



Federal Register

**Friday,
September 5, 2008**

Part II

Postal Regulatory Commission

**39 CFR Parts 3001, 3030, and 3031
Administrative Practice and Procedure,
Postal Service; Proposed Rule**

POSTAL REGULATORY COMMISSION**39 CFR Parts 3001, 3030, and 3031****[Docket No. RM2008-3; Order No. 101]****Administrative Practice and Procedure,
Postal Service****AGENCY:** Postal Regulatory Commission.**ACTION:** Proposed rule.

SUMMARY: The Commission is proposing new rules to address two types of administrative filings authorized under a new postal law: complaints and rate and service inquiries. It is also proposing to delete existing complaint rules, as they are overtaken by the proposal. Issuance of this document reflects the Commission's ongoing implementation of new and revised statutory provisions.

DATES: Initial comments are due October 6, 2008. Reply comments are due October 27, 2008.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202-789-6820 and stephen.sharfman@prc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction and Background**

This rulemaking is part of the series of rulemakings initiated by the Postal Regulatory Commission (Commission) to fulfill its responsibilities under the Postal Accountability and Enhancement Act (PAEA), Public Law No. 109-435, 120 Stat. 3218 (2006). The proposed rules seek to implement 39 U.S.C. 3662 setting forth procedures governing the disposition of complaints filed with the Commission. The proposed rules replace existing regulations and are designed to enable the Commission to hear and resolve complaints in a streamlined and efficient manner while providing appropriate due process for all participants.

The Commission's current complaint procedures are found in 39 CFR 3001.81 *et seq.* The proposed rules would locate the revised, enhanced complaint regulations in part 3030 and delete those located in subpart E of part 3001. The proposed regulations would also add a new part 3031 to set up procedures for dealing with rate or service inquiries.

Below, the Commission discusses the proposed rules with respect to the complaint process. Part II presents a more thorough discussion and detailed outline of the main issues raised in this

docket by the Commission's proposed rules. Part III provides a section-by-section analysis of each proposed new rule. The proposed rules are set forth at the end of this Notice. Comments by interested persons are due October 6, 2008. Reply comments are due by October 27, 2008.

These proposed rules represent the Commission's initial effort to establish a basic functional framework for addressing complaints and other written communications received by the Commission under its enhanced responsibilities due to the passage of the PAEA. These regulations are designed to serve as a reasonable starting point. The Commission expects that these rules will evolve as the Commission grows more familiar with the types of issues that it may be asked to consider. If the Commission subsequently is made aware that the complaint or rate or service inquiry rules are not adequate, the Commission will promptly begin proceedings to enhance these rules.

II. Discussion of the Proposed Rules

The PAEA imposes a new regulatory structure on the Postal Service which, among other things, elevates the role that complaints play in providing interested persons a forum for addressing issues arising under specified sections in title 39. The Commission's complaint authority stems from amended section 3662, which provides, in relevant part, as follows:

Any interested person (including an officer of the Postal Regulatory Commission representing the interests of the general public) who believes the Postal Service is not operating in conformance with the requirements of the provisions of sections 101(d), 401(2), 403(c), 404a, or 601, or this chapter (or regulations promulgated under any of those provisions) may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.

39 U.S.C. 3662(a).

To implement amended section 3662, the Commission proposes to revise its existing complaint procedures and add procedures to deal with rate or service inquiries that are not filed as complaints. These proposed rules are designed to fulfill the intent of Congress as expressed in the text of the PAEA.

The PAEA changed the Commission's role and its relationship with the Postal Service. Due to this new role, the Commission's complaint authority was significantly expanded by the PAEA.

Under the former Postal Reorganization Act of 1970 (PRA), if the Commission found a complaint to be justified, its remedial authority

consisted of issuing a public report or a recommended decision to the Governors of the Postal Service. *See* former 39 U.S.C. 3662 (2000), *superseded by* Pub. L. 109-435. The Commission's complaint authority under the PRA was much more limited and the Commission's rules reflected that limited role. This limited complaint authority reflected the Commission's greater role under the PRA in the rate setting process and the fact that rates were set in an open, public proceeding. In that process, if the public felt that the Postal Service was not complying appropriately with the policies of the PRA, the public could bring those concerns to the Commission during the rate setting proceeding and the Commission could move to balance these and other public policies in recommending domestic rates.

Under the PAEA, the Postal Service has much greater independence and flexibility in managing and setting its rates subject to a limited number of requirements. Subject to these limits, the Postal Service now has broad flexibility to balance policies related to rates and services. The PAEA implemented Congress' goal of allowing the Postal Service to operate more like a business in setting its rates and offering services in order to allow it to more effectively compete with its private sector competitors.

