Federal Register

Friday,
April 10, 2009

Part III

Postal Regulatory Commission

39 CFR Parts 3001, 3030 and 3031

Postal Complaints and Rate and Service Inquiries; Final Rule

POSTAL REGULATORY COMMISSION

39 CFR Parts 3001, 3030 and 3031

[Docket No. RM2008–3; Order No. 195]

Postal Complaints and Rate and Service Inquiries

AGENCY: Postal Regulatory Commission

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule on procedures for certain postal complaints and rate and service inquiries. Their adoption is consistent with Commission obligations under a recent change in law.

DATES: Effective May 11, 2009.

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

SUPPLEMENTARY INFORMATION: *Regulatory History:* 73 FR 51888 (September 5, 2008).

I. Introduction and Background

This order completes 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 109–435, 120 Stat. 3218 (2006). These final rules implement 39 U.S.C. 3662 setting forth procedures governing the disposition of complaints filed with the Commission. The 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. These rules also set up a rate or service inquiry procedure for dealing with issues that do not appear to require the more formalized procedures applicable to complaints.

The Commission appreciates the commenters' thoughtful review of proposed parts 3030 and 3031 and their reasoned observations.[1] The comments have been helpful in sharpening the issues and suggesting alternative resolutions.

The Commission acknowledges that the commenters identify aspects of the proposed sections that would benefit from clarification or correction. Accordingly, the final rules differ from the proposed rules in ways designed to clarify and improve the rules in response to the comments received. The Commission, on its own accord, also makes some editorial and conforming changes to improve the clarity and readability of the rules or to conform them more closely to official publication requirements.

These rules represent the Commission's initial effort to establish a basic functional framework for addressing complaints and other similar written communications received by the Commission in accordance with its enhanced responsibilities under 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 or would benefit from additional detail, the Commission may begin proceedings to enhance these rules.

Below, the Commission discusses the proposed and final rules with respect to the complaint and rate or service inquiry procedures. Part II sets forth the procedural history of this docket. Part III presents a more thorough discussion of the issues raised by the parties in response to the Commission's notice of proposed rulemaking. Part IV provides a thorough section-by-section analysis of each final rule. The final rules themselves are set forth at the end of this order.

II. Procedural History

On August 21, 2008, the Commission issued a notice and order of proposed rulemaking to establish complaint rules in accordance with its new, enhanced responsibilities under the PAEA.[2] The Commission set the deadline for comments on October 6, 2008, and the deadline for reply comments on October 27, 2008. *Id.* On October 6, 2008, the Public Representative; Time Warner Inc. (Time Warner); David B. Popkin (Popkin); Pitney Bowes Inc. (Pitney Bowes); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. (collectively, Valpak); Newspaper Association of America (NAA); and Greeting Card Association (GCA) filed comments.[3] The Postal Service filed its comments on October 7, 2008[4] together with a motion for late acceptance of its comments.[5]

On October 27, 2008, GCA, Valpak, the Postal Service, Popkin, and Time Warner, filed reply comments.[6] Two groups of mailer organizations also filed joint reply comments on October 27, 2008: the Magazine Publishers of America, Inc., the Alliance of Nonprofit Mailers, and American Business Media (collectively, MPA, *et al.*) and the Association for Postal Commerce, Alliance of Nonprofit Mailers, Direct Marketing Association, and Magazine Publishers of America, Inc. (collectively, PostCom, *et al.*).[7]

III. Discussions of Parts 3030 and 3031

As discussed in more detail in Order No. 101, 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 of the U.S. Code. 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

[1] This order focuses primarily on comments suggesting the need for changes. The Commission incorporates by reference its discussion of the rationale for the Commission's structural design of these complaint and rate or service inquiry procedures as well as those issues that did not elicit comments published in PRC Order No. 101, August 21, 2008, located at 73 FR 51888 (September 5, 2008).

[2] PRC Order No. 101, Notice and Order of Proposed Rulemaking Establishing Rules for Complaints, August 21, 2008 (Order No. 101).

[3] Public Representative Comments on Proposed Rulemaking Establishing Rules for Complaints (Public Representative Comments); Initial Comments of Time Warner Inc. in Response to Order No. 101 (Time Warner Comments); Initial Comments of David B. Popkin (Popkin Comments); Comments of Pitney Bowes Inc. (Pitney Bowes Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments Regarding Proposed Rules Governing the Disposition of Complaints (Valpak Comments); Comments of the Newspaper Association of America on Notice and Order of Proposed Rulemaking Establishing Rules for Complaints (NAA Comments); Initial Comments of the Greeting Card Association (GCA Comments), all filed on October 6, 2008.

[4] Initial comments of the United States Postal Service, October 7, 2008.

[5] Motion for the Late Acceptance of the Initial Comments of the United States Postal Service, October 7, 2008 (Motion for Late Acceptance). The Postal Service's Motion for Late Acceptance is granted.

[6] Reply Comments of the Greeting Card Association (GCA Reply Comments); Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Reply Comments Regarding Proposed Rules Governing the Disposition of Complaints (Valpak Reply Comments); Reply Comments of the United States Postal Service (Postal Service Reply Comments); Reply Comments of David B. Popkin (Popkin Reply Comments); Reply Comments of Time Warner Inc. in Response to Order No. 101 (Time Warner Reply Comments); all filed on October 27, 2008.

[7] Reply Comments of Magazine Publishers of America, Inc., Alliance of Nonprofit Mailers, and American Business Media (MPA, *et al.* Comments); Reply Comments of Association for Postal Commerce, Alliance of Nonprofit Mailers, Direct Marketing Association and Magazine Publishers of America, Inc. (PostCom, *et al.* Comments), both filed on October 27, 2008.

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).

In Order No. 101, the Commission proposed to revise its existing complaint procedures and add procedures to deal with rate or service inquiries that are not filed as complaints to implement amended section 3662 and fulfill the intent of Congress as expressed in the text of the PAEA.

To carry out this Congressional intent, the Commission believes that it is appropriate to focus more of its limited resources on important issues that raise rate and service concerns 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's final rules adopt a two-tiered approach to deal efficiently and expeditiously with written communications directed to the Commission regarding the Postal Service. These communications fall into one of two categories: (1) Complaints, and (2) rate or service inquiries. Written communications that satisfy the form and manner requirements discussed below are treated as ''complaints'' under section 3662. Other written communications that do not meet the form and manner requirements that seek assistance with Postal Service-related problems would be treated as rate or service inquiries provided they include some minimal identifying information.

The remainder of this part addresses the parties' comments and the Commission's rationales for either changing the final rules from their proposed form or issuing the final rules as proposed. With respect to certain issues, the Commission believes that no changes from the proposed rules is necessary, but that the parties and general public will benefit from clarifying guidance from the Commission. These issues and guidance are also discussed below.

A. Two-Tier System

The Postal Service initially seemed to support the proposed rate or service inquiry procedures but in its reply comments, ''strongly recommends eliminating the provisions of the proposed rules establishing a role for the Commission in regulating the handling of ordinary rate and service inquiries.'' [8] Its reply comments argue against the rate or service inquiry provisions for the following reasons: (1) It believes that part 3031 will create an ''overly bureaucratic encumbrance'' that will interfere with the efficient operation of the Postal Service; (2) it will force the Postal Service to divert resources toward developing different procedures for handling inquiries from the Commission; (3) the Postal Service already has a variety of channels by which customers can submit their inquiries; (4) part 3031 will encourage customers to bypass the Postal Service's more direct avenues of resolving issues; and (5) it believes that the Commission does not have a statutory basis for issuing rules under part 3031. Postal Service Reply Comments at 1–8.

