the First-Class Mail, USPS Marketing Mail,

Periodicals, Package Services, or Special Services groupings of market dominant Postal Service products or services. Generally, the regulations in this part are applicable to individual classes of mail.

(e) *Density rate authority* means rate authority that is available to all classes to address the effects of decreases in density of mail.

(f) *Maximum rate adjustment authority* means the maximum percentage change in rates available to a class for any planned increase in rates. It is the sum of: The consumer price index rate authority, and any available density rate authority, retirement obligation rate authority, banked rate authority, and rate authority applicable to non-compensatory classes.

(g) *Rate authority applicable to non-compensatory classes* means rate authority available to classes where revenue for each product within the class was insufficient to cover that product's attributable costs as determined by the Commission.

(h) *Rate cell* means each and every separate rate identified as a rate of general applicability.

(i) *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.

(j) *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, including the volume of mail sent by a mailer in a past year or years. 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.

(k) *Retirement obligation rate authority* means rate authority that is available

Postal Regulatory Commission

§ 3030.122

to all classes to provide revenue for remittance towards the statutorily mandated amortization payments for unfunded liabilities.

(1) A *seasonal or temporary rate* is a rate that is in effect for a limited and defined period of time.

§ 3030.102 Schedule for regular and predictable rate adjustments.

(a) The Postal Service shall develop a Schedule for Regular and Predictable Rate Adjustments applicable to rate adjustments subject to this part. The Schedule for Regular and Predictable Rate Adjustments shall:

(1) Schedule rate adjustments at specific regular intervals of time;

(2) Provide estimated filing and implementation dates (month and year) for future rate adjustments for each class of mail expected over a minimum of the next 3 years; and

(3) Provide an explanation that will allow mailers to predict with reasonable accuracy, by class, the amounts of future scheduled rate adjustments.

(b) The Postal Service shall file a current Schedule for Regular and Predictable Rate Adjustments annually with the Commission at the time of filing the Postal Service's section 3652 report (see § 3050.1(g) of this chapter). The Commission shall post the current schedule on the Commission's website at *www.prc.gov*.

(c) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Adjustments, it shall file a revised schedule.

(d) The Postal Service may vary the magnitude of rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Adjustments. In such case, the Postal Service shall provide an explanation for such variation with its rate adjustment filing.

Subpart B—Rate Adjustments

§ 3030.120 General.

This subpart describes the process for the periodic adjustment of rates subject to the percentage limitations specified in § 3030.127 that are applicable to each class of mail.

§ 3030.121 Postal Service rate adjustment filing.

(a) In every instance in which the Postal Service determines to exercise its statutory authority to adjust rates for a class of mail, the Postal Service shall comply with the requirements specified in paragraphs (b) through (d) of this section.

(b) The Postal Service shall take into consideration how the planned rate adjustments are in accordance with the provisions of 39 U.S.C. chapter 36.

(c) The Postal Service shall provide public notice of its planned rate adjustments in a manner reasonably designed to inform the mailing community and the general public that it intends to adjust rates no later than 90 days prior to the planned implementation date of the rate adjustments.

(d) The Postal Service shall file a request to review its notice of rate adjustment with the Commission no later than 90 days prior to the planned implementation date of the rate adjustment.

§ 3030.122 Contents of a rate adjustment filing.

(a) A rate adjustment filing under § 3030.121 shall include the items specified in paragraphs (b) through (j) of this section.

(b) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 90 days before the effective date(s) for the planned rate adjustments.

(c) The intended effective date(s) of the planned rate adjustments.

(d) A schedule of the planned rate adjustments, including a schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments.

(e) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(f) The supporting technical documentation as described in § 3030.123.

(g) A demonstration that the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629.

§ 3030.123

39 CFR Ch. III (7–1–23 Edition)

(h) A certification that all cost, avoided cost, volume, and revenue figures submitted with the rate adjustment filing are developed from the most recent applicable Commission accepted analytical principles.

(i) For a rate adjustment that only includes a decrease in rates, a statement of whether the Postal Service elects to generate unused rate adjustment authority.

(j) Such other information as the Postal Service believes will assist the Commission in issuing a timely determination of whether the planned rate adjustments are consistent with applicable statutory policies.

§ 3030.123 Supporting technical documentation.

(a) Supporting technical documentation shall include the items specified in paragraphs (b) through (k) of this section, as applicable to the specific rate adjustment filing. This information must be supported by workpapers in which all calculations are shown and all relevant values (*e.g.*, rates, CPI-U values, billing determinants) are identified with citations to original sources. The information must be submitted in machine-readable, electronic format. Spreadsheet cells must be linked to underlying data sources or calculations (not hard-coded), as appropriate.

(b) The maximum rate adjustment authority, by class, as summarized by § 3030.127 and calculated separately for each of subparts C through H of this part, as appropriate.

(c) A schedule showing the banked rate adjustment authority available, by class, and the available amount for each of the preceding 5 years calculated as required by subpart H of this part.

(d) The calculation of the percentage change in rates, by class, calculated as required by § 3030.128.

(e) The planned usage of rate adjustment authority, by class, and calculated separately for each of subparts C through H of this part, as appropriate.

(f) The amount of new unused rate adjustment authority, by class, if any, that will be generated by the rate ad-

justment calculated as required by subpart H of this part, as applicable.

(g) A schedule of the workshare discounts included with the planned rate adjustments, and a companion schedule listing the avoided costs that underlie each such discount.

(h) 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 workshare discount;

(2) All data, economic analyses, and other information relied on to justify the workshare 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 workshare discount.

(i) Whenever the Postal Service establishes a new discount or surcharge rate it does not view as creating a workshare discount, it must include with its filing:

(1) An explanation of the basis for its view that the discount or surcharge rate is not a workshare discount; and

(2) A certification that the Postal Service applied accepted analytical principles to the discount or surcharge rate.

(j) Whenever the Postal Service includes a rate incentive with its planned rate adjustment, it must include with its filing:

(1) Whether the rate incentive is being treated under § 3030.128(f)(2) or under § 3030.128(f)(1) and (g);

(2) If the Postal Service seeks to include the rate incentive in the calculation of the percentage change in rates under § 3030.128(f)(2), whether the rate incentive is available to all mailers equally on the same terms and conditions; and

(3) If the Postal Service seeks to include the rate incentive in the calculation of the percentage change in rates under § 3030.128(f)(2), sufficient information to demonstrate that the rate incentive is a rate of general applicability, which at a minimum includes: The terms and conditions of the rate incentive; the factors that determine eligibility for the rate incentive; a

statement that affirms that the rate incentive will not benefit a single mailer; and a statement that affirms that the rate incentive is not only available upon the written agreement of both the Postal Service and a mailer, or group of mailers, or a foreign postal operator.

(k) For each class or product where the attributable cost for that class or product exceeded the revenue from that class or product as determined by the Commission, a demonstration that the planned rate adjustments comply with the requirements in subpart G of this part.

§ 3030.124 Docket and notice.

(a) The Commission will establish a docket for each rate adjustment filed by the Postal Service under § 3030.121, promptly publish notice of the filing in the FEDERAL REGISTER, and post the filing on its website. The notice shall include the items specified in paragraphs (b) through (g) of this section.

(b) The general nature of the proceeding.

(c) A reference to legal authority under which the proceeding is to be conducted.

(d) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule.

(e) The identification of an officer of the Commission to represent the interests of the general public in the docket.

(f) A period of 30 days from the date of the filing for public comment.

(g) Such other information as the Commission deems appropriate.

§ 3030.125 Opportunity for comments.

Public comments should focus on whether planned rate adjustments comport with applicable statutory and regulatory requirements.

§ 3030.126 Proceedings.

(a) If the Commission determines that the rate adjustment filing does not substantially comply with the requirements of §§ 3030.122 and 3030.123, the Commission may:

(1) Inform the Postal Service of the deficiencies and provide an opportunity for the Postal Service to take corrective action;

(2) Toll or otherwise modify the procedural schedule until such time the Postal Service takes corrective action;

(3) Dismiss the rate adjustment filing without prejudice; or

(4) Take other action as deemed appropriate by the Commission.

(b) Within 21 days of the conclusion of the public comment period the Commission will determine whether the planned rate adjustments are consistent with applicable law and issue an order announcing its findings. Applicable law means only the applicable requirements of this part, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629.

(c) If the planned rate adjustments are found consistent with applicable law, they may take effect.

(d) If the planned rate adjustments are found inconsistent with applicable law, the Commission will notify and require the Postal Service to respond to any issues of noncompliance.

(e) Following the Commission's notice of noncompliance, the Postal Service may submit an amended rate adjustment filing that describes the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended rate adjustment filing shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(f) The Commission will allow a period of 10 days from the date of the amended rate adjustment filing for public comment.

(g) The Commission will review the amended rate adjustment filing together with any comments filed for compliance and issue an order announcing its findings within 21 days after the comment period ends.

(h) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect. However, no amended rate shall take effect until 45 days after the Postal Service transmits its rate adjustment filing specifying that rate.

(i) If the planned rate adjustments in an amended rate adjustment filing are found to be inconsistent with applicable law, the Commission shall explain

the basis for its determination and suggest an appropriate remedy. Non-compliant rates may not go into effect.

(j) A Commission finding that a planned rate adjustment is in compliance with the applicable requirements of this part, Commission directives and orders, and 39 U.S.C. 3626, 3627, and 3629 is decided on the merits. A Commission finding that a planned rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter I, is provisional and subject to subsequent review.

§ 3030.127 Maximum rate adjustment authority.

(a) The maximum rate adjustment authority available to the Postal Service for each class of market dominant mail is limited to the sum of the percentage points developed in subparts C through E and G through H of this part.

(b) For any product where the attributable cost for that product exceeded the revenue from that product as determined by the Commission, rates may not be reduced.

§ 3030.128 Calculation of percentage change in rates.

(a) For the purpose of calculating the percentage change in rates, the current rate is the rate in effect at the time of the rate adjustment filing under § 3030.121 with the following exceptions:

(1) 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. When used with respect to a seasonal or temporary rate, the current rate is the most recent rate in effect for the rate cell, regardless of whether the seasonal or temporary rate is available at the time of the rate adjustment filing.

(2) 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, the current rate is the full undiscounted rate in effect for the rate cell at the time of the rate adjustment filing, not the discounted rate in effect for the rate cell at such time.

(b) For the purpose of calculating the percentage change in rates, the volume

for each rate cell shall be obtained from the most recently available 12 months of Postal Service billing determinants with the following permissible adjustments:

(1) 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.

(2) Whenever possible, adjustments shall be based on known mail characteristics or historical volume data, as opposed to forecasts of mailer behavior.

(3) 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 0. If the Postal Service does not adjust the billing determinants for the rate cell to 0, the Postal Service shall include a rationale for its treatment of the rate cell with the information required under paragraph (b)(1) of this section.

(c) For a rate adjustment that involves a rate increase, 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. Second, the same set of rate cell volumes is multiplied by the corresponding current rate for each cell and the resulting products are summed. Third, 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.

(d) For rate adjustments that only involve a rate decrease, 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 rate adjustment filing that involved a rate increase to replace the planned rates under the most recent rate adjustment filing that involves a rate increase with the corresponding planned rates

applicable to the class from the rate adjustment filing involving only a rate decrease.

(e) The formula for calculating the percentage change in rates for a class, described in paragraphs (c) and (d) of this section, is as follows:

$$\text{Percentage change in rates} = \left(\sum_{i=1}^N (R_{i,n})(V_i) / \sum_{i=1}^N (R_{i,c})(V_i) \right) - 1$$

Where:

N = number of rate cells in the class.

i = denotes a rate cell (i = 1, 2, . . . , N).

R_{i,n} = planned rate of rate cell i.

R_{i,c} = current rate of rate cell i (for rate adjustment involving a rate increase) or rate from most recent rate adjustment involving a rate increase for rate cell i (for a rate adjustment only involving a rate decrease).

V_i = volume of rate cell i.

(f)(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 paragraph (g) of this section).

(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);

(iii) The rate incentive is a rate of general applicability; and

(iv) The rate incentive is made available to all mailers equally on the same terms and conditions.

(g)(1) 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 the percentage change in rates under this section 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 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 the percentage change in rates.

(2) 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.

§ 3030.129 Exceptions for de minimis rate increases.

(a) The Postal Service may request that the Commission review a de minimis rate increase without immediately calculating the maximum rate adjustment authority or banking unused rate adjustment authority. For the exception in this paragraph (a) to apply, requests to review de minimis rate adjustments must be filed separately from any other request to review a rate adjustment filing.

(b) Rate adjustments resulting in rate increases are de minimis if:

(1) For each affected class, the rate increases do not result in the percentage change in rates for the class equaling or exceeding 0.001 percent; and

§ 3030.140

39 CFR Ch. III (7–1–23 Edition)

(2) For each affected class, the sum of all rate increases included in de minimis rate increases since the most recent rate adjustment resulting in a rate increase, or the most recent rate adjustment due to extraordinary and exceptional circumstances, 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.

(c) If the rate adjustments are de minimis, no unused rate adjustment authority will be added to the schedule of banked rate adjustment authority maintained under subpart G of this part as a result of the de minimis rate increase.

(d) If the rate adjustments are de minimis, no rate decreases may be taken into account when determining whether rate increases comply with paragraphs (b)(1) and (2) of this section.

(e) In the next rate adjustment filing proposing to increase rates for a class that is not a de minimis rate increase:

(1) The maximum rate adjustment authority 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.

(f) The Postal Service shall file supporting workpapers with each request to review a de minimis rate increase that demonstrate that the sum of all rate increases included in de minimis rate increases since the most recent rate adjustment resulting in a rate increase that was not de minimis, or the most recent rate adjustment due to extraordinary and exceptional circumstances, does not result in a percentage change in rates for the class equaling or exceeding 0.001 percent.

(g) For any product where the attributable cost for that product exceeded the revenue from that product as determined by the Commission, rates may not be reduced.

Subpart C—Consumer Price Index Rate Authority

§ 3030.140 Applicability.

The Postal Service may adjust rates based upon changes in the Consumer

Price Index for all Urban Consumers (CPI-U) identified in § 3030.141. If rate adjustment filings involving rate increases are filed 12 or more months apart, rate adjustments are subject to a full year limitation calculated pursuant to § 3030.142. If rate adjustment filings involving rate increases are filed less than 12 months apart, rate adjustments are subject to a partial year limitation calculated pursuant to § 3030.143.

§ 3030.141 CPI-U data source.

The monthly CPI-U values needed for the calculation of rate adjustment limitations under this subpart 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.”

§ 3030.142 CPI-U rate authority when rate adjustment filings are 12 or more months apart.

(a) If a rate adjustment filing involving a rate increase is filed 12 or more months after the most recent rate adjustment filing involving a rate increase, then the calculation of an annual limitation for the class (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 of the rate adjustment filing and dividing the sum by 12 (Recent Average). Second, 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). Third, 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.

(b) The formula for calculating a full year limitation for a rate adjustment filing filed 12 or more months after the last rate adjustment filing is as follows: Full Year Limitation = (Recent Average/Base Average)–1.

Postal Regulatory Commission

§ 3030.162

§ 3030.143 CPI-U rate authority when rate adjustment filings are less than 12 months apart.

(a) If a rate adjustment filing involving a rate increase is filed less than 12 months after the most recent rate adjustment filing involving a rate increase, then the annual limitation for the class (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.

(b) 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 of the rate adjustment filing and dividing the sum by 12 (Recent Average). Second, the partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous rate adjustment filing (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.

(c) The formula for calculating the partial year limitation for a rate adjustment filing filed less than 12 months after the last rate adjustment filing is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) – 1.

Subpart D—Density Rate Authority

§ 3030.160 Applicability.

(a) This subpart allocates rate authority to address the effects of decreases in the density of mail as measured by the sources identified in § 3030.161. The calculation of the additional rate authority corresponding to the change in density is described in § 3030.162.

(b) The Postal Service shall file a notice with the Commission by December 31 of each year that calculates the amount of density rate authority that is eligible to be authorized under this subpart.