At the same time, the PAEA changed and expanded the Commission's complaint authority. The Commission is authorized to order the Postal Service to come into compliance with the statute and remedy the effects of any non-compliance, *see* 39 U.S.C. 3662(c), order fines for deliberate non-compliance, section 3662(d), and have the district courts of the United States enforce these administrative orders, section 3664. The PAEA also altered the scope of the Commission's complaint jurisdiction. *See* section 3662 (citing 39 U.S.C. 101(d), 401(2), 403(c), 601, and chapter 36).

This enhancement of the Commission's complaint authority reflects Congress' intent for complaints to become one of the major tools to achieve the PAEA goal of increased accountability and transparency of the Postal Service to the public it serves. *See* 39 U.S.C. 3622(b)(6) ("increase the transparency of the ratemaking process"); 39 U.S.C. 3691 (transparency of service standards); 39 U.S.C. 3622(b)(3) ("maintain high quality service standards"); 39 U.S.C. 504(g)(3)(A) ("public interest in maintaining the financial transparency of a government establishment * * *"). However, even though Congress

expanded the number of issues that the Commission could consider in a complaint proceeding, the Commission's complaint jurisdiction was not intended to be without limit. See U.S.C. 3662(a).

The proposed rules distinguish between the nature of complaints that may be filed with the Commission. They recognize that the Commission's primary role is to foster public postal policy as set forth in the PAEA by focusing on issues and decisions with substantial ramifications.

To carry out this intent of Congress, the Commission believes that it is appropriate to focus more of its limited resources on important issues that raise rate and service issues with broad implications or unfair competition issues, and less of its resources on issues that can more easily be remedied by postal management on a local level.

Toward these ends, the Commission proposes a two-tiered approach to deal efficiently and expeditiously with written communications directed to the Commission regarding the Postal Service. As proposed, these communications fall into one of two categories: (1) Complaints, and (2) rate or service inquiries. The proposed rules treat written communications that satisfy the form and manner requirements discussed below as "complaints" filed under section 3662. Written communications that do not meet the form and manner requirements would be treated as rate or service inquiries provided they include some minimal identifying information. The differences and reasons for this proposed differentiation between the categories of written communications received by the Commission as well as the proposed methods of dealing with such communications are discussed below.

These rules are intended to reflect Congressional intent that the complaint process be available for hearing such broad policy matters which, under the PRA, would have been handled in the context of a comprehensive proceeding. Additionally, these proposed rules are intended to provide for some residual remedy for mailers in the potential situation where the Postal Service does not adequately deal with mailers' individual concerns.

A. Complaints

Form and manner requirements. The Commission's new proposed complaint procedures are designed largely to deal with problems, needs, or concerns of more than only a limited number of persons or those dealing with claims of unfair competition. The proposed rules

categorize written communications as complaints under section 3662 if they satisfy certain "form and manner" requirements.¹ These requirements are designed to elicit all the information necessary for the Commission to be able to make an informed judgment about whether or not the complaint raises a material issue of fact or law under section 3662(b)(1)(A). The proposed rules, consistent with past practice, explicitly encourage settlement of disputes and add the option of alternative dispute resolution procedures.

In addition to specifying the statutory section or sections to which a complaint must apply, Congress only intended for the Commission to begin proceedings if a particular complaint raised a material issue of fact or law. See 39 U.S.C. 3662(b)(1)(A)(i).

Nature of complaints. 39 U.S.C. 3662 provides the basis for the Commission's authority to hear complaints. It provides that a complaint may be filed by any person who believes that the Postal Service is not acting in accordance with sections 101(d), 401(2), 403(c), 404(a), 601, and chapter 36 (or any regulations promulgated under these sections). It is helpful for this analysis (and to explain why the proposed rules were crafted in this fashion) to explore the commonalities of these statutory provisions. First, the Commission discusses the statutory provisions that may raise broad policy issues. Then, the Commission discusses those statutory sections that may raise issues relating to unfair competition.

In the Commission's new role created by the PAEA, chapter 36 controls the Postal Service's and Commission's authority over rates and services of market dominant products, competitive products, and experimental products. Chapter 36 expresses Congressional intent with respect to the national policies that the Postal Service and the Commission are to apply with respect to rate setting and providing services to the public.²

These rates and services are typically designed in a manner that affects a significant number of individuals, represents a pattern or practice, or

¹ The law provides the Commission with discretion to determine the form and procedures to use for dealing with the variety of complaints it may hear under 39 U.S.C. section 3662 ("Any interested person * * * may lodge a complaint with the Postal Regulatory Commission in such form and manner as the Commission may prescribe.").