Valpak also asserts that there is no statutory basis for the Commission's rate or service inquiry rules since they are not complaints under section 3662. Valpak Comments at 16–20. Valpak contends that if rate or service inquiries are considered a second, lower tier of complaints under section 3662, then ''the proposed rules would be deficient in failing to provide full complaint treatment to the second type of complaints.'' *Id.* at 17. Valpak is also concerned about the situation where an interested person meets all the filing requirements of section 3030.10 but is ''denied'' complaint status because the complaint fails to meet the criteria of paragraph 3030.13(a). *Id.* at 18.

Popkin is concerned that the rate or service inquiry rules give the Postal Service the option to submit less responsive information in a longer period of time than the Postal Service's Postal Operations Manual requires. Popkin Comments at 3.

On reply, Time Warner notes that the Commission uses section 503 as its statutory basis for its authority to issue rules under part 3031. Time Warner Reply Comments at 2. It also contends that section 3662 does not require a hearing on the record under sections 556 and 557 of the Administrative Procedure Act. It believes that the Commission need only follow the requirements of informal adjudications under section 555. *Id.* at 6–8.

Pitney Bowes and the Public Representative generally support the Commission's proposed rate or service inquiry procedures believing they are sound and satisfy the accountability and transparency objectives of the PAEA through the Commission's monitoring role. Pitney Bowes Comments at 5–6; and Public Representative Comments at 1–2.

Commission analysis. In part, the rate or service inquiry procedures are designed to enhance the accountability and transparency of the Postal Service to the public it serves. The Postal Service should be accessible and the public should be able to see how the Postal Service handles issues that arise with customers. Part 3031 does not require the Postal Service to create an entirely new set of procedures for dealing with customer inquiries. The rules merely require the Postal Service to send a written response to an inquirer and send a copy of that response to the Commission. Popkin notes that the Postal Service's own Postal Operations Manual requires the Postal Service to respond to customer issues and that part 3031 requires a lesser degree of formality than the Postal Service's own internal operating procedures. *See* Postal Operations Manual sections 165–167. Thus, part 3031 should not be overly burdensome on the Postal Service or force the Postal Service to create entirely new procedures for dealing with inquiries from the Commission.

The Postal Service's concerns that part 3031 would encourage customers to bypass the Postal Service's current variety of direct avenues of communication are unfounded. The Commission's part 3031 rules are meant to be an additional method of contact for mailers. The Commission's proposed procedures contemplate a longer turn-around time for inquiries then the Postal Service's internal operating procedures. If anything, this would discourage customers from using the Commission's rules in part 3031 as a primary tool for dealing with issues with the Postal Service.

Valpak and the Postal Service's argument that the Commission does not have authority to issue the rate or service inquiry rules in part 3031 reflects a fundamental misunderstanding of the relationship of part 3031 to part 3030. As Time Warner notes, the Commission's authority for issuing the rules in part 3031 is section 503, not section 3662. As the Commission stated in Order No. 101:

> [T]he 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.

[8] *Compare* Postal Service Reply Comments at 1–8 *with* Postal Service Comments at 5.

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.

Order No. 101 at 10–11. This statement provides the Commission's rationale for determining that the rules in part 3031 allow the Commission to ''carry out their functions and obligations * * * as prescribed under this title [title 39 of the U.S. Code].'' 39 U.S.C. 503. With a limited exception discussed below, the Commission's rate or service inquiry procedures have no basis under 39 U.S.C. 3662.

The one potential circumstance where the Commission may use a portion of its rate or service inquiry procedures with respect to a complaint filed under section 3662 occurs when the Commission exercises its authority in section 3030.13. Section 3030.13 provides that if the Commission determines that there is a reasonable likelihood that the part 3031 procedures may result in resolution of the issues raised by a complaint, the Commission may apply the procedures of section 3031.11 provided that the complaint does not fall within one of the exceptions listed in paragraphs 3030.13(a)(1)–(4).[9] This furthers the Commission's goal of encouraging settlement. However, section 3030.13 also provides that if application of section 3031.11 procedures does not result in resolution of the issues raised by the complaint, it is sent back to the Commission to be resolved under part 3030. *See* paragraph 3030.13(c). Thus, all complaints that meet the filing requirements of section 3030.10 and other applicable criteria are given full consideration under part 3030.

B. Burden of Proof

NAA suggests that the Commission's complaint rules address who has the burden of proof after the Commission makes a determination that the complaint raises a material issue of fact or law and begins proceedings on the complaint. It believes that the burden of proof should be on the Postal Service. NAA provides the following four reasons in support of this contention. First, it believes that because the Postal Service is a government service operated by the Federal Government, it is appropriate to ask that a governmental service bear the burden of demonstrating that it acts in accordance with the law. NAA Comments at 5–9.

Second, NAA believes that because the structure of the PAEA's rate-setting system focuses primarily on compliance with the price cap at a class level, Commission review of proposed rate changes do not result in a finding by the Commission that a particular rate is ''lawful.'' Third, it believes that the statutory provisions regarding the annual compliance review support placing the burden on the Postal Service. Fourth, NAA contends that when the regulated entity controls all the data likely to be relevant to a complaint, it is appropriate to place the burden on that entity. For these reasons, NAA proposes three separate burden of proof standards depending on the subject matter of the complaint and whether the issue has been subject to an annual compliance determination. *Id.* at 8–9.

Valpak states that ''it may be possible that the Commission could fulfill its statutory obligation to address and resolve burden of proof issues by waiting until they arise in litigating specific complaints.'' However, it believes that it is ''preferable'' for the Commission to address the issue in this docket. Valpak Reply Comments at 3–5. It believes that the complainant should typically bear the burden of proof to show the existence of a material issue of fact or law, but once that showing is made, it argues that the Postal Service should bear the ultimate burden of proof that its rates and practices comply with applicable law and regulations since it possesses all the relevant information. *Id.* at 6–8.

The Postal Service believes that whether burden shifting in a manner that diverges from the ordinary adjudicatory process is appropriate may depend on the nature and type of complaint before the Commission. Therefore, noting that this is ''a complex issue,'' the Postal Service suggests that the final rules not assign a burden of proof upon any specific party. Postal Service Reply Comments at 13–14.

MPA, *et al.* argue that NAA's proposal is contrary to 5 U.S.C. 556(d).[10] MPA, et al. Reply Comments at 2. It cites *Nat'l Ass'n of Recycling Industries, Inc.* v. *ICC,* 627 F.2d 1341, 1344 (D.C. Cir. 1980) and *Council of Forest Industries of British Columbia* v. *ICC,* 570 F.2d 1056 (D.C. Cir. 1978) in support of its argument that the burden of proof should be on the complainant. Nonetheless, MPA, *et al.* emphasizes that the placement of the burden of proof on the complainant is not without limit. Burden shifting may be appropriate if, for example, the Postal Service fails to respond to legitimate discovery requests.

Time Warner believes that NAA's rationale for concluding that the Postal Service should bear the burden of proof in complaint proceedings is ''ill conceived.'' Time Warner Reply Comments at 4–6. First, Time Warner contends that NAA's notion that it is appropriate to shift the burden to the Postal Service because it is a government service is contrary to the ordinary presumption of regularity afforded to agency actions. Second, Time Warner argues that NAA's cross-reference to the annual compliance review statutory provisions is immaterial. If anything, the absence of an express provision on the burden of proof in the complaint provision similar to the annual compliance determination provisions in the statute implies that the burden of proof would not lie with the Postal Service. Third, Time Warner takes issue with NAA's contention that the rebuttable presumption under paragraph 3653(e) implies that Congress intended for the Postal Service to have the burden in cases dealing with those matters. It argues that a rebuttable presumption only relieves the Postal Service of the burden of producing some evidence of legality at the outset of the proceeding by shifting the initial burden of production of evidence of illegality to the complaining party.