(c) The Commission shall review the Postal Service's notice and determine

how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission's determination;

(2) Must be included in the calculation of the maximum rate adjustment authority in the first generally applicable rate adjustment filed after the Commission's determination; and

(3) May be used to generate unused rate authority, if unused, within 12 months of the Commission's announcement.

§ 3030.161 Density calculation data sources.

(a) The data needed for the calculation of the density rate authority in § 3030.162 shall be obtained from the values reported by the Postal Service as specified in paragraphs (b) through (d) of this section. When both originally filed and annually revised data are available, the originally filed data shall be used. When the originally filed data are corrected through a refiling or in the Commission's Annual Compliance Determination report, the corrected version of the originally filed data shall be used.

(b) Market dominant volume and total volume from the Revenue, Pieces, and Weight report, filed by the Postal Service under § 3050.25 of this chapter;

(c) Institutional costs and total costs from the Cost and Revenue Analysis report, filed with the Postal Service's section 3652 report (see § 3050.1(g) of this chapter); and

(d) The number of delivery points, from the input data used to produce the Total Factor Productivity estimates, filed with the Postal Service's section 3652 report.

§ 3030.162 Calculation of density rate authority.

(a) *Formulas.* (1) The formula for calculating the amount of density rate authority, in conformance with paragraph (b)(1) of this section, is as follows:

$$\text{Density rate authority} = \text{the greater of 0 and } -1 * \frac{IC_T}{TC_T} * \% \Delta D_{[T-1,T]}$$

Where:

T = most recently completed fiscal year.
T-1 = fiscal year prior to fiscal year T.
IC_T = institutional cost in fiscal year T.
TC_T = total cost in fiscal year T.

$\% \Delta D_{[T-1,T]}$ = Percentage change in density from fiscal year T-1 to fiscal year T.

(2) The formula for calculating the percentage change in density, in conformance with paragraph (b)(2) of this section, is as follows:

$$\text{Percentage change in density from prior fiscal year} = \frac{\frac{V_T}{DP_T}}{\frac{V_{T-1}}{DP_{T-1}}} - 1$$

Where:

T = most recently completed fiscal year.
T-1 = fiscal year prior to fiscal year T.
V_T = volume in fiscal year T (either market dominant volume or total volume as discussed in paragraph (b)(2) of this section).
DP_T = delivery points in fiscal year T.

(b) *Calculation.* (1) The amount of density rate authority available under this section shall be calculated in three steps. First, the percentage change in density during the most recently completed fiscal year shall be calculated using the formula in paragraph (a)(2) of this section as described in paragraph (b)(2) of this section. Second, this percentage change shall be multiplied by the institutional cost ratio, which is calculated as institutional costs for the most recently completed fiscal year divided by total costs for that fiscal year. Finally, this product shall be multiplied by negative 1 so that declines in density correspond to a positive increase in rates. If the result of this calculation is less than 0, the amount of additional rate authority shall be 0.

(2) The percentage change in density from the prior fiscal year shall be calculated as the ratio of volume to delivery points for the most recently completed fiscal year, divided by the same ratio for the prior fiscal year, and subtracting 1 from the quotient. The result is expressed as a percentage,

rounded to three decimal places. To ensure that decreases in competitive product volume will not result in the Postal Service receiving greater additional rate adjustment authority under this subpart, the percentage change in density shall be calculated two ways: Using market dominant volume and using total volume. The greater of the two results (not using absolute value) shall be used as the percentage change in density from the prior fiscal year.

Subpart E—Retirement Obligation Rate Authority

§ 3030.180 Definitions.

(a) The definitions in paragraphs (b) through (e) of this section apply to this subpart.

(b) *Amortization payments* mean the amounts that the Postal Service is invoiced by the U.S. Office of Personnel Management to provide for the liquidation of the specific and supplemental unfunded liabilities by statutorily predetermined dates, as described in § 3030.182(a).

(c) *Phase-in period* means the period of time spanning the fiscal years of issuance of the first five determinations following January 14, 2021, as specified by the timing provisions in § 3030.181.

(d) *Required minimum remittance* means the minimum amount the Postal Service is required to remit during a

Postal Regulatory Commission

§ 3030.183

particular fiscal year, as calculated under § 3030.184.

(e) *Revenue collected under this subpart* means the amount of revenue collected during a fiscal year as a result of all previous rate increases authorized under this subpart, as calculated under § 3030.184.

§ 3030.181 Applicability.

(a) This subpart allocates additional rate authority to provide the Postal Service with revenue for remittance towards the statutorily mandated amortization payments for supplemental and unfunded liabilities identified in § 3030.182. As described in § 3030.184, for retirement obligation rate authority to be made available, the Postal Service must annually remit towards these amortization payments all revenue collected under this subpart previously. The full retirement obligation rate authority, calculated as described in § 3030.183, shall be phased in over 5 fiscal years, taking into account changes in volume during the phase-in period. If combined with an equal rate increase on Competitive products, the compounded rate increase resulting from retirement obligation rate authority is calculated to generate sufficient additional revenue at the end of the phase-in period to permit the Postal Service to remit the entire invoiced amount of its amortization payments.

(b) Until the conclusion of the phase-in period, the Postal Service shall file a notice with the Commission by December 31 of each year that calculates the amount of retirement obligation rate authority that is eligible to be authorized under this subpart.

(c) The Commission shall review the Postal Service's notice and determine how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission's determination;

(2) Must be included in the calculation of the maximum rate adjustment authority in the first generally applicable rate adjustment filed after the Commission's determination;

(3) Shall lapse if not used in the first generally applicable rate adjustment

filed after the Commission's determination;

(4) Shall lapse if unused, within 12 months of the Commission's determination, however this paragraph (c)(4) shall not prohibit the Postal Service from making a stand-alone adjustment to one or two generally applicable rate cells, if such a case were to be followed by a broader rate adjustment in the class later in the same fiscal year; and

(5) May not be used to generate unused rate authority, nor shall it affect existing banked rate authority.

§ 3030.182 Retirement obligation data sources.

(a) The amounts of the amortization payments needed for the calculation of retirement obligation rate adjustment authority in § 3030.183 shall be obtained from notifications to the Postal Service by the Office of Personnel Management of annual determinations of the funding amounts specific to payments at the end of each fiscal year for Retiree Health Benefits as computed under 5 U.S.C. 8909a(d)(2)(B) and (d)(3)(B)(ii); the Civil Service Retirement System as computed under 5 U.S.C. 8348(h)(2)(B); and the Federal Employees Retirement System as computed under 5 U.S.C. 8423(b)(1)(B), (b)(2), and (b)(3)(B), filed with the Postal Service's section 3652 report.

(b) The values for market dominant revenue, total revenue and market dominant volumes needed for the calculation of retirement obligation rate authority in § 3030.183 shall be obtained from values reported in the Revenue, Pieces, and Weight report, filed by the Postal Service under § 3050.25 of this chapter.

(c) The values for additional rate authority previously provided under this subpart, if any, needed for the calculation of retirement obligation rate authority in § 3030.183 and the calculation of required minimum remittances under § 3030.184 shall be obtained from the Commission's prior determinations.

§ 3030.183 Calculation of retirement obligation rate authority.

(a) *Formulas.* (1) The formula for calculating the amount of retirement obligation rate authority available under

this subpart, described in paragraph (b)(1) of this section, is as follows:

$$\text{Additional rate authority in fiscal year } T + 1 = \left(1 + \frac{AP_T}{TR_T} - PARA_T\right)^{\frac{1}{5-N}} - 1$$

Where:

T = most recently completed fiscal year.

AP_T = total amortization payment for fiscal year T.

TR_T = total revenue in fiscal year T.

PARA_T = previously authorized retirement obligation rate authority, compounded through fiscal year T, expressed as a proportion of the market dominant rate base and calculated using the formula in paragraph (a)(2) of this section as described in paragraph (b)(2) of this section.

N = number of previously issued determinations in which retirement obligation rate authority was made available under this subpart.

(2) The formula for calculating the amount of previously authorized retirement obligation rate authority through fiscal year T, described in paragraph (b)(2) of this section, is as follows:

Previously authorized retirement obligation rate authority through

$$\text{fiscal year } T = 1 - \left(\prod_{t=T-N}^T (1 + r_t) \right)^{-1}$$

Where:

T = most recently completed fiscal year.

r_t = retirement obligation rate authority authorized in fiscal year T.

N = number of previously issued determinations in which retirement obligation rate authority was made available under this subpart.

(b) *Calculations.* (1) The amount of retirement obligation rate authority available for a fiscal year shall be calculated in four steps. First, the ratio of the total amortization payment for the fiscal year under review to the total revenue in the fiscal year under review shall be added to 1. This sum represents the factor by which an equal increase in market dominant and competitive rates in the fiscal year under review would generate sufficient additional revenue to make the full amortization payment. It does not account, however, for any previous rate authority authorized under this subpart. The second step is therefore to subtract the proportion of the market dominant rate base resulting from previously au-

thorized retirement obligation rate authority. That proportion is calculated using the formula in paragraph (a)(2) of this section as described in paragraph (b)(2) of this section. Third, to amortize the resulting amount of retirement obligation rate authority over the remainder of the phase-in period, the difference shall be raised to the power of the inverse of the number of determinations remaining in the phase-in period, including the current determination. Finally, 1 shall be subtracted from the result to convert from a proportional change in rates to a percentage of rate adjustment authority.

(2) The amount of previously authorized retirement obligation rate authority shall be calculated in two steps. First, the sums of 1 and the amount of retirement obligation rate authority authorized in each of the previous fiscal years shall be multiplied together. This product represents the compounded amount of such rate authority, expressed as a net rate increase. To

Postal Regulatory Commission

§ 3030.184

express this product as a proportion of the market dominant rate base, the second step is to subtract the inverse of this product from 1.

§ 3030.184 Required minimum remittances.

(a) *Minimum remittances.* During each fiscal year subsequent to January 14, 2021, the Postal Service shall remit towards the liabilities identified in § 3030.182 an amount equal to or greater

than the amount of revenue collected as a result of all previous rate increases under this subpart during the previous fiscal year, as calculated using the formulas in paragraph (b) of this section, as described in paragraph (c) of this section.

(b) *Formulas.* (1) The formula for calculating the amount of revenue collected under this subpart during a fiscal year, described in paragraph (c)(1) of this section, is as follows:

$$\text{Amount of revenue} = MDR_T \left(1 - \left(\prod_{t=T-N}^T 1 + (p_t)(r_t) \right)^{-1} \right)$$

Where:

T = most recently completed fiscal year.

MDR_T = market dominant revenue in fiscal year T.

N = number of previously issued determinations in which retirement obligation rate authority was made available under this subpart.

r_t = retirement obligation rate authority authorized in fiscal year *t*.

p_t = prorated fraction of r_t that was in effect during fiscal year T, calculated using the

formula in paragraph (b)(2) of this section, as described in paragraph (c)(2) of this section.

(2) The formula for calculating the prorated fraction of retirement obligation rate authority authorized in a particular fiscal year *t* that was in effect during the most recently completed fiscal year, described in paragraph (c)(2) of this section, is as follows:

Prorated fraction

$$= \begin{cases} 0, & \text{if } r_t \text{ was not in effect during fiscal year T} \\ 1, & \text{if } r_t \text{ was in effect for all of fiscal year T} \\ \frac{\left(\frac{E_Q}{D_Q}\right)(QMDV_Q) + \sum_{i=Q+1}^T QMDV_i}{MDV_T}, & \text{if } r_t \text{ came into effect during fiscal year T} \end{cases}$$

Where:

T = most recently completed fiscal year.

r_t = retirement obligation rate authority authorized under this subpart in fiscal year *t*.

Q = the number of the quarter during the fiscal year of the effective date of the price increase including retirement obligation rate authority made available under this subpart.

E_Q = number of days in quarter Q subsequent to and including the effective date of the price increase.

D_Q = total number of days in quarter Q.

QMDV_Q = market dominant volume in quarter Q.

MDV_T = market dominant volume in fiscal year T.

(c) *Calculations.* (1) The amount of revenue collected under this subpart during a fiscal year, as calculated by the formula in paragraph (b)(1) of this section, shall be calculated in three steps. First, the sums of 1 and the amount of retirement obligation rate authority made available under this

§ 3030.185

subpart during each previous fiscal year—prorated to account for mid-year price increases as described in paragraph (b)(2) of this section—shall be multiplied together. This product represents the proportion by which prices were higher during the most recently completed fiscal year as a result of retirement obligation rate authority. Second, to express this net price increase as a proportion of market dominant revenue, the inverse of this product shall be subtracted from 1. Finally, the result shall be multiplied by market dominant revenue for the fiscal year to change the proportion into a dollar amount.

(2)(i) The prorated fraction of retirement obligation rate authority authorized in a particular fiscal year that was in effect during the most recently completed fiscal year, as calculated by the formula in paragraph (b)(2) of this section, shall be a piecewise function of three parts. First, if the retirement obligation rate authority authorized in a particular year was not in effect during the most recently completed fiscal year, the prorated fraction shall be 0. Second, if the retirement obligation rate authority authorized in a particular year was in effect during the entirety of the most recently completed fiscal year, the prorated fraction shall be 1. Finally, if the retirement obligation rate authority authorized in a particular fiscal year was used to raise prices during the most recently completed fiscal year, the prorated fraction shall be the proportion of volume sent during the fiscal year after that rate increase went into effect.

(ii) The proportion in paragraph (c)(2)(i) of this section shall be calculated in four steps. First, the number of days of the fiscal quarter after and including the effective date of the price adjustment including the retirement obligation rate authority shall be divided by the total number of days in that fiscal quarter. This quotient determines the proportion of days in that quarter in which the higher rates were in effect. Second, that quotient shall be multiplied by the market dominant volume from that fiscal quarter to determine the amount of volume during the quarter receiving the higher rates. Third, that product shall be added to

39 CFR Ch. III (7–1–23 Edition)

the market dominant volume from any subsequent quarters of the fiscal year because the volume in those quarters was also sent under the higher rates. Finally, this sum shall be divided by the total market dominant volume from the fiscal year to determine the proportion of annual volume sent after the rate increase went into effect.

§ 3030.185 Forfeiture.

(a) If any of the circumstances described in paragraphs (b) through (d) of this section occur, the Postal Service shall not be eligible for future retirement obligation rate authority under this subpart, and the Commission may commence additional proceedings as appropriate.

(b) If, subsequent to March 1, 2021, and prior to the end of the phase-in period, the Postal Service fails to timely file the notice required under § 3030.181(b);

(c) In any fiscal year in which retirement obligation rate authority was determined to be available under this subpart, the Postal Service fails to timely file under § 3030.122 for a rate increase including the full amount of retirement obligation rate authority authorized under this subpart during that fiscal year, to take effect prior to the end of that fiscal year; or

(d) In any fiscal year including or subsequent to the first fiscal year in which rate authority under this subpart was used to adjust market dominant rates, the Postal Service's total payments towards the supplemental and unfunded liabilities identified in § 3030.182 are not equal to or greater than the minimum remittance required for that fiscal year under § 3030.184(a).

Subpart F—[Reserved]

Subpart G—Non-compensatory Classes or Products

§ 3030.220 Applicability.

This subpart is applicable to a class or product where the attributable cost for that class or product exceeded the revenue from that class or product as determined by the Commission. Section 3030.221 is applicable where the attributable cost for a product within a

Postal Regulatory Commission

§ 3030.242

class exceeded the revenue from that particular product where the product is classified within a class where the overall class revenue exceeded the attributable cost for that class. Section 3030.222 is applicable where the attributable cost for an entire class exceeded the revenue from that class.

§ 3030.221 Individual product requirement.

Whenever the Postal Service files a rate adjustment filing affecting a class of mail which includes a product where the attributable cost for that product exceeded the revenue from that product, as determined by the Commission, the Postal Service shall increase the rates for each non-compensatory product by a minimum of 2 percentage points above the percentage increase for that class. This section does not create additional rate authority applicable to any class of mail. This section only applies to products classified within classes for which the overall class revenue exceeded the attributable cost for that class. This section does not apply to a non-compensatory product for which the Commission has determined that the Postal Service lacks independent authority to set rates (such as rates set by treaty obligation).