² Under the PAEA, the Commission no longer recommends rates. The new statute provides the Postal Service with increased flexibility which is balanced by an increase in transparency and oversight by the Commission.

impacts a substantial region of the nation. In certain circumstances, rates or services are designed to apply to individual mail users or limited numbers of mail users. In such situations, competitors may be harmed and be the most likely to seek redress.

Chapter 36 also prescribes specific reports that the Postal Service and the Commission are tasked with providing. These broad reports are designed to increase the accountability and the transparency of the Postal Service to the general public it serves.

Congress authorized complaints to be brought for violations of section 101(d) which requires the costs of postal operations to be apportioned on a fair and equitable basis. The distribution of postal operational costs through rates is, by its very nature, done on more than a localized basis. Related costs are pooled to determine national average costs for different categories of mail. Specific costs for an individual mailpiece are not typically considered under this section.

It is important to recognize that Congress chose not to include the other paragraphs of section 101 in providing interested persons with an avenue for bringing complaints. For example, Congress's decision not to include paragraphs 101(a) and (b) should be read as an indicator that Congress did not want the Commission to focus its limited resources on considering complaints of individuals alleging isolated violations of section 101. For example, section 101(a) requires the Postal Service to "provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities." Furthermore, section 101(b) provides that "[n]o small post office shall be closed solely for operating at a deficit * * *." By excluding these provisions, Congress altered the Commission's complaint jurisdiction to controversies raising broad policy issues such as these cost apportionment concerns.

Section 401(2) deals with the Postal Service's authority to promulgate regulations. In allowing complaints to be brought for violations of this section, Congress authorized interested persons to petition for review of specific Postal Service rules and regulations claimed to be unlawful. This section concerns the adoption and amendment of the Postal Service's rules and regulations and the overall policy behind those regulations, not the application of a particular rule to an individual mail user. This provides further support that Congress intended the Commission's complaint authority typically be used to consider issues of broad applicability.

Section 601 permits the carriage of letters out of the mail under certain conditions. Thus, it may affect potential competitors' abilities to compete with the Postal Service for certain aspects of the Postal Service's business. In allowing complaints for violations of this section, Congress provided a check on the monopoly powers of the Postal Service and a means to address claims that it was using those powers to give itself an unfair competitive advantage in those areas where Congress believed that competition with the Postal Service is in the best interest of the nation. Accordingly, individualized complaints may be based upon this section as such complaints are rooted in claims of unfair competition.

Section 403(c) prohibits the Postal Service from establishing rates, classifications, and fees that either unduly discriminate against or grant an unreasonable preference to any mail users. By including section 403(c) within the statutory provisions that interested persons are allowed to file complaints under, section 3662 provides individuals with a forum for seeking relief against the Postal Service action alleged to be unduly discriminatory or preferential. This section reflects the bedrock regulatory principle of maintaining a level playing field among competing private entities as well as those entities that compete against the Postal Service for the non-monopoly aspects of its business. Accordingly, individualized complaints would lie under this section.

Section 404a limits the Postal Service power (1) to establish regulations which have the effect of harming competition; (2) to compel private entities to disclose information about their intellectual property; or (3) to use information obtained from a person without their consent and then offer any postal product that uses or is based on such information. These provisions effectively limit the Postal Service's authority to control certain aspects of the marketplace. In allowing complaints to be brought for violations of this section, Congress provides for an independent regulatory body to maintain fair competition and a level playing field among the Postal Service, its competitors, and its suppliers. Accordingly, individualized complaints may be based upon this section.

The proposed rules are designed to help the Commission identify those complaints that are more likely to raise material issues of fact or law as required by section 3662(b)(1)(A) related to the policy issues attendant to chapter 36 and the enumerated sections discussed above. They allow for efficient use of

the Commission's limited resources on complaints that may raise material issues of fact or law.

At the same time, the Commission's rules are designed to encourage the expeditious resolution of complaints that may be less likely to raise broader material issues of fact or law under 3662(b)(1)(A) or raise broad issues of public postal policy. The proposed complaint rules are designed to strike an appropriate balance between ensuring that postal management receives increased flexibility while providing the accountability and transparency of the Postal Service as envisioned by the PAEA.