Commission analysis. Both NAA and Valpak correctly note that the Commission's current rules do not address which party has the burden of proof. Valpak Reply Comments at 2–3; and NAA Comments at 5–6, and n.6 (noting that ''Commission decisions on complaints under the Postal Reorganization Act typically recited the parties' contentions and then presented the Commission's discussion and decision. Burdens of proof were typically not mentioned''.) This demonstrates that Commission

[9] Popkin comments that this section is not clear, but does not state what exactly is not clear about it or make a suggestion on how to clarify it. Without such guidance, the Commission does not believe altering this provision at this time will improve the rule.

[10] Several parties argue that the Commission's rules may not be in compliance with the requirements of 5 U.S.C. 556. As Time Warner points out, 39 U.S.C. 3662 does not require the Commission to conduct its complaint proceedings on the record after an opportunity for a hearing as was required by former section 3624. *See Pension Benefit Guaranty Corp.* v. *LTV,* 496 U.S. 633, 655–56 (1990). Time Warner Reply Comments at 6–9. Nonetheless, the Commission's complaint rule procedures are in compliance with sections 556 and 557 of title 5.

complaint rules can function effectively without promulgating rules of general applicability addressing burdens of proof.

Additionally, while there may be certain instances where burden shifting is appropriate, with so few complaints yet filed under the PAEA, the Commission is not confident that it could effectively forecast the universe of possible future complaint scenarios where it would be best to place the burden of proof on the Postal Service instead of the complainant. Addressing the issue on a case-by-case basis, on the other hand, will provide the Commission with the flexibility to apply appropriate legal standards in varying factual circumstances.[11] The Postal Service suggests this resolution, and Valpak concedes that the Commission could fulfill its statutory mandate in this manner. Postal Service Reply Comments at 13–14; and Valpak Reply Comments at 3.

Moreover, there is question as to whether the Commission could even issue a final rule addressing burden of proof at this time without another round of notice and comment. Notice and comment rulemaking require an agency's proposed rule and its final rule to differ only insofar as the latter is a ''logical outgrowth'' of the former. *See Environmental Integrity Project* v. *EPA,* 425 F.3d 992 (DC Cir. 2005); and *Shell Oil Co.* v. *EPA,* 950 F.2d 741, 750–51 (DC Cir. 1991). It may be difficult to support a claim that burden of proof regulations would be a ''logical outgrowth'' of the proposed rules which did not address or hint at burdens of proof.

Accordingly, for these reasons, the Commission finds that it would be best to gain experience with the effectiveness of the complaint rules prior to proposing any rules on allocating the burden of proof between the parties. If the Commission finds, through experience, that such rules may be helpful in fulfilling its statutory responsibilities, it may propose rules on burdens of proof at that time or upon petition of an interested person.

C. Meet or Confer Requirement

Paragraph 3030.10(a)(9) requires the complainant to certify that it has attempted to ''meet or confer'' with the Postal Service in an effort to resolve or settle its issues prior to filing a complaint. Several parties seek clarification from the Commission on the extent and effort necessary to comply with this requirement.[12] These commenters are concerned that the certification requirement may be interpreted ''as to allow litigation over whether such a meeting was attempted, or whether, if attempted, the meeting was sufficiently substantive.'' *See, e.g.,* NAA Comments at 13. Several commenters suggest that the Postal Service be directed to designate one or more appropriate individuals with whom the complainant should attempt to make contact in order to satisfy this requirement. *Id.* The Postal Service agrees with this proposal and suggests that the designee be its general counsel. Postal Service Reply Comments at 10–11, 17.

Time Warner suggests that the Commission carve out an exception to the ''meet or confer'' requirement. In particular, Time Warner argues that the Commission should waive the requirement if doing so would be futile or unduly burdensome. Time Warner Comments at 7. The Postal Service does not support this exception. It believes that all parties will act in good faith in an attempt to settle matters.

Commission analysis. The majority of the parties' comments stem from the Commission's admittedly limited discussion in Order No. 101 of the intended scope of the ''meet or confer'' requirement. Accordingly, the Commission provides a more complete explanation in this order as to the level of ''meeting or conferring'' that the Commission anticipates will satisfy the requirements of paragraph 3030.10(a)(9). This should alleviate the vast majority of the commenters' concerns.

The goal of the meet or confer provision is to ensure that complainants attempt to resolve their issues with the Postal Service prior to bringing a more formal proceeding to the Commission for its consideration. Under the Commission's prior complaint procedures, in some cases, the first time that the appropriate officials at the Postal Service were notified of the existence of the issues leading to the complaint was upon the complaint's filing. Some of these issues could have been resolved without filing a complaint with the Commission if the appropriate officials at the Postal Service had been made aware of the issues prior to the filing.

The Commission's meet or confer requirement is simply an attempt to make sure that the appropriate individuals at the Postal Service—those with authority to resolve the issues raised by complainant—are aware of the issues and are given a reasonable opportunity to resolve them prior to the complainant's filing with the Commission. An e-mail, letter, or similar attempt at communication with appropriate Postal Service personnel explaining the nature of the complainant's concerns should ordinarily initiate the meet or confer requirement. After the complainant has initiated communication, the Postal Service has a reasonable time to resolve the issue, or notify the complainant that a resolution in a reasonable period of time is likely. What constitutes a ''reasonable period of time'' will vary depending on the circumstances and complexity of the issues involved. If the Postal Service believes settlement to be unlikely, it should immediately notify the complainant of this fact.

In an effort to identify a designated appropriate individual within the Postal Service who has the authority to settle issues raised by a complaint, commenters suggest, and the Postal Service agrees, that the Postal Service's general counsel be designated as the appropriate official to whom complainants should direct their meet or confer communications. The Commission finds this reasonable and therefore changes its final rule from the proposed rule in order to state that the complainant's meet or confer attempts be directed to the Postal Service's general counsel.

Time Warner's proposal, while superficially appealing, could result in unnecessary litigation over the issue of whether a meet or confer attempt would be futile. The meet or confer requirement is not burdensome. It is a procedural mechanism which could lead to resolution of issues prior to a complaint being filed. For these reasons, the Commission does not create an

[11] Similarly, both the Postal Service and Time Warner argue that the Commission has discretion to refrain from beginning proceedings on a complaint even if the complaint raises a material issue of fact or law. Postal Service Reply Comments at 16; Time Warner Reply Comments at 28. On the other hand, GCA, NAA, Popkin, and Valpak appear to argue that the Commission must hear all complaints that raise a material issue. GCA Comments at 2; NAA Comments at 3; Popkin Comments at 2; and Valpak Comments at 18–19. At this time, it is unnecessary for the Commission to determine whether it has discretion in a particular case to refrain from hearing a complaint that meets the requirements of part 3030 subpart B. Here, the Commission is promulgating procedural rules for parties to follow in submitting a complaint for the Commission's consideration. It is not attempting to define the complete scope of its complaint jurisdiction. The Commission will likely need to make determinations on the scope of its complaint authority when circumstances arise where such a determination becomes an issue with respect to the facts and circumstances of a particular complaint. The Commission believes that it is more appropriate to make such decisions with an underlying factual predicate upon which to base such decisions.

[12] Public Representative Comments at 2–3; Popkin Comments at 2; and NAA Comments at 12–13.

exception to the meet or confer requirement of paragraph 3030.10(a)(9).