§ 3030.222 Class requirement and additional class rate authority.

(a) This section provides 2 percentage points of additional rate authority for any class of mail where the attributable cost for that class exceeded the revenue from that class as determined by the Commission. This additional rate authority is optional and may be used at the Postal Service's discretion.

(b) The Commission shall announce how much, if any, rate authority will be authorized under this subpart. Any rate authority allocated under this subpart:

(1) Shall be made available to the Postal Service as of the date of the Commission's announcement;

(2) Must be included in the calculation of the maximum rate adjustment authority change in rates in the first generally applicable rate adjustment filed after the Commission's announcement; and

(3) May be used to generate unused rate authority, if unused, within 12 months of the Commission's announcement.

Subpart H—Accumulation of Unused and Disbursement of Banked Rate Adjustment Authority

§ 3030.240 General.

Unless a specific exception applies, unused rate adjustment authority, on a class-by-class basis, shall be calculated for each rate adjustment filing. Unused rate adjustment authority shall be added to the schedule of banked rate authority in each instance, and be available for application to rate adjustments pursuant to the requirements of this subpart.

§ 3030.241 Schedule of banked rate adjustment authority.

Upon the establishment of unused rate adjustment authority, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of banked rate authority on a class-by-class basis. At a minimum, the schedule must track the amount of banked rate authority available immediately prior to the rate adjustment filing and the amount of banked rate authority available upon acceptance of the rates included in the rate adjustment filing. It shall also track all changes to the schedule, including the docket numbers of Commission decisions affecting the schedule, the dates and amounts that any rate authority was generated or subsequently expended, and the expiration dates of all rate adjustment authority. The schedule shall be included with any rate adjustment filing purporting to modify the amount of banked rate adjustment authority.

§ 3030.242 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed 12 months apart or less.

(a) When rate adjustment filings that involve a rate increase are filed 12 months apart or less, unused rate adjustment authority for a class is equal

§ 3030.243

to the difference between the maximum rate adjustment authority as summarized by § 3030.127 and calculated pursuant to subparts C through G of this part and this subpart, as appropriate, and the percentage change in rates for the class calculated pursuant to § 3030.128, subject to the limitations described in paragraph (b) of this section.

(b) For rate adjustment filings that involve a rate increase, unused rate adjustment authority cannot exceed the unused portion of rate authority calculated pursuant to subparts C and D of this part and § 3030.222.

§ 3030.243 Calculation of unused rate adjustment authority for rate adjustments that involve a rate increase which are filed more than 12 months apart.

(a) When rate adjustment filings that involve a rate increase are filed more than 12 months apart, any interim rate adjustment authority must first be added to the schedule of banked rate authority before the unused rate adjustment authority is calculated.

(b) Interim rate adjustment authority for a class is equal to the Base Average applicable to the second rate adjustment filing (as developed pursuant to § 3030.142) divided by the Recent Average utilized in the first rate adjustment filing (as developed pursuant to § 3030.142) and subtracting 1 from the quotient. The result is expressed as a percentage and immediately added to the schedule of banked rate authority as of the date the rate adjustment filing is filed. If the Commission announces that rate authority calculated pursuant to subpart D of this part or § 3030.222 are available and no rate adjustment is filed before the Commission subsequently announces that further rate authority calculated pursuant to subpart D of this part or § 3030.222 are available, then the amount of rate authority calculated pursuant to subpart D of this part and § 3030.222 in the first Commission announcement shall be added to the interim rate adjustment authority.

(c) Unused rate adjustment authority for a class is equal to the difference between the maximum rate adjustment authority as summarized by § 3030.127 and calculated pursuant to subparts C

39 CFR Ch. III (7–1–23 Edition)

through G of this part and this subpart, as appropriate, and the percentage change in rates for the class calculated pursuant to § 3030.128, subject to the limitations described in paragraph (d) of this section.

(d) For rate adjustment filings that involve a rate increase, unused rate adjustment authority cannot exceed the unused portion of rate authority calculated pursuant to subparts C and D of this part and § 3030.222.

§ 3030.244 Calculation of unused rate adjustment authority for rate adjustments that only include rate decreases.

(a) For rate adjustment filings that only include rate decreases, unused rate adjustment authority for a class is calculated in two steps. First, the difference between the maximum rate adjustment authority as summarized by § 3030.127 and calculated pursuant to subparts C through G of this part and this subpart, as appropriate, for the most recent rate adjustment that involves a rate increase and the percentage change in rates for the class calculated pursuant to § 3030.128(d) is calculated. Second, the unused rate adjustment authority generated in the most recent rate adjustment that involves a rate increase is subtracted from that result.

(b) 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 rate adjustment that involves a rate increase on the schedule maintained under § 3030.241. For purposes of this section, 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 § 3030.241 on the same date as the most recent rate adjustment filing that involves a rate increase.

(c) For rate adjustment filings that only include rate decreases, the sum of unused rate adjustment authority generated under paragraph (a) of this section and the unused rate adjustment authority generated in the most recent rate adjustment that involves a rate

increase cannot exceed the unused portion of rate adjustment authority calculated pursuant to subparts C and D of this part and § 3030.222 in the most recent rate adjustment that involves a rate increase.

(d) Unused rate adjustment authority generated under paragraph (a) of this section shall be subject to the limitation under § 3030.245, regardless of whether it is used alone or in combination with other existing unused rate adjustment authority.

(e) For rate adjustment filings that only include rate decreases, unused rate adjustment authority generated under this section lapses 5 years from the date of filing of the most recent rate adjustment filing that involves a rate increase.

(f) A rate adjustment filing that only includes rate decreases that is filed immediately after a rate adjustment due to extraordinary or exceptional circumstances (*i.e.*, without an intervening rate adjustment involving a rate increase) may not generate unused rate adjustment authority.

§ 3030.245 Application of banked rate authority.

(a) Banked rate authority may be applied to any planned rate adjustment subject to the limitations appearing in paragraphs (b) through (f) of this section.

(b) Banked rate authority may only be applied to a proposal to adjust rates after applying rate authority as described in subparts C through F of this part and in § 3030.222.

(c) A maximum of 2 percentage points of banked rate authority may be applied to a rate adjustment for any class in any 12-month period. If banked rate authority is used, it shall be subtracted from the schedule of banked rate adjustment authority as of the date of the final order accepting the rates.

(d) Subject to paragraphs (b) and (c) of this section, interim rate adjustment authority may be used to make a rate adjustment pursuant to the rate adjustment filing that led to its calculation. If interim rate adjustment authority is used to make such a rate adjustment, the interim rate adjustment authority generated pursuant to

the rate adjustment filing shall first be added to the schedule of banked rate adjustment authority pursuant to § 3030.241 as the most recent entry. Then, any interim rate adjustment authority used in accordance with this paragraph (d) shall be subtracted from the existing banked rate adjustment authority using a first-in, first-out (FIFO) method, beginning 5 years before the instant rate adjustment filing.

(e) Banked rate authority for a class must be applied, using a first-in, first-out (FIFO) method, beginning 5 years before the instant rate adjustment filing.

(f) Banked rate adjustment authority calculated under this section shall lapse 5 years from the date of the rate adjustment filing leading to its calculation.

Subpart I—Rate Adjustments Due to Extraordinary and Exceptional Circumstances

§ 3030.260 General.

The Postal Service may request to adjust rates for market dominant products due to extraordinary or exceptional circumstances pursuant to 39 U.S.C. 3622(d)(1)(E). The rate adjustments are not subject to rate adjustment limitations or the restrictions on the use of unused rate adjustment authority. The rate adjustment request may not include material classification changes. The request is subject to public participation and Commission review within 90 days.

§ 3030.261 Contents of a rate adjustment filing.

(a) Each exigent request shall include the items specified in paragraphs (b) through (i) of this section.

(b) A schedule of the planned rates.

(c) Calculations quantifying the increase for each affected product and class.

(d) 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.

(e) A full discussion of why the requested rate adjustments are necessary

§ 3030.262

39 CFR Ch. III (7–1–23 Edition)

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.

(f) A full discussion of why the requested rate adjustments are reasonable and equitable as among types of users of market dominant products.

(g) 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.

(h) 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.

(i) Such other information as the Postal Service believes will assist the Commission in issuing a timely determination of whether the requested rate adjustments are consistent with applicable statutory policies.

§ 3030.262 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide additional information in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate adjustments requested. The Postal Service shall include within its request the identification of one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification or additional information.

§ 3030.263 Docket and notice.

(a) The Commission will establish a docket for each request to adjust rates due to extraordinary or exceptional circumstances, publish notice of the request in the FEDERAL REGISTER, and post the filing on its website. The notice shall include the items specified in paragraphs (b) through (g) of this section.

(b) The general nature of the proceeding.

(c) A reference to legal authority under which the proceeding is to be conducted.

(d) A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule.

(e) The identification of an officer of the Commission to represent the interests of the general public in the docket.

(f) A specified period for public comment.

(g) Such other information as the Commission deems appropriate.

§ 3030.264 Public hearing.

(a) The Commission will hold a public hearing on the Postal Service's 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 supporting information.

(b) 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 § 3010.120 of this chapter, and will become part of the administrative record of the proceeding.

(c) 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.

(d) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

§ 3030.265 Opportunity for comments.

(a) 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;

(2) The adequacy of the justification for adjustments in the amounts requested by the Postal Service; and

Postal Regulatory Commission

§ 3030.283

(3) Whether the specific rate adjustments requested are reasonable and equitable.

(b) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

§ 3030.266 **Deadline for Commission decision.**

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. The Commission will act expeditiously on the Postal Service's 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.

§ 3030.267 **Treatment of banked rate adjustment authority.**

(a) Each request will identify the banked 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) Rate adjustments may use existing banked rate adjustment authority in amounts greater than the limitations described in § 3030.245.

(c) Increases will exhaust all banked 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.

Subpart J—Workshare Discounts

§ 3030.280 **Applicability.**

This subpart is applicable whenever the Postal Service proposes to adjust a rate associated with a workshare discount. For the purpose of this subpart, the cost avoided by the Postal Service for not providing the applicable service refers to the amount identified in the most recently applicable Annual Compliance Determination, unless the Commission otherwise provides.

§ 3030.281 **Calculation of passthroughs for workshare discounts.**

For the purpose of this subpart, the percentage passthrough for any workshare discount shall be calculated by dividing the workshare discount by the cost avoided by the Postal Service for not providing the applicable service and expressing the result as a percentage.

§ 3030.282 **Increased pricing efficiency.**

(a) For a workshare discount that is equal to the cost avoided by the Postal Service for not providing the applicable service, no proposal to adjust a rate associated with that workshare discount may change the size of the discount.

(b) For a workshare discount that exceeds the cost avoided by the Postal Service for not providing the applicable service, no proposal to adjust a rate associated with that workshare discount may increase the size of the discount.

(c) For a workshare discount that is less than the cost avoided by the Postal Service for not providing the applicable service, no proposal to adjust a rate associated with that workshare discount may decrease the size of the discount.

§ 3030.283 **Limitations on excessive discounts.**

(a) No proposal to adjust a rate may set a workshare discount that would exceed the cost avoided by the Postal Service for not providing the applicable service, unless at least one of the following reasons provided in paragraphs (b) through (e) of this section applies.

(b) The proposed workshare discount is associated with a new postal service, a change to an existing postal service, or a new workshare initiative.

(c) The proposed workshare discount is a minimum of 20 percent less than the existing workshare discount.

(d) The proposed workshare discount is set in accordance with a Commission order issued pursuant to § 3030.286.

(e) The proposed workshare discount is provided in connection with a subclass of mail, consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39

§ 3030.284

U.S.C. 3622(e)(2)(C)) and is in compliance with § 3030.285(c).

§ 3030.284 Limitations on discounts below avoided cost.

(a) No proposal to adjust a rate may set a workshare discount that would be below the cost avoided by the Postal Service for not providing the applicable service, unless at least one of the following reasons provided in paragraphs (b) through (e) of this section applies.

(b) The proposed workshare discount is associated with a new postal service, a change to an existing postal service, or a new workshare initiative.

(c) The proposed workshare discount is a minimum of 20 percent more than the existing workshare discount.

(d) The proposed workshare discount is set in accordance with a Commission order issued pursuant to § 3030.286.

(e) The percentage passthrough for the proposed workshare discount is at least 85 percent.

§ 3030.285 Proposal to adjust a rate associated with a workshare discount.

(a) Each proposal to adjust a rate associated with a workshare discount shall be supported by substantial evidence and demonstrate that each proposed workshare discount has been set in compliance with 39 U.S.C. 3622(e) and this subpart. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(b) For each proposed workshare discount that would exceed the cost avoided by the Postal Service for not providing the applicable service, the rate adjustment filing shall indicate the applicable paragraph of § 3030.283 under which the Postal Service is justifying the excessive discount and include any relevant analysis supporting the claim.

(c) For each proposed workshare discount that is provided in connection with a subclass of mail, consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39 U.S.C. 3622(e)(2)(C)), would exceed the cost avoided by the Postal Service for not providing the applicable service, and would not be set in accordance with at least one specific

39 CFR Ch. III (7–1–23 Edition)

provision appearing in § 3030.283(b) through (d), the rate adjustment filing shall provide the information specified in paragraphs (c)(1) through (3) of this section:

(1) The number of mail owners receiving the workshare discount during the most recent full fiscal year and for the current fiscal year to date;

(2) The number of mail owners for the applicable product or products in the most recent full fiscal year and for the current fiscal year to date; and

(3) An explanation of how the proposed workshare discount would promote the public interest, even though the proposed workshare discount would substantially exceed the cost avoided by the Postal Service.

(d) For each proposed workshare discount that would be below the cost avoided by the Postal Service for not providing the applicable service, the rate adjustment filing shall indicate the applicable paragraph of § 3030.284 under which the Postal Service is justifying the discount that is below the cost avoided and include any relevant analysis supporting the claim.

§ 3030.286 Application for waiver.

(a) In every instance in which the Postal Service determines to adjust a rate associated with a workshare discount in a manner that does not comply with the limitations imposed by §§ 3030.283 through 3030.284, the Postal Service shall file an application for waiver. The Postal Service must file any application for waiver at least 60 days prior to filing the proposal to adjust a rate associated with the applicable workshare discount. In its application for waiver, the Postal Service shall indicate the approximate filing date for its next rate adjustment filing.

(b) The application for waiver shall be supported by a preponderance of the evidence and demonstrate that a waiver from the limitations imposed by §§ 3030.283 through 3030.284 should be granted. Preponderance of the evidence means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

(c) The application for waiver shall include a specific and detailed statement signed by one or more knowledgeable Postal Service official(s) who sponsors the application and attests to the accuracy of the information contained within the statement. The statement shall set forth the information specified in paragraphs (c)(1) through (8) of this section, as applicable to the specific workshare discount for which a waiver is sought:

(1) The reason(s) why a waiver is alleged to be necessary (with justification thereof), including all relevant supporting analysis and all assumptions relied upon.

(2) The length of time for which a waiver is alleged to be necessary (with justification thereof).

(3) For each subsequent rate adjustment filing planned to occur during the length of time for which a waiver is sought, a representation of the proposed minimum amount of the change to the workshare discount.

(4) For a claim that the amount of the workshare discount exceeding the cost avoided by the Postal Service for not providing the applicable service is necessary in order to mitigate rate shock (39 U.S.C. 3622(e)(2)(B)), the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(4)(i) through (iii) of this section:

(i) A description of the customers that the Postal Service claims would be adversely affected.

(ii) Prices and volumes for the workshare discount at issue (the benchmark and workshared mail category) for the last 10 years.

(iii) Quantitative analysis or, if not available, qualitative analysis indicating the nature and extent of the likely harm to the customers that would result from setting the workshare discount in compliance with § 3030.283(c).

(5) For a claim that setting an excessive or low workshare discount closer or equal to the cost avoided by the Postal Service for not providing the applicable service would impede the efficient operation of the Postal Service, the Postal Service shall provide an explanation addressing all of the items

specified in paragraphs (c)(5)(i) through (iii) of this section:

(i) A description of the operational strategy at issue.