Most local issues related to problems associated with individual mailers do not raise postal public policy concerns. Instead, they raise issues which are typically isolated incidents or those affecting only a few mail users. These are typically best resolved by the Postal Service at the local level. To ensure that the Commission is effective and efficient, the Commission proposes to initially take a more informal approach toward dealing with these types of complaints. Such procedures provide the Postal Service with an opportunity to remedy the alleged wrongdoing prior to the Commission taking any action. This serves the PAEA goal of allowing postal management greater flexibility in dealing with its customers without unnecessary and potentially burdensome regulatory involvement.

The Commission, however, recognizes that some of these complaints may in fact raise public postal policy issues that are important to the postal system and have a greater potential to raise material issues of fact or law. Accordingly, if the Postal Service is unable to resolve such complaints on a more informal basis, the Commission will take appropriate action. If the complaint raises material issues of fact or law in accordance with 39 U.S.C. 3662(b)(1)(A) formal complaint procedures will be initiated.

The Commission's proposed rules are also designed to provide more formal treatment for issues raised by individual matters when those issues appear to represent a potential pattern or practice affecting a significant number of mail users. The Commission believes that such systemic patterns or practices have a significant likelihood of raising broad policy issues whereby more formal procedures may be appropriate.

B. Rate or Service Inquiries

The complaint procedures apply to written communications directed to the Commission that meet the form and manner requirements of the proposed complaint rules. The proposed rate or

service inquiry procedures apply to written communications directed to the Commission that are not filed as complaints. The Postal Service typically is best suited to address these matters and should deal with such issues in the first instance in accordance with the PAEA goal of greater management responsibility and flexibility.

Nonetheless, the Commission believes that it should be informed concerning matters that may bear on future complaints or its other responsibilities under the PAEA. By helping facilitate public communication with the Postal Service, the Commission furthers the PAEA goal of increased accountability and transparency of the Postal Service.

The Commission believes also that its enhanced authority under the PAEA may encourage more individuals to seek the Commission's assistance in resolving their issues with the Postal Service. As a result, the proposed rules provide the mailing public with an avenue for bringing their concerns to appropriate Postal Service personnel.

Rate and service inquiry procedures also allow the Commission to ensure that issues raised and resolved under these rules remain isolated incidents. The rate or service inquiry process will help the Commission in deciding whether to address these matters in a more formal manner, which could potentially include the initiation of a complaint proceeding by a public representative or the appointment of an investigator to explore the matter. 39 U.S.C. 503 allows the Commission to promulgate these regulations to carry out its enhanced responsibilities under the PAEA.

C. Commission Investigator

The Commission's proposed rules allow it to appoint an investigator to explore issues raised in a complaint or rate or service inquiry filing. The Commission believes that the ability to appoint an investigator will allow it to deal more efficiently with complaints in certain situations, particularly where more information that cannot be easily obtained through more conventional means may be needed, or where the use of conventional means would bring undue delay. With the assistance of an investigator, the Commission may be able to resolve a complaint at an early stage of the proceeding, thereby saving the parties litigation costs, time, and resources.

39 U.S.C. 503 allows the Commission to promulgate regulations to carry out its obligations and functions under its new, PAEA-enhanced responsibilities. One of these enhanced responsibilities is the Commission's enforcement

authority to order the Postal Service to take remedial action. If the Commission finds a complaint to be justified and remedial action appropriate, the Commission might seek the assistance of an investigator to ensure that any proposed remedial action is tailored narrowly to address the violation without causing undue or unnecessary disruption.

The Commission does not envision the investigator playing a dominant role in any complaint proceedings. The parties remain advocates for their positions and the investigator will act as a neutral fact gatherer in order to develop the record. As a check and balance, the parties will always have the opportunity to review the investigator's public, written findings and make comments to the Commission prior to its decision.

D. Conclusion

As noted earlier, these complaint and rate or service inquiry rules are meant to provide structure, and allow the Commission to effectively and efficiently deal with concerns as they arise. At the current time, the Commission has confidence in the Postal Service's ability to manage and direct remediation of individual, localized mailer problems. If, over the course of time, the Commission determines through its data collection and monitoring of complaints and rate or service inquiries that the Postal Service is not dealing effectively with such individual, localized mailer issues, the Commission may determine that revised rules are necessary to allow it to play a more active role in the process.

III. Section-by-Section Analysis

In this part, the Commission reviews the proposed rules, describing what each rule seeks to accomplish. The purpose of this section-by-section analysis is to assist the commenters in determining the nature of each proposed regulation and the rationale behind it. Each proposed section is discussed below.