D. Scope of Investigator Authority

Several commenters ask the Commission to clarify the role, responsibilities, activities, and powers of an investigator appointed under section 3030.21. *See, e.g.,* PostCom, et al. Reply Comments at 2–9; and NAA Comments at 11–12. It appears that some parties are concerned that an investigator could supplant the complainant's control of the development and presentation of its case. *See, e.g., id.*

The Public Representative seeks clarification on whether the investigator can call conferences, accept written documents or pleadings, take testimony, issue subpoenas, or conduct on-site visits. Public Representative Comments at 4. NAA seeks clarification on whether an investigator would be able to invoke the Commission's subpoena power and whether an investigator would be recused from the Commission's decision-making responsibilities. NAA Comments at 12.

The Postal Service believes that if the Commission sets forth a framework and guidelines for how investigators are expected to be deployed, it would help ensure the efficiency and effectiveness of the Commission's investigation, minimize disruption of postal operations, and protect confidentiality of any relevant law enforcement activity. Postal Service Comments at 5–7.

Valpak sees the investigator's role as completed once the Commission makes a determination as to whether a material issue of fact or law exists. Valpak Reply Comments at 10. Similarly, PostCom, et al. seek clarification as to when in the procedural process an investigator may be introduced. PostCom, et al. Reply Comments at 2. It believes that the examples provided in the preamble of Order No. 101 create confusion on this temporal issue, and it argues that the statute does not contemplate any role for an investigator before the Commission makes an initial determination of materiality. *Id.* at 3–4.

Commission analysis. The majority of the parties' comments stem from the Commission's limited discussion in Order No. 101 of the role, responsibilities and powers of an investigator appointed under section 3030.21. Accordingly, the Commission believes that the parties and the general public will benefit from a more detailed explanation of the functions that the Commission envisions a typical investigator undertaking. This should alleviate the vast majority of the commenters' concerns.

The investigator will not play a dominant role in complaint proceedings. The Commission anticipates that its use of an investigator will be an unusual occurrence. It envisions the investigator helping the Commission as a ''fact gatherer''—not fact finder [13]—in extraordinary circumstances where more conventional methods would delay or provide incomplete information for the Commission to base its decision.

An investigator will produce a public, written report on the facts and circumstances of the particular case or on any specific task that the Commission assigns. When this report is complete, parties will be able to view the report, including the underlying data substantiating the report, assuming that appropriate levels of confidentiality are maintained, and provide comments.[14]

The commenters seek clarification as to the investigator's authority. Similarly, several parties seek clarification on the timing of an investigator's appointment. The commenters appear to be concerned that they will be unaware of the size and scope of the investigation until the investigator releases a final report at an undetermined time during the proceeding. The Commission does not envision using the investigator in this way as it does not foster the PAEA's goals of enhanced transparency and accountability.

The Commission believes it is important to clarify some of the potential methods it may use for ensuring that the investigators will not be conducting their investigations in secret. The role of investigator is new and the Commission has not yet gained experience as to the benefits and drawbacks of its use. Nonetheless, the Commission believes the following discussion on these topics will be beneficial.

The Commission anticipates that the powers of an investigator will vary depending on the facts and circumstances of the particular case to which the investigator is assigned, and is therefore not appropriate for a rule of general applicability. For the same reason, the Commission does not believe that it can specify when a typical investigation will begin or end.[15]

The Commission order appointing an investigator in a particular case will detail the size and scope of the investigator's responsibilities and authorities. The Commission anticipates that all interested parties will cooperate fully with the investigator by providing all information needed to complete the assigned investigation.[16] The parties will be allowed to communicate with the investigator; there will not be any *ex parte* prohibition. How to best conduct the investigation meeting the goals and using the tools that the Commission set out in its appointing order will be at the discretion of the particular investigator.

E. Appointment of a Public Representative

Valpak argues that the PAEA mandates that the Commission have one permanent officer of the Commission to represent the interests of the general public in complaint cases. Valpak Comments at 7–15. Valpak contends that the current Commission practice of appointing different public representatives in various cases reduces the likelihood that a public representative will initiate a

[13] Several parties raise a concern that an investigator will act as a decision-maker or ''fact finder.'' *See, e.g.,* PostCom, et al. Reply Comments at 6–9. The investigator will not be involved in the Commission's decision-making responsibilities with respect to that particular complaint. An investigator is neutral, in the sense that the investigator is not seeking to advocate on behalf of a particular party. One of the major differences between the role of the Public Representative appointed under section 505 and the investigator is that the Public Representative advocates on behalf of the interests of the general public, whereas the investigator has no client. The investigator seeks to help the Commission base its decision on all relevant facts. In the ordinary case, investigators will develop information from their own observations, interviews, and site visits, instead of directly from the parties. Investigators will not serve as mediators or arbitrators, though it bears mention that the Commission may appoint a different person to act as a mediator in complaint cases if it believes that such an alternative dispute resolution process may aid in resolving the complaint. *See* section 3030.40.

[14] The appropriate level of confidentiality that the Commission affords to certain information is the subject of another rulemaking docket. *See* Docket No. RM2008–1.

[15] Valpak makes an argument based on the placement of the rule within the regulatory scheme that the investigator's appointment only lasts until the Commission makes a finding on whether the complaint raises a material issue of fact or law. Valpak Reply Comments at 10–11. Section 3030.21 is not limited in that manner. The regulation is contained in subpart C of part 3030 which deals with the collection of supplemental information throughout the proceeding—prior to and after a Commission finding that a material issue of fact or law exists. *See also* Order No. 101 (using the following as an example of when an investigator might be appropriate: ''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)''.

[16] Several comments seek clarification as to whether an investigator will have the authority to issue subpoenas on behalf of the Commission. *See, e.g.,* NAA Comments at 11–12. An investigator is not qualified to issue subpoenas. *See* 39 U.S.C. 504(f)(2).

complaint,[17] and is inconsistent with the intent of the PAEA. Popkin requests that the Commission establish an organization within the Commission to provide an ongoing evaluation of the Postal Service's activities. Popkin Comments at 1–2.

NAA and Time Warner argue that nothing in section 505 or in the PAEA generally requires the Commission to maintain a single, fixed individual to advocate on behalf of the interests of the general public. NAA Reply Comments at 4–6; and Time Warner Reply Comments at 9–26. GCA believes that given the relatively specific focus of this docket, it would be premature to argue in general terms the merits of a continuing public representation office within the Commission. GCA Reply Comments at 1–2.

Commission analysis. The Commission's internal organizational structure is outside the scope of this proceeding. Indeed, under 5 U.S.C. 553(b)(3)(A), Congress recognized that agencies should be given wide latitude in their development of agency management and administration. Section 553(b)(3)(A) provides that rules of ''agency organization'' are exempt from the requirements of notice and comment ruling. *See American Hosp. Ass'n* v. *Bowen,* 834 F.2d 1037, 1047 (DC Cir. 1987) (The distinctive purpose of [5 U.S.C.] 553's third exemption, for ''rules of agency organization, procedure or practice,'' is to ensure ''that agencies retain latitude in organizing their internal operations.'') Courts have also recognized that internal agency organization, management, and the ordering of its priorities are better left to the discretion of the agency. *Heckler* v. *Chaney,* 470 U.S. 821, 831–32 (1985) (''The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities.'')

The Commission agrees with NAA and Time Warner that nothing in the PAEA requires the Commission to designate a single individual to serve as the officer of the Commission to represent the interests of the general public. The issue of how best to allocate Commission resources to effectuate the intent of the PAEA is of continuing concern, and the Commission appreciates suggestions for how it can fulfill its responsibilities under the law more efficiently or effectively. The Commission regularly evaluates its operations, and therefore Valpak's and Popkin's views will be considered in that context.

