

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

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

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§ 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.

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§ 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

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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.

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(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

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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

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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-

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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

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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

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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

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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 memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination shall be served in accordance with 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

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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.

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(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

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.

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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). Hearings (with Rebuttal Cases and requests for leave to file Surrebuttal Cases). Initial Briefs	49-51.
14	Initial Briefs	54-56. (7 days after conclusion of hearings).
15	Reply Briefs	(7 days after filing of Initial Briefs).
16	Target Issuance Date of Advisory Opinion	90.

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

²This order would appoint a Public Representative.

³This 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.

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

⁵If no surrebuttal cases are requested, hearings begin on Day 49.

⁶If 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).