Section 3030.1 Applicability. This proposed rule identifies the types of complaints that the Commission will consider as specified by 39 U.S.C. 3662. It also identifies the other Commission rules that will apply to complaint proceedings including the filing requirements and the Commission's adjudication procedures. Paragraph (b) of this section makes the discovery rules inapplicable to complaint proceedings until the Commission initiates a proceeding on the complaint, *i.e.*, until the Commission finds that the complaint raises a material issue of fact

or law. Without such a provision, the discovery process might be abused. This paragraph ensures that only complainants raising material issues of fact or law will subject the Postal Service to the time and expense of the discovery process.

Section 3030.2 Scope and nature of complaints. This proposed rule describes the nature of complaints that the Commission will consider. It expands upon the Commission's current "Scope and nature of complaints" rule, 39 CFR 3001.82, to conform with the statutory changes to 39 U.S.C. 3662.

Section 3030.10 Complaint contents. This proposed rule identifies the information that must be included in a complaint filing in order to satisfy the "form and manner" requirements. These requirements, which are based largely upon the Federal Energy Regulatory Commission's formal complaint rule, 18 CFR 385.206, are designed to provide specificity as to the legal and factual basis for the complaint. The intent is to apprise the Postal Service of the key elements of the complaint, and in concert with the Postal Service's answer, to enable the Commission to determine whether the complaint raises a material issue of fact or law.

The proposed rule requires the complainant to certify that it has attempted to meet or confer with the Postal Service. This criterion has two purposes. First, it is designed to allow the parties to explore whether alternative dispute resolution procedures might be effective in settling the issues raised by the complaint. Second, it requires an attempt to resolve the complaint before involving the Commission. This follows the Commission's long-standing policy favoring settlement. *See* 39 CFR 3001.85(b).

Section 3030.11 Service. This proposed rule requires the complainant to serve the complaint on the Postal Service at the same time the complaint is filed with the Commission. This rule ensures that the Postal Service receives a copy of the complaint at the time it is sent to the Commission instead of having to wait to be notified of the pending complaint.

Section 3030.12 Pleadings filed in response to a complaint. This proposed rule governs the timeline for the Postal Service to respond to complaints. The Postal Service has 20 days to respond to a formal complaint. If the Postal Service files an appropriate motion, the timeline for the Postal Service to file its answer to a complaint is altered as it would be under the Federal Rules of Civil Procedure.

Section 3030.13 Conditions for application of rate or service inquiry procedures. This proposed rule addresses the Commission's ability to apply the rate or service inquiry special procedures in order to attempt to resolve a complaint using the Postal Service's internal procedures.

This section does not allow the Commission to use the special rate or service inquiry procedures in connection with complaints that raise unfair competition issues or concern rate or service matters with broad implications. As discussed above, these topics raise important policy issues that Congress intended the Commission to consider in the first instance.

Section 3030.14 Answer contents. This proposed rule identifies the information to be included in an answer filed with the Commission. The requirements for the proposed rule are based largely upon the Federal Energy Regulatory Commission's answer rule, 18 CFR 385.213. The proposed rule is designed to elicit information necessary for the Commission to determine if the appropriate statutory and regulatory requirements have been met as well as to determine if the complaint raises a material issue of fact or law. The rule requires the Postal Service to certify that it has attempted to meet or confer with the complainant. This mirrors the provision in proposed rule 3030.10 designed to foster settlement.

Section 3030.20 Sufficiency of information. This proposed rule is designed to give the Commission flexibility to obtain additional information if it determines it would be better able to make an informed determination on whether a complaint raises a material issue of fact or law under 39 U.S.C. 3662(b)(1). This section allows additional information to be obtained by issuing a request or through the appointment of an investigator.

Section 3030.21 Investigator. This proposed rule allows the Commission to appoint an investigator to explore some or all of the issues raised in a complaint. This proposed rule also makes public the investigator's findings and report to ensure that the process remains open and transparent.

Section 3030.30 Beginning proceedings on complaints. This proposed rule explains the various procedural paths that a complaint will take when the Commission makes a finding under 39 U.S.C. 3662(b)(1)(A)(i) or (ii). Upon making a finding under these sections, the Commission will either (1) issue a notice that includes setting forth the next steps in the proceeding, or (2) issue a final order dismissing the complaint.

Section 3030.40 Policy on settlement. This proposed rule is a recodification of 39 CFR 3001.85(b) as a separate rule. The Commission believes that its policy favoring settlement is important and should be in a separate rule to emphasize its importance and so that it can be found easily in the Code of Federal Regulations.

Section 3030.41 Satisfaction. This proposed rule sets forth the procedural requirements that a complainant must follow in the event that the complaint is resolved informally (in whole or in part). The rule is designed to ensure that parties are free to explore settlement at any stage of litigating a complaint. However, once a determination that a complaint raises a material issue of fact or law has been made, the Commission believes it is prudent to evaluate whether the issues raised by the complaint may continue to impact a significant segment of the mailing community prior to closing its docket.