F. An Annual Compliance Determination's Impact on Complaint Proceedings

NAA is concerned that a Commission finding of compliance or noncompliance in an annual compliance determination could moot a pending complaint on the same issue. It argues that if an annual compliance determination renders a complaint moot, in practice, this will relegate complaints to a short period between the end of March and early June so parties can ensure that the Commission makes a final determination on the complaint prior to the next annual compliance determination. NAA Comments at 9–11. NAA urges the Commission to address this issue in a manner that fairly balances the interests of the complainant and the Postal Service and allows the Commission to manage its resources efficiently. It suggests (1) modifying the procedural schedule of the complaint to allow both proceedings to be resolved at the same time, or (2) reserving judgment on the subject matter of the pending complaint in the annual compliance determination. *Id.*

The Postal Service believes that such modifications are unnecessary. It contends that the annual compliance determination reviews matters ''on a macro level,'' whereas a complaint would presumably seek relief for a specific problem. Accordingly, the Postal Service reaches the conclusion that it is unlikely that a finding of compliance as part of an annual compliance determination would completely eviscerate a complaint. Postal Service Reply Comments at 15.

Commission analysis. Some complaints probably will be seeking particular relief for a specific problem on a more ''micro level,'' as the Postal Service suggests. This does not solve the problem identified by NAA for complaints dealing with issues on the same ''macro level'' as those typically reviewed in an annual compliance determination. The Commission agrees with NAA that it would not give full effect to the statutory scheme if complaints could be rendered moot by the issuance of an annual compliance determination.

Congress contemplated this very issue and addressed it directly in the statute. Paragraph 3653(e) states:

> A timely written determination * * * [of compliance] shall, for purposes of any proceeding under section 3662, create a rebuttable presumption of compliance by the Postal Service [of those issues] during the year to which such determination relates.

39 U.S.C. 3653(e). Had Congress chosen to have an annual compliance determination render a complaint moot, it would have made paragraph 3653(e) into an irrebuttable presumption. Instead, Congress chose to provide the Postal Service with a rebuttable presumption with respect to a complaint proceeding.

Congress recognized that annual compliance determination proceedings are completed in a very short, fixed timeframe and are not subject to the same opportunities for contesting evidence as exist in an adversarial proceeding. These rules contemplate full complaint proceedings to provide a thorough, in-depth review of any particular subject matter in the context of a complaint. Commission findings in an annual compliance determination are relevant to a pending complaint proceeding, but are not necessarily dispositive of those issues.

G. The Requirements of Section 3030.10

Several comments raise issues with the requirements of section 3030.10, which sets forth the content requirements for the filing of a complaint. Their comments are discussed below.

1. Overall Complaint Content Requirements

Popkin and Valpak argue that the form and manner requirements of section 3030.10 are too burdensome. Valpak Comments at 5–6; and Popkin Comments at 2. More specifically, Valpak has issues with the following requirements: (1) Paragraph (a)(5), which requires a statement as to the nature of the evidentiary support that the complainant expects to obtain during discovery, and (2) paragraph (a)(6), which requires facts premised on information and belief to explain why those facts could not be ascertained by the complainant.

The Postal Service supports these enhanced requirements because they provide specificity as to the legal and factual basis for the complaint and allow the Postal Service to respond more completely in the limited timeframe for answers. It also believes that such information will provide the Postal Service with a better understanding of the complaint, determine if the information expected to be obtained during discovery actually exists, identify the appropriate employees to provide such information, and encourage the informal resolution of complaints. Postal Service Reply Comments at 8–10.

[17] Valpak actually contends, with limited explanation, that public representatives are precluded from ever filing a complaint.

Commission analysis. Paragraph 3662(b) requires the Commission to make a determination as to whether the complaint raises a material issue of fact or law within 90 days after the filing of such complaint. This potentially requires the Commission to consider a significant amount of information in an abbreviated timeframe in order to make a finding whether a particular complaint raises a material issue of fact or law. In order for the Commission to fulfill these statutory responsibilities in a timely fashion, the Commission must have all the potentially relevant information when the parties file their initial pleadings. If the Commission were to require less information at the outset from the complainant, the result would be less responsive information from the Postal Service in its answer. This could cause the Commission to have to routinely solicit additional information from the parties in order to determine if the complaint raises material issues of fact or law. These required supplemental submissions would delay the Commission's determination under paragraph 3662(b)(1) and possibly result in a dismissal of a complaint under paragraph 3662(b)(2). The Commission believes it is in the best interest of all stakeholders to have it consider complaints under paragraph 3662(b)(1), rather than having them dismissed under paragraph 3662(b)(2). The best way for the Commission to accomplish this goal is to have all the information necessary to make such determinations as early in the process as possible. This is what the requirements of paragraph 3030.10(a) are designed to accomplish.

Paragraphs (a)(5) and (a)(6) of section 3030.10 are designed to elicit information to ensure that the complainant has completed an appropriate level of due diligence prior to filing the complaint. The Commission clarifies that paragraph (a)(5) merely requires the complainant to state to the extent possible the nature of the evidentiary support it expects to obtain during discovery. This allows the Commission to better understand the nature of the complainant's case in order to make a determination under paragraph 3662(b)(1) as to whether a material issue of fact or law exists. The Commission recognizes that frequently such information will be in the control of the Postal Service. Nonetheless, the complainant must have some general understanding of how it intends to gather evidence in support of its case prior to filing.

Similarly, paragraph (a)(6) merely requires the complainant to state why facts premised on information and belief are alleged on that basis as opposed to actually being ascertained by the complainant. This ensures that the complainant's case is based on more then mere speculation. These provisions are not burdensome.

2. Issues Pending in Other Forums

Paragraph (a)(7) of section 3030.10 requires the complainant to alert the Commission as to whether the same or similar issues raised in the complaint are pending in another proceeding. Popkin takes issue with this provision arguing that the Commission should not be a ''court of last resort.'' Popkin Comments at 2. Popkin's concern that the Commission will become a ''court of last resort'' is unfounded. The Commission is not requiring parties to attempt to resolve their disputes in other adjudicatory forums prior to bringing a complaint to the Commission. Paragraph 3030.10(a)(7) will make the Commission aware of other forums that have addressed or may be dealing with the same dispute. This information will help the Commission avoid duplication and potential inconsistency between adjudicatory bodies. Further, having multiple governmental entities resolving the same dispute at the same time is a waste of governmental resources.

3. Alternative Dispute Resolution

Popkin asks for clarification as to the meaning of the term ''alternative dispute resolution'' (ADR) in paragraph 3030.10(a)(9). Presumably, Popkin finds the provision confusing, unclear, or misplaced. Popkin Comments at 2.

Commission analysis. This provision explores whether the issues being raised in the complaint may be resolved through settlement, negotiation, mediation, arbitration or other dispute resolution procedures. The Commission believes that in certain circumstances ADR imposes fewer costs than litigation, provides parties with more confidentiality when they believe it is appropriate, provides greater flexibility in remedies, and faster resolution. The parties may find these alternatives desirable, and the Commission wants to encourage these alternative procedures when appropriate.

Nonetheless, the Commission agrees with Popkin that the wording of this provision could be unclear and may be more appropriately located as part of the Commission's settlement rule, section 3030.40. Accordingly, the Commission will move the alternative dispute resolution provision from paragraph 3030.10(a)(9) to section 3030.40, where the Commission discusses the possible informal resolution procedures it may undertake in the context of a complaint proceeding.