(ii) Quantitative analysis or, if not available, qualitative analysis indicating how the workshare discount at issue is related to that operational strategy.

(iii) How setting the workshare discount in compliance with § 3030.283(c) or § 3030.284(c), whichever is applicable, would impede that operational strategy.

(6) For a claim that reducing or eliminating the excessive workshare discount would lead to a loss of volume in the affected category of mail and reduce the aggregate contribution to the Postal Service's institutional costs from the mail that is subject to the discount (39 U.S.C. 3622(e)(3)(A)), the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(6)(i) through (iii) of this section:

(i) A description of the affected category of mail.

(ii) Quantitative analysis or, if not available, qualitative analysis indicating the expected loss of volume and reduced contribution that is claimed would result from reducing or eliminating the excessive workshare discount.

(iii) How setting the excessive workshare discount in compliance with § 3030.283(c) would lead to the expected loss of volume and reduced contribution.

(7) For a claim that reducing or eliminating the excessive workshare discount would result in a further increase in the rates paid by mailers not able to take advantage of the workshare discount (39 U.S.C. 3622(e)(3)(B)), or a claim that increasing or eliminating a low workshare discount for a non-compensatory product would result in a further increase in the rates paid by mailers not able to take advantage of the workshare discount, the Postal Service shall provide an explanation addressing all of the items specified in paragraphs (c)(7)(i) through (iii) of this section:

(i) A description of the mailers not able to take advantage of the discount.

(ii) Quantitative analysis or, if not available, qualitative analysis indicating the expected size of the rate increase that is claimed would result in the rates paid by mailers not able to take advantage of the discount.

(iii) How setting the excessive workshare discount in compliance with § 3030.283(c) or the low workshare discount for a non-compensatory product in compliance with § 3030.284(c) or (e), whichever is applicable, would result in a further increase in the rates paid by mailers not able to take advantage of the discount.

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

(d) Unless the Commission otherwise provides, commenters will be given at least 7 calendar days to respond to the application for waiver after it has been filed by the Postal Service.

(e) To better evaluate the waiver application, the Commission may, on its own behalf or by request of any interested person, order the Postal Service to provide experts on the subject matter of the waiver application to participate in technical conferences, prepare statements clarifying or supplementing their views, or answer questions posed by the Commission or its representatives.

(f) For a proposed workshare discount that would exceed the cost avoided by the Postal Service for not providing the applicable service, the application for waiver shall be granted only if at least one provision appearing in 39 U.S.C. 3622(e)(2)(A) through (e)(2)(D) or 39 U.S.C. 3622(e)(3)(A) through (e)(3)(B) is determined to apply.

(g) For a proposed workshare discount that would be set below the cost avoided by the Postal Service for not providing the applicable service, the application for waiver shall be granted only if setting the workshare discount closer or equal to the cost avoided by the Postal Service for not providing the applicable service would impede the efficient operation of the Postal Service or if increasing or eliminating a low workshare discount for a non-compensatory product would result in a further increase in the rates paid by

mailers not able to take advantage of the workshare discount.

(h) The Commission will issue an order announcing, at a minimum, whether the requested waiver will be granted or denied no later than 21 days following the close of any comment period(s). An order granting the application for waiver shall specify all conditions upon which the waiver is granted, including the date upon which the waiver shall expire.

PART 3035—REGULATION OF RATES FOR COMPETITIVE PRODUCTS

Sec.

3035.101 Scope.

3035.102 Changes in rates of general applicability.

3035.103 Decrease in rates of general applicability.

3035.104 Change in class of general applicability.

3035.105 Rate or class not of general applicability.

3035.106 Sufficiency of information.

3035.107 Standards for compliance.

AUTHORITY: 39 U.S.C. 503; 3633.

SOURCE: 72 FR 63697, Nov. 9, 2007, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

§ 3035.101 Scope.

Rules in this part are applicable to competitive products.

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3035.102 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.

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

Postal Regulatory Commission

§ 3035.107

§ 3035.103 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).

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3035.104 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.

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3035.105 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.

(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).

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3035.106 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.

[72 FR 63697, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3035.107 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

Pt. 3040

will use the sum of competitive products' volume-variable costs and product-specific 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). Pursuant to 39 U.S.C. 3631(b), the Commission will calculate a competitive product's attributable costs as the sum of its volume-variable costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product's incremental costs.

(c)(1) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively, at a minimum, will be calculated using the following formula:

$$AS_{t+1} = AS_t * (1 + \% \Delta CCM_{t-1} + CGD_{t-1})$$

Where,

AS = Appropriate Share, expressed as a percentage and rounded to one decimal place

CCM = Competitive Contribution Margin

CGD = Competitive Growth Differential

t = Fiscal Year

If t = 0 = FY 2007, AS = 5.5 percent

(2) The Commission shall, as part of each Annual Compliance Determination, calculate and report competitive products' appropriate share for the upcoming fiscal year using the formula set forth in paragraph (c)(1) of this section.

[72 FR 63697, Nov. 9, 2007, as amended at 81 FR 88123, Dec. 7, 2016; 84 FR 539, Jan. 31, 2019. Redesignated at 85 FR 9615, Feb. 19, 2020; 88 FR 3315, Jan. 19, 2023]

PART 3040—PRODUCT LISTS AND THE MAIL CLASSIFICATION SCHEDULE

Subpart A—Product Lists and the Mail Classification Schedule

Sec.

3040.101 Applicability.

3040.102 Product lists.

3040.103 Notice of product list change.

3040.104 Mail Classification Schedule.

3040.105 Modifications to the Mail Classification Schedule.

APPENDIX A TO SUBPART A OF PART 3040—
MARKET DOMINANT PRODUCT LIST

39 CFR Ch. III (7–1–23 Edition)

APPENDIX B TO SUBPART A OF PART 3040—
COMPETITIVE PRODUCT LIST

Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists

3040.130 General.

3040.131 Contents of a request.

3040.132 Supporting justification.

3040.133 Docket and notice.

3040.134 Review.

3040.135 Further proceedings.

Subpart C—Requests Initiated by Users of the Mail to Modify the Product Lists

3040.150 General.

3040.151 Contents of a request.

3040.152 Supporting justification.

3040.153 Docket and notice.

3040.154 Postal Service notice and reply.

3040.155 Review.

3040.156 Further proceedings.

Subpart D—Proposal of the Commission to Modify the Product Lists

3040.170 General.

3040.171 Contents of a proposal.

3040.172 Supporting justification.

3040.173 Docket and notice.

3040.174 Postal Service notice and reply.

3040.175 Review.

3040.176 Further proceedings.

Subpart E—Requests Initiated by the Postal Service To Make Material Changes or Minor Corrections to the Mail Classification Schedule

3040.180 Material changes to product descriptions.

3040.181 Supporting justification for material changes to product descriptions.

3040.182 Docket and notice of material changes to product descriptions.

3040.183 Commission review of material changes to product descriptions.

3040.184–3040.189 [Reserved]

3040.190 Minor corrections to product descriptions.

3040.191 Docket and notice of minor corrections to product descriptions.

3040.192 Commission review of minor corrections to product descriptions.

Subpart F—Size and Weight Limitations for Mail Matter

3040.210 General.

3040.211 Limitations applicable to market dominant mail matter.

3040.212 Limitations applicable to competitive mail matter.

Postal Regulatory Commission

§ 3040.104

Subpart G—Requests for Market Dominant Negotiated Service Agreements

3040.220 General.

3040.221 Additional supporting justification for negotiated service agreements.

3040.222 Data collection plan and report for negotiated service agreements.

AUTHORITY: 39 U.S.C. 503; 3622; 3631; 3642; 3682.

SOURCE: 72 FR 63698, Nov. 9, 2007, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

Subpart A—Product Lists and the Mail Classification Schedule

SOURCE: 81 FR 38954, June 15, 2016, unless otherwise noted.

§ 3040.101 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 non-postal 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.

[81 FR 38954, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.102 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 3040—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 3040—Competitive Product List.

[85 FR 9658, Feb. 19, 2020]

§ 3040.103 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.

[81 FR 38954, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.104 Mail Classification Schedule.

(a) The Postal Regulatory Commission shall publish a Mail Classification Schedule (including both current and previous versions) on its website 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;

§ 3040.105

(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 categories, 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

39 CFR Ch. III (7–1–23 Edition)

(5) A list of country codes for international mail prices.

[81 FR 38954, June 15, 2016. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

§ 3040.105 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 website 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.

[81 FR 38954, June 15, 2016. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

APPENDIX A TO SUBPART A OF PART 3040—MARKET DOMINANT PRODUCT LIST

(An asterisk (*) indicates an organizational class or group, not a Postal Service product.)

FIRST-CLASS MAIL *

Single-Piece Letters/Postcards
Presorted Letters/Postcards
Flats
Outbound Single-Piece First-Class Mail
International
Inbound Letter Post

USPS MARKETING 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

Postal Regulatory Commission

Pt. 3040, Subpt. A, App. B

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
Stamp Fulfillment Services

NEGOTIATED SERVICE AGREEMENTS *

Domestic *
International *
Inbound Market Dominant Multi-Service
Agreements with Foreign Postal Opera-
tors

NONPOSTAL SERVICES *

Alliances with the Private Sector to Defray
Cost of Key Postal Functions
Philatelic Sales

MARKET TESTS *

USPS Connect Local Mail

[88 FR 21918, Apr. 12, 2023]

APPENDIX B TO SUBPART A OF PART 3040—COMPETITIVE PRODUCT LIST

(An asterisk (*) indicates an organizational
class or group, not a Postal Service product.)

DOMESTIC PRODUCTS *

Priority Mail Express
Priority Mail
Parcel Select
Parcel Return Service
First-Class Package Service

INTERNATIONAL PRODUCTS *

Outbound International Expedited Services
Inbound Parcel Post (at UPU rates)
Outbound Priority Mail International
International Priority Airmail (IPA)
International Surface Air Lift (ISAL)
International Direct Sacks-M-Bags
Outbound Single-Piece First-Class Package
International Service
Inbound Letter Post Small Packets and
Bulky Letters

NEGOTIATED SERVICE AGREEMENTS *

Domestic *
Priority Mail Express Contract 81
Priority Mail Express Contract 83
Priority Mail Express Contract 87
Priority Mail Express Contract 88
Priority Mail Express Contract 92
Priority Mail Express Contract 94
Priority Mail Express Contract 95
Priority Mail Express Contract 96
Priority Mail Express Contract 97
Priority Mail Express Contract 98
Priority Mail Express Contract 99
Parcel Return Service Contract 17

Parcel Return Service Contract 18
Priority Mail Contract 80
Priority Mail Contract 153
Priority Mail Contract 360
Priority Mail Contract 530
Priority Mail Contract 543
Priority Mail Contract 544
Priority Mail Contract 547
Priority Mail Contract 551
Priority Mail Contract 559
Priority Mail Contract 573
Priority Mail Contract 589
Priority Mail Contract 590
Priority Mail Contract 595
Priority Mail Contract 596
Priority Mail Contract 601
Priority Mail Contract 604
Priority Mail Contract 605
Priority Mail Contract 607
Priority Mail Contract 609
Priority Mail Contract 611
Priority Mail Contract 614
Priority Mail Contract 615
Priority Mail Contract 618
Priority Mail Contract 628
Priority Mail Contract 631
Priority Mail Contract 640
Priority Mail Contract 642
Priority Mail Contract 645
Priority Mail Contract 647
Priority Mail Contract 655
Priority Mail Contract 657
Priority Mail Contract 658
Priority Mail Contract 660
Priority Mail Contract 663
Priority Mail Contract 665
Priority Mail Contract 666
Priority Mail Contract 669
Priority Mail Contract 671
Priority Mail Contract 672
Priority Mail Contract 682
Priority Mail Contract 685
Priority Mail Contract 686
Priority Mail Contract 687
Priority Mail Contract 690
Priority Mail Contract 692
Priority Mail Contract 693
Priority Mail Contract 694
Priority Mail Contract 695
Priority Mail Contract 699
Priority Mail Contract 700
Priority Mail Contract 701
Priority Mail Contract 704
Priority Mail Contract 705
Priority Mail Contract 707
Priority Mail Contract 708
Priority Mail Contract 709
Priority Mail Contract 711
Priority Mail Contract 712
Priority Mail Contract 714
Priority Mail Contract 715
Priority Mail Contract 720
Priority Mail Contract 721
Priority Mail Contract 722
Priority Mail Contract 724
Priority Mail Contract 725
Priority Mail Contract 727

Pt. 3040, Subpt. A, App. B

39 CFR Ch. III (7–1–23 Edition)

Priority Mail Contract 728
 Priority Mail Contract 730
 Priority Mail Contract 733
 Priority Mail Contract 734
 Priority Mail Contract 735
 Priority Mail Contract 736
 Priority Mail Contract 737
 Priority Mail Contract 738
 Priority Mail Contract 739
 Priority Mail Contract 740
 Priority Mail Contract 741
 Priority Mail Contract 742
 Priority Mail Contract 743
 Priority Mail Contract 744
 Priority Mail Contract 745
 Priority Mail Contract 746
 Priority Mail Contract 747
 Priority Mail Contract 748
 Priority Mail Contract 749
 Priority Mail Contract 750
 Priority Mail Contract 751
 Priority Mail Contract 752
 Priority Mail Contract 753
 Priority Mail Contract 754
 Priority Mail Contract 755
 Priority Mail Contract 756
 Priority Mail Contract 757
 Priority Mail Contract 758
 Priority Mail Contract 759
 Priority Mail Contract 760
 Priority Mail Contract 761
 Priority Mail Contract 762
 Priority Mail Contract 763
 Priority Mail Contract 764
 Priority Mail Contract 765
 Priority Mail Contract 766
 Priority Mail Contract 767
 Priority Mail Contract 768
 Priority Mail Contract 769
 Priority Mail Contract 770
 Priority Mail Contract 771
 Priority Mail Contract 772
 Priority Mail Contract 773
 Priority Mail Express & Priority Mail Contract 99
 Priority Mail Express & Priority Mail Contract 102
 Priority Mail Express & Priority Mail Contract 114
 Priority Mail Express & Priority Mail Contract 116
 Priority Mail Express & Priority Mail Contract 118
 Priority Mail Express & Priority Mail Contract 120
 Priority Mail Express & Priority Mail Contract 122
 Priority Mail Express & Priority Mail Contract 123
 Priority Mail Express & Priority Mail Contract 130
 Priority Mail Express & Priority Mail Contract 131
 Priority Mail Express & Priority Mail Contract 133
 Priority Mail Express & Priority Mail Contract 134

Parcel Select & Parcel Return Service Contract 7
 Parcel Select & Parcel Return Service Contract 9
 Parcel Select & Parcel Return Service Contract 10
 Parcel Select & Parcel Return Service Contract 11
 Parcel Select & Parcel Return Service Contract 14
 Parcel Select Contract 34
 Parcel Select Contract 35
 Parcel Select Contract 37
 Parcel Select Contract 38
 Parcel Select Contract 39
 Parcel Select Contract 40
 Parcel Select Contract 41
 Parcel Select Contract 42
 Parcel Select Contract 43
 Parcel Select Contract 44
 Parcel Select Contract 45
 Parcel Select Contract 48
 Parcel Select Contract 49
 Parcel Select Contract 50
 Parcel Select Contract 51
 Parcel Select Contract 52
 Parcel Select Contract 53
 Parcel Select Contract 54
 Parcel Select Contract 55
 Priority Mail—Non-Published Rates 1
 Priority Mail—Non-Published Rates 2
 First-Class Package Service Contract 87
 First-Class Package Service Contract 106
 First-Class Package Service Contract 108
 First-Class Package Service Contract 109
 First-Class Package Service Contract 110
 First-Class Package Service Contract 112
 First-Class Package Service Contract 114
 First-Class Package Service Contract 115
 First-Class Package Service Contract 116
 First-Class Package Service Contract 117
 First-Class Package Service Contract 118
 First-Class Package Service Contract 119
 First-Class Package Service Contract 120
 First-Class Package Service Contract 121
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 62
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 66
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 67
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 71
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 73
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 74
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 75
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 77
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 78
 Priority Mail Express, Priority Mail & First-Class Package Service Contract 79
 Priority Mail & First-Class Package Service Contract 26