Section 3030.50 Remedies. This proposed rule sets forth the potential statutory remedies for a complaint that the Commission finds to be justified. The Commission has three types of remedial authority. The Commission may issue an order designed to ensure that the Postal Service achieves compliance with the applicable requirements found to be violated through the complaint proceeding. The Commission also may issue an order to remedy the effects of non-compliance with applicable requirements or postal policy. Finally, in cases of deliberate non-compliance by the Postal Service, the Commission may fine the Postal Service for each incidence of deliberate non-compliance. The rule ensures that in those circumstances where the Commission is considering fining the Postal Service, participants will be afforded an opportunity to comment, including addressing any aggravating and mitigating factors related to the violation prior to the Commission making a determination that such extraordinary relief is warranted.

Section 3031.10 Rate or service inquiry contents. This proposed rule identifies the information that should be included in rate or service inquiries. The requirements for this proposed rule are based in part on the Federal Communications Commission's informal complaint rules, 47 CFR 1.716. The proposed rule is designed to elicit the information necessary for the Commission to determine how to deal efficiently with the inquiry so that the party's needs or concerns can be addressed appropriately.

Section 3031.11 Rate or service inquiry procedures. This proposed rule

sets forth the special procedures that the Commission will take when it receives a rate or service inquiry. The Commission will send the inquiry to the Postal Service for appropriate action, and review reports submitted by the Postal Service in connection with rate or service inquiries filed under this part.

Section 3031.12 Treatment as a complaint. The purpose of part 3031 is to assist individuals in resolving rate or service matters through informal means. This proposed rule also provides for the appointment of an investigator or officer to represent the general public if the Commission believes that a systematic pattern may be at issue. Such action could ultimately result in the prosecution of a complaint proceeding under part 3030 if such pattern or practice affects a substantial number of persons or region of the nation in an important respect.

IV. Public Representative

Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

It is Ordered:

1. Docket No. RM2008-3 is established for the purpose of receiving comments on the Commission's proposed rules under the Postal Accountability and Enhancement Act establishing procedures governing the disposition of complaints filed with the Commission.

2. The Commission proposes to amend its rules of practice and procedure as shown below. The proposed amendments involve removing subpart E of part 3001 and adding new parts 3030 and 3031.

3. Kenneth E. Richardson is designated as an officer of the Commission representing the interests of the general public in this docket.

4. Interested persons may submit comments by October 6, 2008.

5. Interested persons may submit reply comments by October 27, 2008.

6. The Secretary shall arrange for publication of this Notice in the **Federal Register**.

List of Subjects in 39 CFR Parts 3030 and 3031

Administrative practice and procedure, Postal Service.

Issued: August 21, 2008.

By the Commission.

Judith M. Grady,
Acting Secretary.

For the reasons stated in the preamble, under the authority at 39

U.S.C. 3662, the Postal Regulatory Commission proposes to amend 39 CFR chapter III as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 3622; 3633; 3652; 3661.

Subpart E—[Removed]

2. Remove and reserve subpart E of part 3001, consisting of §§ 3001.81 through 3001.87.

3. Add part 3030 to read as follows:

PART 3030—RULES FOR COMPLAINTS

Subpart A—General

Sec.

3030.1 Applicability.

3030.2 Scope and nature of complaints.

Subpart B—Form and Manner Requirements of Initial Pleadings

3030.10 Complaint contents.

3030.11 Service.

3030.12 Pleadings filed in response to a complaint.

3030.13 Conditions for application of rate and service inquiry procedures.

3030.14 Answer contents.

Subpart C—Supplemental Information

3030.20 Sufficiency of information.

3030.21 Investigator.

Subpart D—Proceedings

3030.30 Beginning proceedings on complaints.

Subpart E—Settlement

3030.40 Policy on settlement.

3030.41 Satisfaction.

Subpart F—Commission Determinations and Relief

3030.50 Remedies.

Authority: 39 U.S.C. 503; 3662.

Subpart A—General

§ 3030.1 Applicability.

(a) The rules in this part govern the procedure for complaints filed under 39 U.S.C. 3662 that meet the form and manner requirements of subpart B of this part. Part 3001, subpart A of this chapter applies unless otherwise stated in this part or otherwise ordered by the Commission.

(b) Sections 3001.25 through 3001.27 of this chapter do not apply to this part unless and until the Commission makes a finding under § 3030.30(a)(1) that the complaint raises material issues of fact or law.