4. Pre-Complaint Written Correspondence

The Postal Service suggests that Commission section 3030.10 require a complainant to provide copies of all correspondence or written communications between the complainant and the Postal Service. Postal Service Comments at 1–3. The Postal Service is concerned that without this information, it will have to spend a significant portion of time attempting to locate the appropriate personnel within the Postal Service that the complainant attempts to contact with respect to his or her issue. Popkin points out that since paragraph 3030.10(a)(9) requires the complainant to meet or confer with the Postal Service prior to filing the complaint, it will be aware of the facts and circumstances surrounding the complaint prior to filing. Popkin Reply Comments at 1.

Commission analysis. In the current complaint rules, there is no requirement that the complainant and Postal Service meet or confer prior to a complaint filing. The new rules include the requirement that the complainant put the Postal Service on notice that a complaint may be forthcoming. Dialogue at the meet or confer stage should provide the Postal Service with enough detail to identify Postal Service employees who have been dealing with the complainant.

These rules also provide the Postal Service with a much greater level of detail as to the facts and circumstances surrounding the complaint then the current rules provide. This significant additional detail should ensure that the Postal Service does not have to use ''valuable time and postal headquarters resources * * * seeking local internal sources of information that either verify or refute allegations in a service complaint or inquiry.'' Postal Service Comments at 2.

The Commission has concerns that requiring the complainant to publicly produce all copies of correspondence or written communications with the Postal Service on the topic of the complaint may have a chilling effect on the efforts of the complainant to attempt to settle the matter. *See, e.g.*, Federal Rule of Evidence 408. Additionally, complainants are likely to provide this information in support of the requirement in paragraph 3030.10(a)(9) that they explain why they believe settlement unlikely.

H. Answer Contents and Timing

Several comments raise issues with the requirements of rules relating to the Postal Service's filing of its answer and the timeframe allowed for filing such answer. These comments are discussed below.

1. Postal Service Certification of Meet or Confer

The Public Representative notes that paragraph 3030.14(a)(6) requires the Postal Service to certify, in its answer, that it attempted to meet or confer with the complainant in an attempt to resolve the matter ''prior to the filing.'' Proposed rule 3030.14(a)(6). The Public Representative believes that the language of the proposed rule is unclear as to whether the meet or confer attempt must be made by the Postal Service (1) prior to the complaint filing, or (2) prior to the filing of the answer. Public Representative Comments at 3–4. Valpak makes a similar point. Valpak Comments at 7. The Public Representative believes that the better approach is to require the Postal Service to certify an attempt to meet or confer after the complaint is filed since that is when the complaint is committed to writing and all the facts and circumstances are set out in detail.

Commission analysis. The Commission appreciates the parties' identification of a potential ambiguity in its proposed rules. The Commission believes that the Postal Service should attempt to meet or confer with the complainant in an attempt to resolve the issues raised in the complaint, but is not seeking to add additional settlement attempt requirements that may be fruitless. The Commission wants to ensure that a good faith attempt at settlement was undertaken by both parties. Thus, if the Postal Service does not believe that the complainant initiated a good faith settlement attempt prior to the filing of its complaint, the Postal Service should strive to undertake a good faith settlement attempt with the complainant prior to filing its answer. If the Postal Service believes that the complainant did, in good faith, attempt to settle the issues raised in the complaint, the Postal Service need not make another attempt. Additionally, the Postal Service only has a limited amount of time to respond to the complaint. Requiring additional meet or confer attempts may compromise the Postal Service's ability to effectively respond to the complaint litigation. A simple certification that the complainant and the Postal Service undertook good faith settlement negotiations and those attempts did not result in settlement will suffice. Thus, to clarify this conclusion in the final rule, the Commission accepts Valpak's suggestion and will add the language ''of its answer'' after the words ''prior to the filing'' in paragraph 3030.14(a)(6). To further clarify, the Commission also alters the language of that rule from ''attempted to meet or confer'' to ''met or conferred.''

Additionally, for the same reasons discussed in part III.G.3 of this order, the Commission alters paragraph 3030.14(a)(6) in the same manner as it altered paragraph 3030.10(a)(9).

2. Deemed Admissions

Valpak notes that the Commission's current complaint rules state that ''[e]ach fact alleged in a complaint not thus specifically answered shall be deemed to have been admitted.'' Valpak suggests that the Commission carry this provision over to its new complaint rules. Valpak Comments at 6.

Commission analysis. The Commission agrees with Valpak. This provision ensures that the Postal Service responds to every allegation of the complaint and will allow the Commission to have a better record for decision. Accordingly, the Commission will add Valpak's requested provision to paragraph 3030.14(a)(3).

3. Timeframe for Responsive Pleadings

The Postal Service notes that section 3030.12 provides the Postal Service with 20 days to file its answer. It contends that this time period is too short and that the Commission did not provide a rationale for choosing a 20-day deadline. It believes that it would be difficult for the Postal Service to meet the requirements of section 3030.14 in this short timeframe. Postal Service Comments at 3–4.

Commission analysis. In Order No. 101, the Commission provided its rationale for the timeframes in proposed rule 3030.14. *See* Order No. 101 at 14. There, it noted that the timeframes in the proposed rule for answers parallel those provided to civil litigants under the Federal Rules of Civil Procedure. *See* Federal Rule of Civil Procedure 12. As a result of paragraph 3030.10(a)(9), the Postal Service will have notice that a complaint may be filed. Also, if the Postal Service files a motion to dismiss the complaint or similar motion, the rules provide the Postal Service with additional time to file its answer. While 20 days may be shorter than the current timeframe, private parties in civil litigation routinely meet such a deadline.

The Commission only has 90 days to make its determination as to whether a complaint raises a material issue of fact or law. This requirement supports a limited time for the Postal Service's answer. In certain circumstances, the Commission may have to request supplemental information from the parties pursuant to section 3030.20 prior to making a decision under section 3030.30. If the Commission provides the Postal Service with more time than proposed, the Commission may not be able to fulfill its duties within the statutorily mandated timeframe of paragraph 3662(b)(1). Section 3030.11 provides the Postal Service with immediate service of the complaint via e-mail. This should allow the Postal Service to begin working on its answer and litigation strategy quickly.

I. Service of Process

Valpak and the Popkin comment on proposed rule 3030.11 which requires service of the complaint on the Postal Service via e-mail. Valpak suggests that hand delivery or U.S. Mail should also be sufficient service. Valpak Comments at 5. Popkin believes that posting the complaint on the Commission's Web site should be considered adequate service. Popkin Comments at 2.

Commission analysis. The Commission wants to ensure that the appropriate individuals at the Postal Service receives the complaint as contemporaneously as possible with the filing. Hand delivery may not be delivered to appropriate Postal Service personnel as rapidly as e-mail. It could be received by a receptionist or be left by the person who signed for the delivery in the mailroom. Similarly, U.S. Mail sent to Federal Government offices in the District of Columbia is subject to unpredictable, and occasionally extended delays a result of security screening procedures. With a 20-day deadline for the Postal Service's answer after the complaint is filed, the Commission wanted to ensure that the date the Postal Service receives service coincidences with the date the complaint is deemed filed. This also helps ensure the Commission can make its required findings within the 90-day statutory deadline. The provision requiring e-mail service of the complaint on the Postal Service requires minimal effort. It is not a burdensome requirement.

Nonetheless, to ensure that parties that do not have access to e-mail are not barred from filing complaints, the Commission alters its proposed rule to allow waivers of e-mail service in accordance with its paper filing requirements under paragraph 3001.9(a).

J. Availability of Rate or Service Inquiries on the Commission's Web Site

Several commenters suggest that rate or service inquiries directed to the Commission be available on the Commission's Web site. Popkin Comments at 3; and Public Representative Comments at 7. The Public Representative believes that if the general public has access to issues previously addressed by inquiries, together with the Postal Service's response to such inquiries, there could be a greater understanding of the extent of the questions and problems experienced by other mailers as well as a knowledge of the Postal Service responses and the potential for resolution of problems. The Public Representative also notes that the number of inquiries may be significantly reduced if the public understands the Postal Service's policies and the reasons for the policies through publicly available application of those policies to particular rate or service inquiries.