Postal Regulatory Commission

Pt. 3040, Subpt. A, App. B

Priority Mail & First-Class Package Service Contract 79	Priority Mail & First-Class Package Service Contract 197
Priority Mail & First-Class Package Service Contract 102	Priority Mail & First-Class Package Service Contract 198
Priority Mail & First-Class Package Service Contract 121	Priority Mail & First-Class Package Service Contract 199
Priority Mail & First-Class Package Service Contract 126	Priority Mail & First-Class Package Service Contract 200
Priority Mail & First-Class Package Service Contract 128	Priority Mail & First-Class Package Service Contract 202
Priority Mail & First-Class Package Service Contract 129	Priority Mail & First-Class Package Service Contract 203
Priority Mail & First-Class Package Service Contract 132	Priority Mail & First-Class Package Service Contract 204
Priority Mail & First-Class Package Service Contract 137	Priority Mail & First-Class Package Service Contract 205
Priority Mail & First-Class Package Service Contract 139	Priority Mail & First-Class Package Service Contract 206
Priority Mail & First-Class Package Service Contract 141	Priority Mail & First-Class Package Service Contract 208
Priority Mail & First-Class Package Service Contract 143	Priority Mail & First-Class Package Service Contract 209
Priority Mail & First-Class Package Service Contract 144	Priority Mail & First-Class Package Service Contract 210
Priority Mail & First-Class Package Service Contract 146	Priority Mail & First-Class Package Service Contract 213
Priority Mail & First-Class Package Service Contract 148	Priority Mail & First-Class Package Service Contract 214
Priority Mail & First-Class Package Service Contract 153	Priority Mail & First-Class Package Service Contract 215
Priority Mail & First-Class Package Service Contract 154	Priority Mail & First-Class Package Service Contract 216
Priority Mail & First-Class Package Service Contract 155	Priority Mail & First-Class Package Service Contract 217
Priority Mail & First-Class Package Service Contract 163	Priority Mail & First-Class Package Service Contract 218
Priority Mail & First-Class Package Service Contract 166	Priority Mail & First-Class Package Service Contract 219
Priority Mail & First-Class Package Service Contract 169	Priority Mail & First-Class Package Service Contract 220
Priority Mail & First-Class Package Service Contract 172	Priority Mail & First-Class Package Service Contract 221
Priority Mail & First-Class Package Service Contract 175	Priority Mail & First-Class Package Service Contract 222
Priority Mail & First-Class Package Service Contract 177	Priority Mail & First-Class Package Service Contract 223
Priority Mail & First-Class Package Service Contract 183	Priority Mail & First-Class Package Service Contract 224
Priority Mail & First-Class Package Service Contract 184	Priority Mail & First-Class Package Service Contract 225
Priority Mail & First-Class Package Service Contract 186	Priority Mail & First-Class Package Service Contract 226
Priority Mail & First-Class Package Service Contract 188	Priority Mail & First-Class Package Service Contract 227
Priority Mail & First-Class Package Service Contract 189	Priority Mail & First-Class Package Service Contract 228
Priority Mail & First-Class Package Service Contract 190	Priority Mail & First-Class Package Service Contract 229
Priority Mail & First-Class Package Service Contract 191	Priority Mail & Parcel Select Contract 4
Priority Mail & First-Class Package Service Contract 192	Priority Mail & Parcel Select Contract 5
Priority Mail & First-Class Package Service Contract 193	Priority Mail Express, Priority Mail, First- Class Package Service & Parcel Select Contract 6
Priority Mail & First-Class Package Service Contract 195	Priority Mail Express, Priority Mail, First- Class Package Service & Parcel Select Contract 8

39 CFR Ch. III (7-1-23 Edition)

[illegible]

Pt. 3040, Subpt. A, App. B

[illegible]

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 99

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 100

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 101

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 102

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 103

Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 104

Priority Mail, First-Class Package Service & Parcel Select Contract 3

Priority Mail, First-Class Package Service & Parcel Select Contract 4

Priority Mail Express, Priority Mail & Parcel Select Contract 1

OUTBOUND INTERNATIONAL *

Global Expedited Package Services (GEPS) Contracts

GEPS 3

GEPS 5

GEPS 6

GEPS 7

GEPS 8

GEPS 9

GEPS 10

Global Bulk Economy (GBE) Contracts

Global Plus Contracts

Global Plus 1C

Global Plus 1D

Global Plus 1E

Global Plus 2C

Global Plus 3

Global Plus 4

Global Plus 5

Global Plus 6

Global Reseller Expedited Package Contracts

Global Reseller Expedited Package Services 1

Global Reseller Expedited Package Services 2

Global Reseller Expedited Package Services 3

Global Reseller Expedited Package Services 4

Global Expedited Package Services (GEPS)—Non-Published Rates

Global Expedited Package Services (GEPS)—Non-Published Rates 2

Global Expedited Package Services (GEPS)—Non-Published Rates 3

Global Expedited Package Services (GEPS)—Non-Published Rates 4

Global Expedited Package Services (GEPS)—Non-Published Rates 5

Global Expedited Package Services (GEPS)—Non-Published Rates 6

Global Expedited Package Services (GEPS)—Non-Published Rates 7

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

Global Expedited Package Services (GEPS)—Non-Published Rates 11

Global Expedited Package Services (GEPS)—Non-Published Rates 12

Global Expedited Package Services (GEPS)—Non-Published Rates 13

Global Expedited Package Services (GEPS)—Non-Published Rates 14

Global Expedited Package Services (GEPS)—Non-Published Rates 15

Outbound Competitive International Merchandise Return Service Agreement with Royal Mail Group, Ltd.

Competitive International Merchandise Return Service Agreements with Foreign Postal Operators

Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 1

Competitive International Merchandise Return Service Agreements with Foreign Postal Operators 2

Alternative Delivery Provider (ADP) Contracts

ADP 1

Alternative Delivery Provider Reseller (ADPR) Contracts

ADPR 1

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contracts

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 4

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 5

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 6

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 7

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 8

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 9

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 10

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 11

Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 12

§ 3040.130

ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service Contract 2
International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contracts
International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 1
International Priority Airmail, International Surface Air Lift, Commercial ePacket, Priority Mail Express International, Priority Mail International & First-Class Package International Service with Reseller Contract 2

INBOUND INTERNATIONAL *

International Business Reply Service (IBRS) Competitive Contracts
International Business Reply Service Competitive Contract 1
International Business Reply Service Competitive Contract 3
Inbound Direct Entry Contracts with Customers
Inbound Direct Entry Contracts with Foreign Postal Administrations
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)
Inbound Competitive Multi-Service Agreements with Foreign Postal Operators
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)

39 CFR Ch. III (7–1–23 Edition)

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 *

[88 FR 21918, Apr. 12, 2023]

Subpart B—Requests Initiated by the Postal Service To Modify the Product Lists

§ 3040.130 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.

[81 FR 38957, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.131 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

Postal Regulatory Commission

§ 3040.134

Schedule and the proposed changes therein in legislative format.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.132 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) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

(b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

(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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020, as amended at 85 FR 81138, Dec. 15, 2020]

§ 3040.133 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 website. 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.

[72 FR 63698, Nov. 9, 2007. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

§ 3040.134 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.135

39 CFR Ch. III (7–1–23 Edition)

§ 3040.135 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;
- (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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

Subpart C—Requests Initiated by Users of the Mail to Modify the Product Lists

§ 3040.150 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.

[81 FR 38957, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.151 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.152 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) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any applicable Commission directives and orders;

- (b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

- (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

Postal Regulatory Commission

§ 3040.156

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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020, as amended at 85 FR 81138, Dec. 15, 2020]

§ 3040.153 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 website. 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.

[72 FR 63698, Nov. 9, 2007. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

§ 3040.154 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.155 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.156 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

Subpart D—Proposal of the Commission to Modify the Product Lists

§ 3040.170 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.

[81 FR 38957, June 15, 2016. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.171 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.172 Supporting justification.

Supporting justification shall:

- (a) Explain the reason for initiating the docket and explain why the change is not inconsistent with the applicable requirements of this part and any ap-

plicable Commission directives and orders;

- (b) Explain why, as to market dominant products, the change is not inconsistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code;

- (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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020, as amended at 85 FR 81138, Dec. 15, 2020]

§ 3040.173 Docket and notice.

The Commission will establish a docket for each request to modify the

Postal Regulatory Commission

§ 3040.181

market dominant list or the competitive product list, promptly publish notice of the request in the FEDERAL REGISTER, and post the filing on its website. 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.

[72 FR 63698, Nov. 9, 2007. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020]

§ 3040.174 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.175 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.176 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

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.

§ 3040.180 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.

[80 FR 35575, June 22, 2015. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.181 Supporting justification for material changes to product descriptions.

(a) Supporting justification for changes to a product description in the

§ 3040.182

Mail Classification Schedule shall include a description of, and rationale 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 the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders; 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 3035 of this chapter.

(c) Describe the likely impact that the changes will have on users of the product and on competitors.

[80 FR 35575, June 22, 2015. Redesignated and amended at 85 FR 9615, 9658, Feb. 19, 2020; 85 FR 81138, Dec. 15, 2020]

§ 3040.182 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 website;

(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 the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders.

[80 FR 35575, June 22, 2015. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020; 85 FR 81138, Dec. 15, 2020]

§ 3040.183 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 ac-

39 CFR Ch. III (7–1–23 Edition)

tions 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

(g) Direct other action that the Commission considers appropriate.

[80 FR 35575, June 22, 2015. Redesignated at 85 FR 9615, Feb. 19, 2020]

§§ 3040.184–3040.189 [Reserved]

§ 3040.190 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 § 3040.180;

(2) Explain why the proposed corrections are consistent with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders; and

(3) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed corrections therein in legislative format.

[80 FR 35575, June 22, 2015. Redesignated and amended at 85 FR 9615, 9659, Feb. 19, 2020; 85 FR 81138, Dec. 15, 2020]

Postal Regulatory Commission

§ 3040.211

§ 3040.191 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 website;

(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 the policies and the applicable criteria of chapter 36 of title 39 of the United States Code, the applicable requirements of this part, and any applicable Commission directives and orders.

[80 FR 35575, June 22, 2015. Redesignated and amended at 85 FR 9615, 9660, Feb. 19, 2020; 85 FR 81138, Dec. 15, 2020]

§ 3040.192 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 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.

[80 FR 35575, June 22, 2015. Redesignated at 85 FR 9615, Feb. 19, 2020]

Subpart F—Size and Weight Limitations for Mail Matter

§ 3040.210 General.

Applicable size and weight limitations for mail matter shall appear in

the Mail Classification Schedule as part of the description of each product.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.211 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:

(1) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed updates therein in legislative format;

(2) Describe the likely impact that the proposed update will have on users of the product(s) and on competitors; and

(3) Describe how the proposed update is in accordance with the policies and the applicable criteria of chapter 36 of title 39 of the United States Code.

(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 direct other action as deemed appropriate.

[72 FR 63698, Nov. 9, 2007, as amended at 84 FR 32317, July 8, 2019. Redesignated at 85 FR 9615, Feb. 19, 2020]

§ 3040.212

39 CFR Ch. III (7–1–23 Edition)

§ 3040.212 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.

[72 FR 63698, Nov. 9, 2007. Redesignated at 85 FR 9615, Feb. 19, 2020]

Subpart G—Requests for Market Dominant Negotiated Service Agreements

SOURCE: 85 FR 81138, Dec. 15, 2020, unless otherwise noted.

§ 3040.220 General.

This subpart imposes additional requirements whenever there is a request to add a negotiated service agreement to the market dominant product list. The additional supporting justification appearing in § 3040.221 also should be provided whenever the Postal Service proposes to modify the terms of an existing market dominant negotiated service agreement. Commission findings that the addition of a special classification is not inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review. No rate(s) shall take effect until 45 days after the Postal Service files a request for review of a notice of a new rate or rate(s) adjustment specifying the rate(s) and the effective date.

§ 3040.221 Additional supporting justification for negotiated service agreements.

(a) Each request shall also include the items specified in paragraphs (b) through (j) of this section.

(b) A copy of the negotiated service agreement.

(c) The planned effective date(s) of 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 (39 U.S.C. 3622(c)(10)(A)(i) and (ii)). The projection of the change in net financial position as a result of the agreement shall be based on accepted analytical principles. The projection of the 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 (39 U.S.C. 3622(c)(10)(B)).

(i) A discussion in regard to how functionally similar negotiated service agreements will be made available on

Postal Regulatory Commission

§ 3045.3

public and reasonable terms to similarly situated mailers.

(j) Such other information as the Postal Service believes will assist the Commission in issuing a timely determination of whether the requested changes are consistent with applicable statutory policies.

§ 3040.222 Data collection plan and report for negotiated service agreements.

(a) The Postal Service shall include with any request concerning a negotiated service 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 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.

PART 3045—RULES FOR MARKET TESTS OF EXPERIMENTAL PRODUCTS

Sec.

3045.1 Applicability.

3045.2 Advance notice.

3045.3 Contents of notice.

3045.4 Review.

3045.5 Commission action.

3045.6 Changes in market test.

3045.7–3045.9 [Reserved]

3045.10 Duration.

3045.11 Extension of market test.

3045.12 Cancellation of market test.

3045.13–3045.14 [Reserved]

3045.15 Dollar amount limitation.

3045.16 Exemption from dollar amount limitation.

3045.17 Prevention of market disruption.

3045.18 Request to add a non-experimental product or price category based on an experimental product to the product list.

3045.19 [Reserved]

3045.20 Data collection and reporting requirements.

AUTHORITY: 39 U.S.C. 503; 3641.

SOURCE: 79 FR 54563, Sept. 11, 2014, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

§ 3045.1 Applicability.

The rules in this part apply to market tests of experimental products undertaken pursuant to 39 U.S.C. 3641.

§ 3045.2 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.

§ 3045.3 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;

§ 3045.4

(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 §3010.101(t) 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 §3045.20.

(b) [Reserved]

[79 FR 54563, Sept. 11, 2014, as amended at 85 FR 9659, Feb. 19, 2020]

§ 3045.4 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 website. 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

39 CFR Ch. III (7–1–23 Edition)

(5) Include such other information as the Commission deems appropriate.

(b) [Reserved]

[79 FR 54563, Sept. 11, 2014, as amended at 85 FR 9660, Feb. 19, 2020]

§ 3045.5 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]

§ 3045.6 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.

§§ 3045.7–3045.9 [Reserved]

§ 3045.10 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 § 3045.11.

[85 FR 9659, Feb. 19, 2020]

§ 3045.11 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

Postal Regulatory Commission

§ 3045.15

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;

(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.

§ 3045.12 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 mar-

ket 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.

§§ 3045.13–3045.14 [Reserved]

§ 3045.15 Dollar amount limitation.

(a) The Consumer Price Index used for calculations under this part is the CPI-U index, as specified in § 3030.141(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 Million 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 § 3045.16.

(c) For each fiscal year, the \$10 Million Adjusted Limitation shall reflect the average CPI result during the previous fiscal year calculated as described in paragraph (d) of this section. The Commission shall publish this figure annually, after the close of the fiscal year, on its website 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 214.463. 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 214.463. 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/214.463).

[79 FR 54563, Sept. 11, 2014, as amended at 84 FR 975, Feb. 1, 2019; 85 FR 9659, 9660, Feb. 19, 2020; 85 FR 81139, Dec. 15, 2020]

§ 3045.16 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 website 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 through September 2008 and dividing the sum by 12 (Base Average). The resulting Base Average is 214.463. 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 214.463.

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/214.463).

(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 § 3045.11(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.

[79 FR 54563, Sept. 11, 2014, as amended at 84 FR 975, Feb. 1, 2019; 85 FR 9659, 9660, Feb. 19, 2020]

Postal Regulatory Commission

§ 3045.18

§ 3045.17 Prevention of market disruption.

Notwithstanding the \$10 Million Adjusted Limitation or any adjustment granted pursuant to § 3045.16, 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 § 3010.101(t) of this chapter.