§ 3030.2 Scope and nature of complaints.

Any interested person (including a duly appointed officer of the Commission representing the interests of the general public) may file a written complaint with the Commission if that person believes that the Postal Service is not operating in conformance with:

(a) The provisions of 39 U.S.C. chapter 36, or 39 U.S.C. 101(d), 401(2), 403(c), 404a, or 601; or

(b) Any rule, order, or other regulatory requirement based on any of these statutory provisions.

Subpart B—Form and Manner Requirements of Initial Pleadings**§ 3030.10 Complaint contents.**

(a) A complaint must:

(1) Set forth the facts and circumstances that give rise to the complaint;

(2) Clearly identify and explain how the Postal Service action or inaction violates applicable statutory standards or regulatory requirements including citations to the relied upon section or sections of title 39, order, regulation, or other regulatory requirements;

(3) Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to the complainant;

(4) Include a description of persons or classes of persons known or believed to be similarly affected by the issues involved in the complaint, if applicable;

(5) State the nature of the evidentiary support that the complainant has or expects to obtain during discovery to support the facts alleged in the complaint;

(6) Include an explanation as to why such facts could not reasonably be ascertained by the complainant where claims are premised on information and belief;

(7) State whether the issues presented are pending in or have been resolved by an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party; and if so, provide an explanation why timely resolution cannot be achieved in that forum;

(8) State the specific relief or remedy requested and the basis for that relief;

(9) Include a certification that states that prior to filing, the complainant attempted to meet or confer with the Postal Service to resolve or settle the complaint, why the complainant believes additional such steps or utilizing some form of alternative dispute resolution would be inadequate, and the reasons for that belief; and

(10) Include a certification that the complaint has been served on the

United States Postal Service as required by § 3030.11.

(b) The Commission may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.

§ 3030.11 Service.

Any person filing a complaint must simultaneously serve a copy of the complaint on the Postal Service at the following address: [Postal Service designated e-mail to be determined in final rule]. A complaint is not deemed filed until it is served on the Postal Service.

§ 3030.12 Pleadings filed in response to a complaint.

(a) Unless otherwise ordered by the Commission, the Postal Service shall file its answer to a complaint within 20 days after the complaint is filed.

(b) If appropriate, the Postal Service may file a dispositive motion or otherwise move to delay disposition of the complaint. If the Postal Service files such a motion, unless otherwise ordered by the Commission, the period of time for filing its answer is altered as follows:

(1) If the Commission denies the motion or postpones disposition, the answer is due within 10 days of the Commission's action; or

(2) If the Commission invokes the rate or service inquiry special procedures under § 3030.13 to the complaint, the answer is due contemporaneously with the Postal Service's report under § 3031.11 of this chapter if the complaint has not been resolved by that date.

(c) If the Postal Service answer is delayed by the filing of a motion under paragraph (b) of this section, it may not obtain a further delay by filing another motion under paragraph (b) of this section raising an issue or objection that was available to the Postal Service but omitted from its earlier motion.

§ 3030.13 Conditions for application of rate or service inquiry procedures.

(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 the beginning of such a pattern); or

(4) Impact a substantial region of the nation.

(b) The Commission may in its discretion, *sua sponte*, attempt to

resolve a complaint through the rate or service inquiry procedures of § 3031.11 of this chapter if the Commission finds that there is a reasonable likelihood that such procedures may result in resolution of the complaint. The Commission will issue an order to apply the procedures of § 3031.11 of this chapter prior to the due date for the Postal Service answer set forth in § 3030.12.

(c) If the Commission determines that application of paragraph (a) of this section is appropriate and the Postal Service is unable to resolve the complaint within 45 days, or such other period of time as ordered by the Commission, the Postal Service shall file its answer in accordance with § 3030.12(b)(2).

§ 3030.14 Answer contents.

(a) An answer must:

(1) Contain a clear and concise statement of any disputed factual allegations upon which the answer relies;

(2) Contain a clear and concise statement of any legal interpretation upon which the answer relies;

(3) Admit or deny, specifically and with explanatory detail, each material factual allegation of the complaint. Denials based on information and belief must include an explanation as to why such facts could not reasonably be ascertained by the Postal Service prior to filing the answer;

(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, the Postal Service attempted to meet or confer with the complainant to resolve or settle the complaint, whether the Postal Service believes additional such steps or utilizing some form of alternative dispute resolution would be inappropriate and the reasons for that belief.

(b) The Commission may waive any of the requirements listed in paragraph (a) to serve the interests of justice.