Commission analysis. The Commission finds this proposal to have merit. It will enhance transparency and accountability in furtherance of the goals and policies of the PAEA. However, there are also countervailing privacy concerns that need to be accommodated. Prior to placing the rate and service inquiries on the Commission's Web site, the Commission will have to ensure that its methods are in compliance with the Privacy Act, 5 U.S.C. 552a, and other applicable privacy related statutes. This suggestion requires no textual change from the Commission's proposed rules.

K. Reasonable Likelihood Standard

The Postal Service argues that proposed rule 3030.13(a)(3) contains a provision where the exception is ''so vague that it swallows the rule.'' Postal Service Comments at 4. Proposed rule 3030.13(a)(3) provides that a complaint will not be sent to the Postal Service for an attempt at informal resolution if it ''[r]epresents a pattern, practice, or systematic issue that affects a significant number of mail users (or is *reasonably likely* to be the beginning of such a pattern).'' Proposed rule 3030.13(a)(3) (emphasis added). The Postal Service believes that the ''reasonably likely'' standard ''lacks criteria that give any confidence that it could be applied other than arbitrarily.'' Postal Service Comments at 5. It suggests that the Commission should either provide criteria that much more clearly define the basis for determining that something is reasonably likely to be the beginning of a pattern or delete this provision.

Commission analysis. The Federal courts routinely apply a ''reasonable likelihood'' standard in a wide variety of circumstances.[18] Thus, the Commission interprets the Postal Service's concern to be with the proposed rules' use of the term ''beginning.'' The Commission understands that it may not be clear when something is the beginning, as opposed to the middle or end, of a pattern. The Commission's goal for this provision is to identify occurrences that may indicate that a pattern is developing. If the complaint, together with other information such as service performance data, indicates that a pattern is evolving, it may be appropriate for the Commission to treat that filing as a complaint. In those situations, the Commission would deal with issues promptly before a substantial number of mail users are harmed.

Therefore, to clarify the intent of this provision, the Commission will change the wording of this standard to ''or is reasonably likely to be evidence that such a pattern has begun.'' This clarifying change should satisfy the Postal Service's concern that the Commission not apply its standards of review in an arbitrary manner.[19]

L. Satisfaction Provision

The Postal Service suggests that the Commission clarify how it intends to close complaint dockets under paragraph 3030.41(a) that have been resolved informally after the Commission has made a finding under paragraph 3030.30(a)(1) that a complaint raises a material issue of fact or law. Postal Service Comments at 7–8. The Postal Service notes that Order No. 101's section-by-section analysis states that after the Commission makes a finding that a complaint raises a material issue of fact or law, the Commission would like the opportunity 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. *Id*. The Postal Service argues that the proposed rule is unclear and provides no guidance on how the Commission will evaluate whether to allow the complaint to be dismissed at that stage.

Commission analysis. In the circumstances where the Commission makes a finding under paragraph 3030.30(a)(1) that the complaint raises a material issue of fact or law and begins proceedings on the complaint, the issues raised in the complaint typically impact a significant segment of the mailing community. While a settlement agreement between the Postal Service and complainant may also resolve the issues of the other members of the mailing community affected by the Postal Service's action, it is possible for the informal resolution reached by the parties to only resolve the issue with respect to that individual complaining party. If this occurs, then the other affected individuals remain aggrieved parties. If the Postal Service and complainant's settlement are limited in scope to only solving the issue with respect to the complainant, it may be in the interest of national postal policy to continue the complaint until a solution is reached that resolves the issues for all affected mailers.

Accordingly, in light of the Postal Service's suggestion and in line with the section-by-section analysis of this rule in Order No. 101, the Commission will clarify the standard by which it will determine whether to allow a complaint to be dismissed under section 3030.41. In line with its section-by-section analysis in Order No. 101 with respect to the proposed rule, it will insert a paragraph (c) into the final rule that states: ''In determining whether to allow the complaint to be dismissed or amended under this rule, the Commission will take into consideration whether the issues raised by the complaint may continue to impact a significant segment of the mailing community.''

M. Availability of Depositions

NAA points out that the Commission's rule authorizing depositions is not contained in sections 3001.25 through 3001.27 and thus appears to be available under section 3030.1 prior to section 3030.30's finding

[18] *See, e.g., U.S.* v. *Gomez*, 431 F.3d 818, 824 (DC Cir. 2005) (reasonably likelihood standard applied in sentencing of criminals); *United States* v. *Holmquist*, 36 F.3d 154, 168 (1st Cir. 1994) (''the standard for authentication, and hence for admissibility, is one of reasonable likelihood''); *SEC* v. *Int'l Loan Network, Inc.*, 770 F.Supp. 678, 688 (D.D.C. 1991) (reasonable likelihood standard applied to preliminary injunction application by SEC); *SEC* v. *Yu*, 231 F. Supp. 2d 16, 19 (D.D.C. 2002) (quoting *Int'l Loan Network* and finding, ''[u]nder the law of this Circuit, the SEC is entitled to a preliminary injunction if 'the evidence establishes a strong prima facie case of previous violations and a reasonable likelihood that the wrong will be repeated.'''); *see also Hinkley* v. *U.S.*, 163 F.3d 647, 650 (DC Cir. 1999) (noting that the ''capable of repetition but evading review'' standard means that if there is a showing that there is ''a reasonable likelihood that [the complainant] will again suffer the deprivation * * * that gave rise to this suit, his case is capable of repetition.'' (internal citations omitted)).

[19] Of course, this test only affects the Commission's discretionary ability to attempt to resolve the matter informally through its rate or service inquiry procedures. It has no substantive application to the complaint. *See* paragraph 3030.13(b).

of a material issue of fact or law. NAA Comments at 4, n.3 (noting that the deposition rule is 39 U.S.C. 3001.33). The Postal Service seeks clarification on this issue due to the fact that it believes that witness depositions are similar to section 3001.27's requests for production, which the proposed rule does not allow prior to the Commission making a section 3030.30 finding. Postal Service Reply Comments at 14.

Commission analysis. While it is true that section 3001.33 is plainly not contained in sections 3001.25 through 3001.27, that does not mean that depositions are routinely available prior to a finding under section 3030.30 that the complaint raises a material issue of fact or law. Commission rule 3001.33 requires an application for authorization from the Commission for approval to take depositions. Furthermore, depositions are only allowed in very limited circumstances. It is difficult to envision any of those circumstances arising in the pre-rule 3030.30 finding stage. Nonetheless, to clarify the Commission's intent that all discovery (including depositions) not be available prior to a finding under section 3030.30 that the complaint raises a material issue of fact or law, the Commission will add that exception to paragraph 3030.1(b).

N. Other Suggestions

Several commenters suggest minor uncontroversial wording changes to the proposed rules. These changes are outlined below.

1. Heading of Section 3030.13

The Public Representative suggests that the Commission change the heading of proposed section 3030.13 to clarify that the section applies rate or service inquiry procedures to complaints. Public Representative Comments at 3. The Commission agrees with the Public Representative that a change to the section's heading provides clarification. Accordingly, the Commission changes the heading of proposed section 3030.13 to ''Conditions for applying rate or service inquiry procedures to complaints'' in the final rule.

2. Ambiguity in Section 3030.20

GCA points out an ambiguity in proposed section 3030.20. Read literally, the proposed section could mean that the Commission will, in its discretion: (1) Require additional information, (2) appoint an investigator, or (3) take no action. To clarify that the Commission will apply either options number (1) or (2), but not (3), GCA provides suggested revised language.