[85 FR 9659, Feb. 19, 2020]

§ 3045.18 Request to add a non-experimental product or price category based on an experimental product to the product list.

(a) If the Postal Service seeks to add a non-experimental product or price category based on a former or current experimental product to the market dominant or competitive product list, the Postal Service shall file a request, pursuant to 39 U.S.C. 3642 and part 3040, subpart B of this chapter, to add a non-experimental product or price category to the applicable product list.

(b) The Postal Service shall comply with the requirements specified in paragraphs (c) through (e) of this section if the proposed non-experimental product or price category:

(1) Offers the same (or similar) service as a former or current experimental product;

(2) Has the same distinct cost or market characteristic as a former or current experimental product; or

(3) Uses (or is based on) data or assumptions from a former or current market test proceeding.

(c) A request filed under this section shall:

(1) Identify the market test and docket number that the proposed non-experimental product or price category is based on;

(2) Explain the relationship between the proposed non-experimental product or price category and market test or experimental product;

(3) Identify any assumptions from the market test that the request uses or is based on;

(4) Include all data from data collection reports filed during the market test in the financial model supporting the request, or separately identify and explain any differences between the data collection reports filed during the market test and the data used in the financial model supporting the request; and

(5) Quantify the product specific costs associated with the development of the market test; that is, costs incurred before the market test was implemented.

(d) The Postal Service must provide advance notice of a request filed under this section.

(1)(i) The requirements in this paragraph (d)(1) apply if the Postal Service seeks to add a non-experimental product or price category based on an experimental product to the competitive product list as an NSA. If the Postal Service seeks to continue the services provided under a market test immediately when the market test ends with no interruption in service, the Postal Service must file a request under this section at least 45 days before:

(A) The market test expires (including any extension period granted); or

(B) The market test is expected to exceed any authorized limitation specified in §§ 3045.15 and 3045.16 during any fiscal year, whichever is earlier.

(ii) In all other instances, the Postal Service must file a request under this section at least 45 days before the requested date for the Commission's decision.

(2)(i) The requirements in this paragraph (d)(2) apply if the Postal Service seeks to add a non-experimental product or price category based on an experimental product to the market dominant or competitive product list as a product other than a competitive NSA. If the Postal Service seeks to continue the services provided under a market test immediately when the market test ends with no interruption in service, the Postal Service must file a request under this section at least 60 days before:

(A) The market test expires (including any extension period granted); or

§ 3045.19

(B) The market test is expected to exceed any authorized limitation specified in §§3045.15 and 3045.16 during any fiscal year, whichever is earlier.

(ii) In all other instances, the Postal Service must file a request under this section at least 60 days before the requested date for the Commission's decision.

(e) The Postal Service shall also file a notice of a request filed under this section in the market test proceeding's docket if the market test proceeding's docket is an active case before the Commission. This notice shall include the applicable docket number(s) for the proceeding evaluating the request.

[84 FR 975, Feb. 1, 2019, as amended at 85 FR 9659, Feb. 19, 2020; 85 FR 29325, May 15, 2020]

§ 3045.19 [Reserved]

§ 3045.20 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 §3045.3(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;

39 CFR Ch. III (7–1–23 Edition)

(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.

[79 FR 54563, Sept. 11, 2014, as amended at 85 FR 9659, Feb. 19, 2020]

SUBCHAPTER F—PERIODIC REPORTING, ACCOUNTING PRACTICES, AND TAX RULES

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.
- 3050.50 Information pertaining to cost and service for flat-shaped mail.
- 3050.55 Information pertaining to cost reduction initiatives.
- 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 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

§ 3050.3

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 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]

39 CFR Ch. III (7–1–23 Edition)

§ 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

Postal Regulatory Commission

§ 3050.21

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 REGISTER and on the Commission's website.

[74 FR 20850, May 5, 2009, as amended at 85 FR 9660, Feb. 19, 2020]

§ 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 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.

[74 FR 20850, May 5, 2009, as amended at 85 FR 81139, Dec. 15, 2020]

§ 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

§ 3050.21

39 CFR Ch. III (7–1–23 Edition)

shall provide the items in paragraphs (b) through (o) 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;

(4) The factual and analytical bases for any claim that one or more of the exception provisions of 39 U.S.C. 3622(e)(2)(A) through (e)(2)(D) or 39 U.S.C. 3622(e)(3)(A) through (e)(3)(B) apply; and

(5) For each workshare discount that is provided in connection with a subclass of mail, consisting exclusively of mail matter of educational, cultural, scientific, or informational value (39 U.S.C. 3622(e)(2)(C)), exceeded the cost avoided by the Postal Service for not providing the applicable service, and was not set in accordance with at least one specific provision appearing in § 3030.262(b) through (d) of this chapter, the information specified in paragraphs (e)(5)(i) through (iii) of this section:

(i) The number of mail owners receiving the workshare discount;

(ii) The number of mail owners for the applicable product or products; and

(iii) An explanation of how the workshare discount promotes the public interest, even though the workshare discount substantially exceeds the cost avoided by the Postal Service;

(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 oper-

ations and, to the extent possible, quantifying the effect;

(4) Analyze the contribution of the agreement to institutional costs for its 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;

(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; and

(6) Provide financial or other supporting documentation that demonstrates that non-compensatory market dominant negotiated service agreements improve the net financial position of the Postal Service over default rates or enhance the performance of mail preparation, processing, transportation, or other functions.

(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) For all market dominant and competitive products:

Postal Regulatory Commission

§ 3050.22

(1) Provide a distribution breakdown of fee revenues, including all underlying calculations and source workpapers; and

(2) Provide any third-party service performance results upon which any financial penalty or bonus is determined, and identify the amount of any forfeited revenue;

(k) Provide all total workhour data and data sources showing workhour measurements by Labor Distribution Code;

(l) For the Inbound Letter Post product, provide revenue, volume, attributable cost, and contribution data by Universal Postal Union country group and by shape for the fiscal year subject to review and each of the preceding 4 fiscal years;

(m) Input data and calculations used to produce the annual Total Factor Productivity estimates;

(n) Copies of notifications to the Postal Service by the Office of Personnel Management (OPM) of annual determinations of the funding amounts specific to payments at the end of each fiscal year computed under 5 U.S.C. 8909a(d)(2)(B) and 5 U.S.C. 8909a(d)(3)(B)(ii); 5 U.S.C. 8348(h)(2)(B) and 5 U.S.C. 8423(b)(3)(B); 5 U.S.C. 8423(b)(1)(B) and 5 U.S.C. 8423(b)(2); and

(o) 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.

[74 FR 20850, May 5, 2009, as amended at 83 FR 49293, Oct. 1, 2018; 85 FR 81139, Dec. 15, 2020]

§ 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.

(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,

§ 3050.23

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 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;

39 CFR Ch. III (7–1–23 Edition)

(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 40 days of the close of Quarters 1, 2, and 3 of the fiscal year and 60 days after Quarter 4, but no later than the filing of reports filed pursuant to section 3050.40(a) or 3050.40(b);

(d) Quarterly Statistics Report, including estimates by shape, weight, and indicia, within 40 days of the close

Postal Regulatory Commission

§ 3050.28

of Quarters 1, 2, and 3 of the fiscal year and 60 days after Quarter 4 but no later than the filing of reports filed pursuant to section 3050.40(a) or 3050.40(b); and

(e) Billing determinants within 60 days of the close of Quarters 1, 2, and 3 of the fiscal year and 90 days after Quarter 4.

[74 FR 20850, May 5, 2009, as amended at 83 FR 49293, Oct. 1, 2018]

§ 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 reports for the last months of Quarters 1, 2, and 3 of the fiscal year shall be provided at the time that the Form 10-Q report is provided and the report for the last month of Quarter 4 of the fiscal year shall be provided at the time that the Form 10-K 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
Revenue:										
Operating Revenue										
Other Revenue										
Total Revenue										
Operating Expenses										
Personnel Compensation and Benefits										
Transportation										
Supplies and Services										
Other Services										
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 Volumes										
Total Workhours (Millions)										
Total Career Employees										
Total Non-Career Employees										

§ 3050.28

39 CFR Ch. III (7–1–23 Edition)

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						
USPS Marketing 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 Operating Revenue:						
Total Volume						

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:										
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 on the 24th day of the following month, except that the reports for the last month of Quarters 1, 2, and

§ 3050.30

3 of the fiscal year shall be provided at the time that the Form 10-Q report is provided and the report for the last month of Quarter 4 of the fiscal year shall be provided at the time that the Form 10-K report is provided;

(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).

[74 FR 20850, May 5, 2009, as amended at 83 FR 49294, Oct. 1, 2018]

§ 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

39 CFR Ch. III (7-1-23 Edition)

(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 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)

Postal Regulatory Commission

§ 3050.50

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.

§ 3050.50 Information pertaining to cost and service for flat-shaped mail.

(a) The reports in paragraphs (b) through (f) of this section shall be filed with the Commission at the times indicated.

(b) Within 95 days after the end of each fiscal year, the Postal Service shall file a financial report that analyzes data from the fiscal year for all mail products that consist of more than 80 percent flat-shaped mail. At a minimum, the report shall include:

(1) Volume and shape workpapers that identify products that contain more than 80 percent flat-shaped mail (flat-shaped products).

(2) Unit attributable cost workpapers for each flat-shaped product that is disaggregated into the following cost categories: Mail processing unit cost, delivery unit cost, vehicle service driver unit cost, purchased transportation unit cost, window service unit cost, and other unit cost.

(3) A narrative that explains the methodology used to calculate the unit attributable cost categories described in paragraph (b)(2) of this section.

(4) A narrative supported by workpapers that identifies flat-shaped products for which the percentage change in average unit attributable cost was greater than the percentage change in total market dominant average unit attributable cost for the same fiscal year. The narrative must include identification of cost categories that are driving above average change in unit attributable cost for flat-shaped product and a specific plan to reduce unit attributable cost for the identified flat-shaped product.

(5) An analysis of volume trends, and mail mix changes for flat-shaped products from FY 2013 to present, which includes, at a minimum, a comparison of:

(i) The aggregate unit attributable costs for combined flat-shaped products for each fiscal year,

(ii) The calculated estimate of aggregate unit attributable costs for combined flat-shaped products for each fiscal year, using FY 2013 fiscal year's volume distribution,

(iii) A narrative that identifies drivers of changes in volume trends and mail mix, and

(iv) A narrative that explains the methodology used to calculate the estimated unit attributable cost described in paragraph (b)(5)(ii) of this section.

(6) An analysis of the Flat Sequencing System (FSS), which includes, at a minimum, the percent of flat-shaped mail destinating in a FSS zone that were not finalized on FSS equipment, the cost of processing flat-shaped mail on the FSS, and the delivery point sequence (DPS) percentage of FSS mail. In addition, a narrative that identifies drivers of changes in the results of the analysis between fiscal years.

(7) A manual processing analysis, which includes, at a minimum, the cost of manually processing flat-shaped mail, the percent of flat-shaped mail that was manually processed, and the percent of flat-shaped mail that was entered at automation prices. In addition, a narrative that identifies drivers of changes in the results of the analysis between fiscal years.

(8) An estimate, with supporting workpapers, of the cost impact of bundle processing on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of bundle processing on flat-shaped products.

(9) An estimate, with supporting workpapers, of the cost impact of low productivity on automated equipment on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of low productivity on automated equipment on flat-shaped products.

(10) An estimate, with supporting workpapers, of the cost impact of manual processing on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of manual processing on flat-shaped products.

(11) An estimate, with supporting workpapers, of the cost impact of allied operations on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of allied operations on flat-shaped products.

(12) An estimate, with supporting workpapers, of the cost impact of transportation on flat-shaped products for the fiscal year. If no estimate is

available, provide a timeline to estimate the cost impact of transportation on flat-shaped products.

(13) An estimate, with supporting workpapers, of the cost impact of last mile/delivery on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the cost impact of last mile/delivery on flat-shaped products.

(c) Within 95 days after the end of each fiscal year, the Postal Service shall file a service report that analyzes data from the fiscal year for all mail products that consist of more than 80 percent flat-shaped mail. At a minimum, the analysis must include:

(1) Service performance scores for all flat-shaped products.

(2) An estimate, with supporting workpapers, of the service impact of bundle processing on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of bundle processing on flat-shaped products.

(3) An estimate, with supporting workpapers, of the service impact of low productivity on automated equipment on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of low productivity on automated equipment on flat-shaped products.

(4) An estimate, with supporting workpapers, of the service impact of manual processing on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of manual processing on flat-shaped products.

(5) An estimate, with supporting workpapers, of the service impact of allied operations on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of allied operations on flat-shaped products.

(6) An estimate, with supporting workpapers, of the service impact of transportation on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of transportation on flat-shaped products.

(7) An estimate, with supporting workpapers, of the service impact of

Postal Regulatory Commission

§ 3050.50

last mile/delivery on flat-shaped products for the fiscal year. If no estimate is available, provide a timeline to estimate the service impact of last mile/delivery on flat-shaped products.

(d) Within 95 days after the end of each fiscal year, the Postal Service shall file an analysis of costs by operationally relevant grouping from FY 2013 to present.

(1) The report shall utilize fiscal year data filed in accordance with §3050.22, and §3050.28(c) and (d) and any other data necessary to complete the analysis.

(2) The report shall also include a narrative that explains the methodology used to calculate costs by operationally relevant grouping.

(e) Within 95 days after the end of each fiscal year, the Postal Service shall file the following reports that include data by both quarter and fiscal year, as well as at the national level and at the facility level unless otherwise specified. The reports shall include, at a minimum, five years of quarterly historical fiscal year data covering the reporting year and the previous four fiscal years.

(1) Bundle Breakage Visibility Reports which include, at a minimum, number of bundles processed, number of bundles processed by class, product, facility, and machine type, number of broken bundles; and number of broken bundles by class, product, facility, and machine type.

(2) Mail Processing Variance Reports, which include, at a minimum, for each machine type that process flat-shaped mail: Category, plant/facility, volume, actual workhours, earned workhours (target hours), productivity, variance, and percent achieved, and target productivities, including narrative that explains methodology used to develop target.

(3) eFlash Report, which includes, at a minimum manual letter and flats volume, manual letter and flats workhours, manual letter and flats cost analysis, manual letter and flats handling time, and manual letter and flats handling cost per piece.

(4) Work in Process metrics, which include, at a minimum, measurement of: unload scan to bundle sorter scan, unload scan to tray mechanization

scan, bundle sorter scan to mail processing equipment piece scan, tray mechanization scan to next automation scan, and unload scan to first automation scan.

(5) First-Class Mail Root Cause Point Impact Report, which includes, at a minimum, root cause, shape, service standard, point impact, rank, results attributed to air transit Automated Area Distribution Center (AADC)/Area Distribution Center (ADC) processing delays, and results attributed to surface transit AADC/ADC processing delays.

(6) SVWeb Report, which includes, at a minimum, on-time departure percentage, on-time arrival percentage, space utilization type by container type, average load percentage, total number of late containers, misrouted containers based on unload scans at unexpected site, National Performance Assessment (NPA) goals, goal achievement, the total score for six required scans, trips on time, space utilization targets, and comparison of fiscal year space utilization to targets.

(7) Last Mile Impact Report, which includes, at a minimum, overall on-time score, on-time score at last processing, and last mile impact for all flat-shaped products at each service standard.

(8) For each report listed in paragraphs (e)(1) through (7) of this section, the Postal Service shall provide a narrative that describes any changes made to underlying data systems during the fiscal year that impact the methodology used to produce the report.

(9) For each report listed in paragraphs (e)(1) through (7) of this section, the Postal Service shall provide a narrative that discusses trends, changes, and reasons for any changes in data within the report.

(10) If any of the reports listed in paragraphs (e)(1) through (7) of this section no longer exist by that name in any year, the Postal Service must provide the closest successor to that report to provide the required information. The Postal Service must identify all differences between the original report and the successor report, and provide a narrative that explains the impact of using the successor report opposed to the original report.