Subpart C—Supplemental Information**§ 3030.20 Sufficiency of information.**

If, after review of the information submitted pursuant to this part, the

Commission determines that additional information is necessary to enable it to evaluate whether the complaint raises material issues of fact or law, the Commission may, in its discretion, require the complainant and/or the Postal Service to provide additional information as deemed necessary or issue an appropriate order to appoint an investigator in accordance with § 3030.21.

§ 3030.21 Investigator.

The Commission may appoint an investigator to examine issues raised by the complaint and responses thereto. The investigator will use appropriate due diligence under the circumstances and provide a public, written report to the Commission.

Subpart D—Proceedings

§ 3030.30 Beginning proceedings on complaints.

(a) Within 90 days after receiving a properly filed complaint under this part, the Commission will issue:

(1) A notice and order in accordance with § 3001.17 of this chapter that finds the complaint raises material issues of fact or law and begin proceedings on the complaint; or

(2) An order dismissing the complaint.

(b) Orders issued pursuant to paragraph (a) of this section shall include the Commission's written statement setting forth the bases of its determination.

(c) Contemporaneously with, or shortly after issuing a notice and order under paragraph (a)(1) of this section, the Commission will appoint a public representative to represent the interests of the general public in the complaint proceeding.

Subpart E—Settlement

§ 3030.40 Policy on settlement.

It shall be the general policy and practice of the Commission to encourage the resolution and settlement of complaints by informal procedures, such as correspondence, conferences between the parties, and the conduct of proceedings off the record with the consent of the parties.

§ 3030.41 Satisfaction.

(a) If a complaint is resolved informally, in whole or in part, subsequent to Commission action under § 3030.30(a)(1), the complainant must promptly file:

(1) A statement explaining the resolution; and

(2) A motion to dismiss or amend the complaint based on the resolution.

(b) The Commission may order the submission of additional information before acting on any motion filed under paragraph (a)(2) of this section.

Subpart F—Commission Determinations and Relief

§ 3030.50 Remedies.

(a) If the Commission finds that a complaint is justified, it will order that the Postal Service take such action as the Commission determines appropriate to:

(1) Achieve compliance with the applicable requirements; and

(2) Remedy the effects of any non-compliance.

(b) If the Commission finds deliberate non-compliance on the part of the Postal Service, the Commission may order, based on the nature, circumstances, extent, and seriousness of the non-compliance, a fine for each incidence of non-compliance.

(c) In any case where the Commission is considering the extraordinary relief described in paragraph (b) of this section, the Commission will provide notice to the participants that such relief is being considered. It will allow the participants a reasonable opportunity to comment and present aggravating and mitigating factors for its consideration.

4. Add part 3031 to read as follows:

PART 3031—RULES FOR RATE OR SERVICE INQUIRIES

Subpart A—Rate or Service Inquiry Forms and Procedures

Sec.

3031.10 Rate or service inquiry contents.

3031.11 Rate or service inquiry procedures.

3031.12 Treatment as a complaint.

Subpart B—[Reserved]

Authority: 39 U.S.C. 503; 3662.

Subpart A—Rate or Service Inquiry Forms and Procedures

§ 3031.10 Rate or service inquiry contents.

(a) A rate or service inquiry shall be in writing and should contain:

(1) The name, address, and telephone number of the inquiring party;

(2) Details regarding the Postal Service's action or inaction;

(3) A statement of facts supporting the inquiring party's allegations; and

(4) The specific relief being sought, if any.

(b) The Commission may waive any of the requirements listed in paragraph (a) of this section to serve the interests of justice.

§ 3031.11 Rate or service inquiry procedures.

(a) The Commission will forward rate or service inquiries to the Postal Service for investigation. The Postal Service will, within 45 days of receipt of such inquiry, advise the Commission in writing, with a copy to the inquiring party, of its resolution of the inquiry or its refusal or inability to do so.

(b) The Commission will monitor all rate or service inquiries to determine if Commission action under § 3031.12 is appropriate.

(c) Where there are clear indications from the Postal Service's report or from other communications between the parties that the inquiry has been resolved, the Commission may, in its discretion, consider such proceeding to be resolved, without response to the inquiring party.

§ 3031.12 Treatment as a complaint.

If the Commission receives a sufficient volume of rate or service inquiries on the same or similar issue such that there may be sufficient cause to warrant treatment as a complaint, it may appoint an investigator to review the matter under § 3030.21 of this chapter or appoint a public representative representing the interests of the general public to pursue the matter.

Subpart B—[Reserved]

[FR Doc. E8-20581 Filed 9-4-08; 8:45 am]

BILLING CODE 7710-FW-P