(f) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that identifies all national operational changes and/or initiatives that occurred during the fiscal year related to flat-shaped mail and all planned national operational changes and/or initiatives for the next fiscal year related to flat-shaped mail. The operational changes and/or initiatives should impact operations related to flat-shaped mail, impact the cost of flat-shaped mail, and/or impact the service of flat-shaped mail.

(1) The report shall identify data from paragraphs (b), (c), (d), and/or (e) of this section that will be impacted by each operational change/initiative.

(2) The report shall also include an estimate, with supporting workpapers, of the impact of each operational change/initiative on the data selected in paragraph (f)(1) of this section.

(g) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that identifies all data enhancements that occurred during the fiscal year related to data systems that affect flat-shaped mail. The data enhancements identified should have an impact on measuring, tracking, and/or reporting on flat-shaped mail cost, operations, and/or service.

[84 FR 20806, May 13, 2019]

§ 3050.55 Information pertaining to cost reduction initiatives.

(a) The reports in paragraphs (b) through (f) of this section shall be filed with the Commission at the times indicated in paragraphs (b) through (f).

(b) Within 95 days after the end of each fiscal year, the Postal Service shall file a financial report that analyzes cost data from the fiscal year. For purposes of this paragraph (b), the percentage change shall compare the fiscal year under review to the previous fiscal year. At a minimum, the report shall include:

(1) For all market dominant mail, the percentage change in total unit attributable cost;

(2) For each market dominant mail product, the percentage change in unit attributable cost;

(3) For the system as a whole, total average cost per piece, which includes all Postal Service competitive and

market dominant attributable costs and institutional costs;

(4) The percentage change in total average cost per piece;

(5) Market dominant unit attributable cost by product;

(6) If the percentage change in unit attributable cost for a market dominant mail product is more than 0.0 percent and exceeds the percentage change in total market dominant mail unit attributable cost, then the following information shall be provided:

(i) Unit attributable cost workpapers for the product disaggregated into the following cost categories: mail processing unit cost, delivery unit cost, vehicle service driver unit cost, purchased transportation unit cost, window service unit cost, and other unit cost;

(ii) A narrative that identifies cost categories that are driving above average increases in unit attributable cost for the product and explains the reason for the above-average increase; and

(iii) A specific plan to reduce unit attributable cost for the product; and

(7) An analysis of volume trends and mail mix changes for each market dominant mail product from fiscal year 2017 through the end of the fiscal year under review, which shall include at a minimum:

(i) A comparison of actual unit attributable costs and estimated unit attributable costs for each market dominant mail product, using the volume distribution from fiscal year 2017;

(ii) A narrative that identifies the drivers of change in volume trends and the mail mix; and

(iii) A narrative that explains the methodology used to calculate the estimated unit attributable costs as required by paragraph (b)(7)(i) of this section.

(c) Within 95 days after the end of each fiscal year, the Postal Service shall file a report with analysis of each planned cost reduction initiative that is expected to require Postal Service total expenditures of \$5 million or more over the duration of the initiative. At a minimum, the report shall include:

(1) A narrative that describes each cost reduction initiative planned for

Postal Regulatory Commission

§ 3050.60

future fiscal years, including the status, the expected total expenditure, start date, end date, and any intermediate deadlines;

(2) Identification of a metric to measure the impact of each planned cost reduction initiative identified in paragraph (c)(1) of this section, a narrative describing the selected metric, a narrative explaining the reason for selecting that metric, and a schedule approximating the months and fiscal years in which the cost reduction impact is expected to be measureable; and

(3) Estimates of the expected impact of each planned cost reduction initiative, with supporting workpapers, using the metric identified in paragraph (c)(2) of this section, total market dominant mail attributable unit cost, and total unit cost as calculated pursuant to paragraph (b)(3) of this section.

(d) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that describes each active cost reduction initiative during the fiscal year which incurred or is expected to incur Postal Service expenditures of \$5 million or more over the duration of the initiative. At a minimum, the report shall include:

(1) The information described in paragraphs (c)(1) through (3) of this section, based on actual data for the fiscal year, and a specific statement as to whether the initiative actually achieved the expected impact as measured by the selected metric;

(2) An explanation of the trends, changes, or other reasons that caused any variance between the actual information provided under paragraph (d)(1) of this section and the estimated information previously provided under paragraphs (c)(1) through (3) of this section, if applicable;

(3) A description of any mid-implementation adjustments the Postal Service has taken or will take to align the impacts with the schedule; and

(4) Any revisions to the schedule of cost reduction impacts for future fiscal years.

(e) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that summarizes all projects associated with a Decision

Analysis Report for the fiscal year. At a minimum, the report shall include:

(1) A description of each project;

(2) The status of each project;

(3) An estimate of cost savings or additional revenues from each project; and

(4) The return on investment expected from each project.

(f) Within 95 days after the end of each fiscal year, the Postal Service shall file a report that summarizes all planned projects that have an approved Decision Analysis Report for the next fiscal year. At a minimum, the report shall include:

(1) A description of each planned project;

(2) The status of each project;

(3) An estimate of the cost savings or additional revenues expected from each project; and

(4) The return on investment expected from each project.

[85 FR 81140, Dec. 15, 2020]

§ 3050.60 Miscellaneous reports and documents.

(a) The reports in paragraphs (b) through (f) of this section shall be provided at the times indicated in paragraphs (b) through (f).

(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 electronic form;

(d) Household Diary Study (when completed);

(e) 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

(f) 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

Pt. 3055

39 CFR Ch. III (7–1–23 Edition)

Docket No. R2006–1 (by July 1 of each year).

[74 FR 20850, May 5, 2009, as amended at 83 FR 49295, Oct. 1, 2018; 85 FR 81141, Dec. 15, 2020]

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 [Reserved]
- 3055.20 First-Class Mail.
- 3055.21 USPS Marketing Mail.
- 3055.22 Periodicals.
- 3055.23 Package Services.
- 3055.24 Special Services.
- 3055.25 Nonpostal Products.

Subpart B—Periodic Reporting of Service Performance Achievements

- 3055.30 Periodic reporting of service performance achievements.
- 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 USPS Marketing 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.

Subpart D—Public Performance Dashboard

- 3055.100 Definitions applicable to this subpart.
- 3055.101 Public Performance Dashboard.
- 3055.102 Contents of the Public Performance Dashboard.

3055.103 Format for data provided in the Public Performance Dashboard.

AUTHORITY: 39 U.S.C. 503; 3652; 3653; 3692(b) and (c); 3705.

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 3040, appendix A to subpart A of part 3040 of this chapter (and for each competitive nonpostal service product specified in the Mail Classification Schedule in part 3040, appendix B to subpart A of part 3040 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.

[88 FR 10038, Feb. 16, 2023]

§ 3055.2 Contents of the annual report of service performance achievements.

(a) The items in paragraphs (b) through (n) 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. If there has been a change to a service standard(s) since the previous report, a description of and reason for the change shall be provided. If there have been no changes to service standard(s) since the previous report, a certification stating this fact shall be provided.

(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;

Postal Regulatory Commission

§ 3055.2

(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. Any graphical representation of data provided shall also be accompanied by the underlying data presented in spreadsheet form.

(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.

(l) For each Market Dominant product, the average time in which the product was delivered, measured by actual delivery days, during the previous fiscal year, provided at the District, Postal Administrative Area, and National levels. "Actual delivery days"

shall include all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays. The report shall include the following information on dispersion around the average:

(1) The percent of mailpieces delivered within +1 day of the applicable service standard;

(2) The percent of mailpieces delivered within +2 days of the applicable service standard; and

(3) The percent of mailpieces delivered within +3 days of the applicable service standard.

(m) A description of each Site-Specific Operating Plan, including operation completion time performance (as a percentage rounded to one decimal place) for each Site-Specific Operating Plan measurement category during the previous fiscal year. Such information shall be at the National level and disaggregated by Division and Region.

(n) A description of the total mail volumes measured and excluded from measurement. Such description shall include:

(1) For each class of Market Dominant products (except Special Services), a report of the reasons that mailpieces were excluded from measurement during the previous fiscal year. The report shall include:

(i) The exclusion reason;

(ii) The exclusion description;

(iii) The number of mailpieces excluded from measurement, which is the sum of all mailpieces excluded from measurement for the individual exclusion reason; and

(iv) The exclusion reason as a percent of total mailpieces excluded from measurement, which is the number of mailpieces excluded from measurement (*i.e.*, provided in paragraph (n)(1)(iii) of this section) divided by the sum of all mailpieces excluded from measurement across all exclusion reason categories (*i.e.*, the sum of all values provided in paragraph (n)(1)(iii) of this section).

(2) The report described in paragraph (n)(1) of this section shall follow the format as shown below:

§ 3055.3

39 CFR Ch. III (7–1–23 Edition)

TABLE 1 TO PARAGRAPH (n)(2)—EXCLUSION REASONS REPORT FOR FISCAL YEAR

Exclusion reason	Exclusion description	Number of mailpieces excluded from measurement	Exclusion reason as a percent of total exclusions

(3) For each class of Market Dominant products and for each Market Dominant product (except Special Services), a description of the mail volumes measured and un-measured during the previous fiscal year. The description shall explain in detail any no-

tations regarding the Postal Service's inability to collect any data. Corresponding data shall also be provided for the same period last year (SPLY).

(4) The report described in paragraph (n)(3) of this section shall follow the format as shown below:

TABLE 2 TO PARAGRAPH (n)(4)—TOTAL MAIL MEASURED/UNMEASURED VOLUMES REPORT FOR FISCAL YEAR

Class/product	^^		^^		^^	
	Prior FY	SPLY	Prior FY	SPLY	Prior FY	SPLY
Total Number of Pieces (RPW–ODIS).						
Total Number of Pieces in Measurement.						
Total Number of Pieces Eligible for Full-Service IMb.						
Total Number of Full-Service IMb Pieces Included in Measurement.						
Total Number of Full-Service IMb Pieces Excluded from Measurement.						
Total Number of Pieces Not in Measurement.						
% of Pieces in Measurement Compared to Total Pieces.						
% of Pieces Not in Measurement Compared to Total Pieces.						
% of Full-Service IMb Pieces in Measurement Compared to Total IMb Full-Service Pieces.						
% of Full-Service IMb Pieces Not in Measurement Compared to Total IMb Full-Service Pieces.						

(5) Descriptions of the current methodologies used to verify the accuracy, reliability, and representativeness of service performance data for each service performance measurement system.

[75 FR 38742, July 6, 2010, as amended at 85 FR 81141, Dec. 15, 2020; 88 FR 10038, Feb. 16, 2023]

§ 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

Postal Regulatory Commission

§ 3055.21

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 ex-

isting 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 [Reserved]

§ 3055.20 First-Class Mail.

(a) For each of the Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats 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, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards.

(b) For each of the Outbound Single-Piece First-Class Mail International and Inbound Letter Post 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 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined.

(c) For each product that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the Postal Administrative Area and National levels, during the previous fiscal year. "Point impact data" means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

[88 FR 10039, Feb. 16, 2023]

§ 3055.21 USPS Marketing Mail.

(a) For each product within the USPS Marketing Mail class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the USPS Marketing Mail class that does

§ 3055.22

not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. “Point impact data” means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service’s methodology for calculating point impact data shall be included. This requirement shall not apply to USPS Marketing Mail Every Door Direct Mail or USPS Marketing Mail Destination Delivery Unit Entry Saturation Flats.

[88 FR 10039, Feb. 16, 2023]

§ 3055.22 Periodicals.

(a) For each product within the Periodicals class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the Periodicals class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous fiscal year. “Point impact data” means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service’s methodology for calculating point impact data shall be included.

[88 FR 10040, Feb. 16, 2023]

§ 3055.23 Package Services.

(a) For each product within the Package Services class, report the on-time service performance (as a percentage rounded to one decimal place).

(b) For each product within the Package Services class that does not meet its service goal during the reporting period, report the point impact data for the top ten root causes of on-time service performance failures, at the National level, during the previous

39 CFR Ch. III (7–1–23 Edition)

fiscal year. “Point impact data” means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identification and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service’s methodology for calculating point impact data shall be included.

[88 FR 10040, Feb. 16, 2023]

§ 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 Nonpostal Products.

(a) For each product that is a non-postal service authorized pursuant to 39 U.S.C. chapter 37, the Postal Service shall report the measure of the quality of service.

(b) If practicable, quantitative measurement (such as on-time service performance) along with identification of the underlying metric(s) shall be provided. If quantitative measurement is not practicable, the Postal Service shall so state, explain why it is not practicable, and provide qualitative analysis.

(c) For the Postal Service’s program to provide property and nonpostal service to other Government agencies under 39 U.S.C. 3704, the Postal Service shall report the quality of service for the program as a whole.

(d) The effective date of this section is October 1, 2023.

[88 FR 10040, Feb. 16, 2023]

Subpart B—Periodic Reporting of Service Achievements

§ 3055.30 Periodic reporting of service performance achievements.

For each Market Dominant product specified in the Mail Classification Schedule in part 3040, appendix A to subpart A of part 3040 of this chapter, the Postal Service shall file a Quarterly Report with the Commission addressing service performance achievements for the preceding fiscal quarter

Postal Regulatory Commission

§ 3055.31

(within 40 days of the close of each fiscal quarter, except where otherwise specified by the Commission), except where otherwise specified by the Commission.

[88 FR 10040, Feb. 16, 2023]

§ 3055.31 Contents of the Quarterly Report of service performance achievements.

(a) The items in paragraphs (b) through (h) 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. Any graphical representation of data provided shall also be accompanied by the underlying data presented in spreadsheet form.

(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.

(f) For each Market Dominant product, the average time in which the product was delivered, measured by actual delivery days, during the previous fiscal quarter, provided at the District, Postal Administrative Area, and National levels. "Actual delivery days" shall include all days in which Market Dominant products are eligible for delivery, excluding Sundays and holi-

days. The report shall include the following information on dispersion around the average:

(1) The percent of mailpieces delivered within +1 day of the applicable service standard;

(2) The percent of mailpieces delivered within +2 days of the applicable service standard; and

(3) The percent of mailpieces delivered within +3 days of the applicable service standard.

(g) A description of each Site-Specific Operating Plan, including operation completion time performance (as a percentage rounded to one decimal place) for each Site-Specific Operating Plan measurement category during the previous fiscal quarter. Such information shall be at the National level and disaggregated by Division and Region.

(h) A description of the total mail volumes measured and excluded from measurement. Such description shall include:

(1) For each class of Market Dominant products (except Special Services), a report of the reasons that mailpieces were excluded during the previous fiscal quarter. The report shall include:

(i) The exclusion reason;

(ii) The exclusion reason description;

(iii) The number of mailpieces excluded from measurement, which is the sum of all mailpieces excluded from measurement for the individual exclusion reason; and

(iv) The exclusion reason as a percent of total mailpieces excluded from measurement, which is the number of mailpieces excluded from measurement (*i.e.*, provided in paragraph (h)(1)(iii) of this section) divided by the sum of all mailpieces excluded from measurement across all exclusion reason categories (*i.e.*, the sum of all values provided in paragraph (h)(1)(iii) of this section).

(v) The report shall include information for each quarter in the applicable fiscal year.

(2) The report described in paragraph (h)(1) of this section shall follow the format as shown below:

TABLE 1 TO PARAGRAPH (h)(2)—EXCLUSION REASONS REPORT FOR FISCAL QUARTER

Exclusion reason	Exclusion description	Number of mailpieces excluded from measurement				Exclusion reason as a percent of total exclusions			
		Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4

(3) For each class of Market Dominant products and for each Market Dominant product (except Special Services), a description of the mail volumes measured and unmeasured during the previous fiscal quarter. The description shall explain in detail any notations regarding the Postal Service's

inability to collect any data. Corresponding data shall also be provided for the same period last year (SPLY). Each report is due within 60 days of the close of each fiscal quarter.

(4) The report described in paragraph (h)(3) of this section shall follow the format as shown below:

TABLE 2 TO PARAGRAPH (h)(4)—TOTAL MAIL MEASURED/UNMEASURED VOLUMES REPORT FOR FISCAL QUARTER

Class/product	^^		^^		^^	
	Prior FQ	SPLY	Prior FQ	SPLY	Prior FQ	SPLY
Total Number of Pieces (RPW-ODIS).						
Total Number of Pieces in Measurements.						
Total Number of Pieces Eligible for Full-Service IMb.						
Total Number of Full-Service IMb Pieces Included in Measurement.						
Total Number of Full-Service IMb Pieces Excluded from Measurement.						
Total Number of Pieces Not in Measurement.						
% of Pieces in Measurement Compared to Total Pieces.						
% of Pieces Not in Measurement Compared to Total Pieces.						
% of Full-Service IMb Pieces in Measurement Compared to Total IMb Full-Service Pieces.						
% of Full-Service IMb Pieces Not in Measurement Compared to Total IMb Full-Service Pieces.						

(i) A report of quarterly third-party audit results of its internal service performance measurement system for Market Dominant products. This report shall include a description of the audit measures used and the audit results specific to inbound and outbound

single-piece First-Class Mail International and the Green Card option of the Return Receipt service. For any measure deemed by the auditor to be not achieved or only partially achieved, the Postal Service shall include in its report an explanation of its

Postal Regulatory Commission

§ 3055.55

plan to achieve said measure in the future. Each report is due within 60 days of the close of each fiscal quarter.

[75 FR 38742, July 6, 2010, as amended at 88 FR 10040, Feb. 16, 2023]

§ 3055.32 Measurement systems using a delivery factor.

For measurements that include a delivery factor, the duration of the delivery factor also shall be presented independent of the total measurement.

§ 3055.45 First-Class Mail.

(a) *Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats.* For each of the Single-Piece Letters/Postcards, Presorted Letters/Postcards, and Flats 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, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-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, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards, provided at the District, Postal Administrative Area, and National levels.

(b) *Outbound Single-Piece First-Class Mail International and Inbound Letter Post.* For each of the Outbound Single-Piece First-Class Mail International and Inbound Letter Post 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 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined, 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 mail subject to the overnight, 2-day, 3-day, 4-day, and 5-day service standards, as well as in the aggregate for the 3-to-5-day service standards and in the aggregate for all service standards combined, provided at the Postal Administrative Area and National levels.

[88 FR 10041, Feb. 16, 2023]

§ 3055.50 USPS Marketing Mail.

(a) For each product within the USPS Marketing 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 Administrative Area, and National levels.

(b) For each product within the USPS Marketing 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.

[88 FR 10042, Feb. 16, 2023]

§ 3055.55 Periodicals.

(a) *In-County Periodicals.* For the In-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,

§ 3055.60

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.

[75 FR 38742, July 6, 2010, as amended at 88 FR 10042, Feb. 16, 2023]

§ 3055.60 Package Services.

(a) For each product within the Package Services class, report the 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.

(b) For each product within the Package Services 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 and End-to-End entry mail, provided at the District, Postal Administrative Area, and National levels.

[88 FR 10042, Feb. 16, 2023]

§ 3055.65 Special Services.

(a) 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, 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

39 CFR Ch. III (7–1–23 Edition)

(rounded to one decimal place) that each service meets or exceeds its service standard. For green card Return Receipt report:

(1) The percentage of green cards properly completed and returned;

(2) The percentage of green cards not properly completed, but returned;

(3) The percentage of mailpieces returned without a green card signature; and

(4) 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; 88 FR 10042, Feb. 16, 2023]

§ 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 3040, appendix A to subpart A of part 3040 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

Postal Regulatory Commission

§ 3055.100

a minimum, the specific reporting requirements presented in §§ 3055.91 through 3055.92.

[85 FR 9659, Feb. 19, 2020]

§ 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;

(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.

Subpart D—Public Performance Dashboard

SOURCE: 88 FR 10042, Feb. 16, 2023, unless otherwise noted.

§ 3055.100 Definitions applicable to this subpart.

(a) *Actual delivery days* refers to all days in which Market Dominant products are eligible for delivery, excluding Sundays and holidays.

(b) *Election mail* refers to items such as ballots, voter registration cards, and absentee applications that an authorized election official creates for voters.

(c) *Nonprofit mail* refers to USPS Marketing Mail mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(6) and the regulations promulgated thereunder and Periodicals

§ 3055.101

39 CFR Ch. III (7–1–23 Edition)

mailpieces that qualify for reduced rates pursuant to 39 U.S.C. 3626(a)(4) and the regulations promulgated thereunder.

(d) *Political mail* refers to any mailpiece sent for political campaign purposes by a registered candidate, a campaign committee, or a committee of a political party to promote candidates, referendums, or campaigns.

§ 3055.101 Public Performance Dashboard.

The Postal Service shall develop and maintain a publicly available website with an interactive web-tool that provides performance information for Market Dominant products. This website shall be updated on a weekly basis, no later than one month from the date of data collection. The website shall include, at a minimum, the reporting requirements specified in § 3055.102 and adhere to the formatting requirements specified in § 3055.103.

§ 3055.102 Contents of the Public Performance Dashboard.

(a) The items in paragraphs (b) through (p) of this section shall be included in the Public Performance Dashboard.

(b) Within each class of Market Dominant products, for each Market Dominant product and each service standard applicable to each Market Dominant product:

(1) The on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The on-time service performance (as a percentage rounded to one decimal place) for each District.

(c) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) The average time in which the product was delivered, measured by actual delivery days, for the Nation;

(2) The average time in which the product was delivered, measured by actual delivery days, for each Postal Administrative Area; and

(3) The average time in which the product was delivered, measured by actual delivery days, for each District.

(d) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) the on-time service performance (as a percentage rounded to one decimal place) for any given time period that can be selected by a Dashboard user within the previous two fiscal years (but no earlier than FY 2021 for National data and FY 2022 for Area and District data); and

(2) the average time in which the product was delivered, measured by actual delivery days, for any given time period that can be selected by the Dashboard user within the previous two fiscal years (but no earlier than FY 2021 for National data and FY 2022 for Area and District data).

(e) Within each class of Market Dominant products, for each Market Dominant product and each applicable service standard:

(1) The on-time service performance (as a percentage rounded to one decimal place) for any given pair of origin/destination Districts that can be selected by a Dashboard user; and

(2) The average time in which the product was delivered, measured by actual delivery days, for any given pair of origin/destination Districts to be selected by the Dashboard user.

(f) For identifiable Political mail:

(1) The processing scores for service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The processing scores for service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The processing scores for service performance (as a percentage rounded to one decimal place) for each District.

(g) For identifiable Election mail:

(1) The processing scores for service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The processing scores for service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The processing scores for service performance (as a percentage rounded to one decimal place) for each District.

Postal Regulatory Commission

§ 3055.102

(h) For the First-Class Mail that the Postal Service identifies as Single-Piece Reply Mail:

(1) The on-time service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The on-time service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area;

(3) The on-time service performance (as a percentage rounded to one decimal place) for each District;

(4) The average time in which the mailpieces were delivered, measured by actual delivery days, for the Nation;

(5) The average time in which the mailpieces were delivered, measured by actual delivery days, for each Postal Administrative Area; and

(6) The average time in which the mailpieces were delivered, measured by actual delivery days, for each District.

(i) For identifiable Nonprofit mail (within Periodicals and USPS Marketing Mail classes of mail):

(1) The processing scores for service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The processing scores for service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The processing scores for service performance (as a percentage rounded to one decimal place) for each District.

(j) For identifiable Nonprofit mail (within the Periodicals and USPS Marketing Mail classes of mail) that does not also qualify as Political Mail or Election Mail:

(1) The processing scores for service performance (as a percentage rounded to one decimal place) for the Nation;

(2) The processing scores for service performance (as a percentage rounded to one decimal place) for each Postal Administrative Area; and

(3) The processing scores for service performance (as a percentage rounded to one decimal place) for each District

(k) The point impact data for the top ten root causes of on-time service performance failures, at the Postal Administrative Area and National levels. "Point impact data" means the number of percentage points by which on-time performance decreased due to a specific root cause of failure. Identifi-

cation and a description of all potential root causes of failure assigned during the previous fiscal year and any changes to the Postal Service's methodology for calculating point impact data shall be included.

(l) For each Market Dominant product and applicable service standard, the on-time service performance target currently in effect, as well as the on-time service performance target for the previous fiscal year.

(m) A summary of the methodology used to group 5-Digit ZIP Codes into the Postal Administrative Areas and Districts with links to more detailed explanations if applicable.

(n) An application that would allow a Dashboard user to initiate a query in order to access, for each Market Dominant product and applicable service standard, the on-time service performance (as a percentage rounded to one decimal place) and average time in which a mailpiece is delivered for a District by inputting the user's street address, 5-Digit ZIP Code, or post office box.

(o) Supporting documentation underlying the results presented in the Dashboard, including:

(1) Data sources for each service performance parameter presented in the Dashboard, as well as links to each such source;

(2) Explanations of how the information in the data sources are transformed and summarized for presentation on the Dashboard; and

(3) Exceptions and detailed explanations for each exception, such as missing service performance data for a specific product or geographic division.

(p) The items in paragraphs (b) through (o) shall be included within the following periods of time.

(1) Within 60 days after the effective date of this section, the Dashboard shall include the required data for each Market Dominant product;

(2) Within 150 days after the effective date of this section, the Dashboard shall include the required data for each Market Dominant class;

(3) Within 210 days after the effective date of this section, the Dashboard shall include the required data for each service standard, for identifiable Nonprofit Mail, and for the First-Class

Mail that the Postal Service identifies as Single-Piece Reply Mail; and

(4) Within 300 days after the effective date of this section, the Dashboard shall include all other data required by this section.

§ 3055.103 Format for data provided in the Public Performance Dashboard.

(a) The results of a user-initiated query and the data underlying the query results should be exportable via a machine-readable format. Such data should be made accessible to any person or entity utilizing tools and methods designed to facilitate access to and extraction of data in bulk, such as an Application Programming Interface (API).

(b) When there is a negative deviation from service performance standards, the Dashboard should clearly indicate such deviation from expected performance and present the service performance from the prior week and the same period last year.

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 costs, product-specific costs, and those inframarginal costs calculated as part of a competitive product's incremental 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).

[73 FR 79261, Dec. 24, 2008, as amended at 81 FR 88123, Dec. 7, 2016]

§ 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 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 Regulatory Commission

§ 3060.20

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 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

§ 3060.21

39 CFR Ch. III (7–1–23 Edition)

for FY 2008, as approved by the Commission, shall be used for all future reports until such time as they may be changed by the Commission. If the Postal Service desires to change such practices, it shall utilize the proce-

dures 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 to § 3060.21.

TABLE 1 TO § 3060.21—COMPETITIVE PRODUCTS INCOME STATEMENT—PRC FORM CP–01
[\$ in 000s]

	FY 20xx	FY 20xx–1	Change from SPLY	Percent change from SPLY
Revenue:	\$x,xxx	\$x,xxx	\$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	x,xxx	x,xxx		
Expenses:	x,xxx	x,xxx		
(4) Volume-Variable Costs	x,xxx	x,xxx	xxx	xx.x
(5) Product Specific Costs	x,xxx	x,xxx	xxx	xx.x
(6) Incremental Inframarginal Costs	x,xxx	x,xxx	xxx	xx.x
(7) Total Competitive Products Attributable Costs	x,xxx	x,xxx	xxx	xx.x
(8) Net Contribution Competitive Products Market Tests	x,xxx	x,xxx	xxx	xx.x
(9) Net Income Before Institutional Cost Contribution	x,xxx	x,xxx	xxx	x.x.x
(10) Required Institutional Cost Contribution	x,xxx	x,xxx	xxx	xx.x
(11) Net Income (Loss) Before Tax	x,xxx	x,xxx	xxx	xx.x
(12) Assumed Federal Income Tax	x,xxx	x,xxx	xxx	xx.x
(13) 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): Inframarginal costs calculated as part of total Competitive Products incremental costs as shown in ACR Library Reference “Competitive Product Incremental and Group Specific Costs” (Currently NP10).
Line (7): Sum total of Competitive Products costs (sum of lines 4, 5, and 6).
Line (8): Net Contribution Competitive Products Market Tests as shown in the Annual Compliance Report.
Line (9): Difference between Competitive Products total revenues and attributable costs and Market Tests Contributions (line 3 less line 7 plus line 8).
Line (10): Minimum amount of Institutional cost contribution required under 39 CFR 3035.7 of this chapter.
Line (11): Line 9 less line 10.
Line (12): Total assumed Federal income tax as calculated under 39 CFR 3060.40.
Line (13): Line 11 less line 12.

[85 FR 9660, Feb. 19, 2020]

§ 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.

Postal Regulatory Commission

§ 3060.30

TABLE 2—ANNUAL SUMMARY OF COMPETITIVE PRODUCTS FINANCIALS—PRC FORM CP-02—
Continued
[\$ in 000s]

	Beginning value	Change from prior year	Ending value
--	-----------------	------------------------	--------------

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.
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:
Total net assets				
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	
Total Current Assets	x,xxx	x,xxx	x,xxx	
Property and Equipment:				
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	
Total Property and Equipment, Net	x,xxx	x,xxx	x,xxx	
Total Assets	\$x,xxx	\$x,xxx	\$x,xxx	
Total Assets Determined from 39 U.S.C. 2011(e)(5)	\$x,xxx	\$x,xxx	\$x,xxx	
Total net liabilities				
Liabilities				

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:
Current Liabilities:				
Compensation and Benefits	x,xxx	x,xxx	x,xxx	
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:				
Workers' Compensation	x,xxx	x,xxx	x,xxx	
Employees Accumulated Leave	x,xxx	x,xxx	x,xxx	
Deferred Appropriation and Other Rev- enue				
Long-Term Portion of Capital Lease Obli- gations	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 applicable corporate tax rate.

(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 sub-

mitted to the Commission no later than the January 15 following the close of the fiscal year referenced in paragraph (b) of this section.

(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.

[73 FR 79261, Dec. 24, 2008, as amended at 84 FR 31738, July 3, 2019]

§ 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

Postal Regulatory Commission

§ 3065.2

§ 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) 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.

[73 FR 79261, Dec. 24, 2008, as amended at 84 FR 31738, July 3, 2019]

PART 3065—RULES FOR LETTERS CARRIED OUT OF THE MAIL

Sec.

3065.1 Applicability and scope.

3065.2 Prohibition on new regulations.

3065.3 Procedure for seeking clarification or interpretation.

AUTHORITY: 39 U.S.C. 503, 601.

SOURCE: 87 FR 42074, July 14, 2022, unless otherwise noted.

§ 3065.1 Applicability and scope.

(a) The rules in this part implement 39 U.S.C. 601, which describes certain circumstances in which letters may be carried out of the mail.

(b) Notwithstanding placement in Postal Service chapter I of this title, the following provisions in parts 310 and 320 of this title are within the scope of this part and the Commission has the authority to interpret them:

(1) Section 310.1 of this title;

(2) Sections 310.2(b)(1) and (2) of this title; and

(3) Sections 320.1 through 320.8 of this title.

(c) In the event of a conflict between 39 U.S.C. 601 and applicable regulations under parts 310 and 320 of this title, 39 U.S.C. 601 shall supersede any other generally applicable requirements.

§ 3065.2 Prohibition on new regulations.

(a) The Postal Service may not promulgate any new regulations or enter into agreements purporting to suspend or otherwise define the scope of the letter monopoly.

(b) The Postal Service may not promulgate any new regulations purporting to interpret 39 U.S.C. 601.

(c) The Commission has the sole authority to promulgate new regulations necessary to carry out 39 U.S.C. 601.

§ 3065.3

§ 3065.3 Procedure for seeking clarification or interpretation.

(a) The Commission may, on its own motion, initiate a proceeding under this subpart pursuant to § 3010.201(a) of this chapter.

(b) The Commission may provide interpretation of these regulations or 39 U.S.C. 601 upon:

39 CFR Ch. III (7–1–23 Edition)

(1) A party's request to initiate a rulemaking proceeding with the Commission pursuant to the requirements of § 3010.201(b) of this chapter; or

(2) A party's request for an advisory opinion from the General Counsel.

PARTS 3066–3099 [RESERVED]