Commission analysis. GCA's suggested changes better reflect Commission intent. Accordingly, the Commission accepts GCA's suggested change with a minor revision.

3. Ambiguity in Section 3030.20

Valpak raises a concern that a literal reading of the statute requires the complaint to raise ''material *issues* of fact or law.'' Valpak Comments at 4 (quoting 39 U.S.C. 3662) (emphasis in original). This could be read to imply that more than one issue must be raised prior to a Commission decision to begin proceedings on a complaint under paragraph 3030.30(a)(1). To avoid confusion, Valpak suggests changing this text to the singular form. The Commission agrees that only one material issue of fact or law must be raised to satisfy paragraph 3030.30(a)(1). Accordingly, it changes the final rule in the manner suggested by Valpak.

IV. Section-by-Section Analysis

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

Section 3030.1 Applicability. This section 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 and deposition sections 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 section describes the nature of complaints that the Commission will consider. It expands upon the Commission's current ''Scope and nature of complaints'' section, 39 CFR 3001.82, to conform with the statutory changes to 39 U.S.C. 3662.

Section 3030.10 Complaint contents. This section 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 rule requires the complainant to certify that it has attempted to meet or confer with the Postal Service's general counsel prior to filing the complaint. 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 a minimal, good faith 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 section requires the complainant to serve the complaint on the Postal Service at the same time the complaint is filed with the Commission. This section 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. Those parties who do not have e-mail access may obtain a waiver of this section.

Section 3030.12 Pleadings filed in response to a complaint. This section governs the timeline for the Postal Service to respond to complaints. The Postal Service has 20 days to respond to a 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 applying rate or service inquiry procedures to complaints. This section addresses the Commission's ability to apply the rate or service inquiry 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 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 in more detail in Order No. 101 [73 FR 51888 (September 5, 2008)], these topics raise important policy issues that

Congress intended the Commission to consider in the first instance.

Section 3030.14 answer contents. This section identifies the information to be included in an answer filed with the Commission. The requirements for the section are based largely upon the Federal Energy Regulatory Commission's answer rule, 18 CFR 385.213. The section 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 section requires the Postal Service to certify that it met or conferred with the complainant. This mirrors the provision in section 3030.10 designed to foster settlement.

Section 3030.20 Sufficiency of information. This section 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 section allows the Commission to appoint an investigator to explore some or all of the issues raised in a complaint. This 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 section 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 section is a re-codification of 39 CFR 3001.85(b) as a separate section. The Commission believes that its policy favoring settlement and alternative dispute resolution is important and should be in a separate section to emphasize its importance and so that it can be found easily in the Code of Federal Regulations.

Section 3030.41 Satisfaction. This section 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 section 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 section sets forth the potential statutory remedies for a complaint that the Commission finds to be justified. The Commission has broad 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 section 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 section identifies the information that should be included in rate or service inquiries. The requirements for this section are based in part on the Federal Communications Commission's informal complaint rules, 47 CFR 1.716. The section 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 section sets forth the 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 section also provides for the appointment of an investigator, an officer to represent the general public, or both, if the Commission believes that a systemic or recurring 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.

V. Ordering Paragraphs

It is Ordered:

1. The Commission hereby deletes the complaint procedures located at part 3001, subpart E of the Commission's Rules of Practice and Procedure.

2. The Commission hereby adopts the final rules applicable to Complaints (part 3030) and Rate or Service Inquiries (part 3031) that follow the Secretary's signature into the Commission's Rules of Practice and Procedure to appear in 39 CFR parts 3030 and 3031, respectively.

3. The Secretary shall arrange for publication of this order in the **Federal Register**. These actions will take effect 30 days after publication in the **Federal Register**.

4. The Motion for the Late Acceptance of the Initial Comments of the United States Postal Service filed on October 7, 2008, is granted.

List of Subjects in 39 CFR Parts 3001, 3030 and 3031

Administrative practice and procedure, Postal Service.

Issued: March 24, 2009.

By the Commission.

Steven W. Williams,

Secretary.

■ For the reasons stated in the preamble, under the authority at 39 U.S.C. 3662, the Postal Regulatory Commission amends 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 applying rate or service inquiry procedures to complaints.
3030.14 Answer contents.

Subpart C—Supplemental Information

3030.20 Sufficiency of information.
3030.21 Investigator.

Subpart D—Proceedings

3030.30 Beginning proceedings on complaints.

Subpart E—Settlement

3030.40 Policy on settlement.
3030.41 Satisfaction.

Subpart F—Commission Determinations and Relief

3030.50 Remedies.

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

Subpart A—General

§ 3030.1 Applicability.

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

(b) Sections 3001.25 through 27 of this chapter and § 3001.33 of this chapter do not apply to this part unless and until the Commission makes a finding under § 3030.30(a)(1) that the complaint raises material issues of fact or law.

§ 3030.2 Scope and nature of complaints.

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

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

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

Subpart B—Form and Manner Requirements of Initial Pleadings

§ 3030.10 Complaint contents.

(a) A complaint must:

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

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

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

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

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

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

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

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

(9) Include a certification that states that prior to filing, the complainant attempted to meet or confer with the Postal Service's general counsel to resolve or settle the complaint, why the complainant believes additional such steps would be inadequate, and the reasons for that belief; and

(10) Include a certification that the complaint has been served on the United States Postal Service as required by § 3030.11.

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

§ 3030.11 Service.

Any person filing a complaint must simultaneously serve a copy of the complaint on the Postal Service at the following address: *sandra.t.broadus@usps.gov*. A complaint is not deemed filed until it is served on the Postal Service. A waiver may be obtained pursuant to § 3001.9(a) of this chapter.

§ 3030.12 Pleadings filed in response to a complaint.

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

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

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

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

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

§ 3030.13 Conditions for applying rate or service inquiry procedures to complaints.

(a) This section applies to complaints that concern rate or service matters that are isolated incidents affecting few mail users provided that the complaint does not either:

(1) Raise unfair competition issues;

(2) Raise issues affecting a significant number of mail users;

(3) Represent a pattern, practice, or systemic issue that affects a significant number of mail users (or is reasonably likely to be evidence that such a pattern has begun); or

(4) Impact a substantial region of the nation.

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

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

§ 3030.14 Answer contents.

(a) An answer must:

(1) Contain a clear and concise statement of any disputed factual

allegations upon which the answer relies;

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

(3) Admit or deny, specifically and with explanatory detail, each material factual allegation of the complaint. Denials based on information and belief must include an explanation as to why such facts could not reasonably be ascertained by the Postal Service prior to filing the answer. Each fact alleged in a complaint not thus specifically answered shall be deemed to have been admitted;

(4) Set forth every defense relied upon. The answer shall advise the complainant and the Commission fully and completely of the nature of any defense, including factual allegations and law upon which the Postal Service relies. Affirmative defenses shall be specifically captioned as such and presented separately from any denials;

(5) State the nature of the evidentiary support that the Postal Service has or expects to obtain to support its factual allegations and defenses; and

(6) Include a certification that states that prior to the filing of its answer, the Postal Service met or conferred with the complainant to resolve or settle the complaint, whether the Postal Service believes additional such steps would be inappropriate and the reasons for that belief.

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

Subpart C—Supplemental Information

§ 3030.20 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the Commission determines that additional information is necessary to enable it to evaluate whether the complaint raises material issues of fact or law, the Commission shall, in its discretion, either require the complainant and/or the Postal Service to provide additional information as deemed necessary, issue an appropriate order to appoint an investigator in accordance with § 3030.21, or do both.

§ 3030.21 Investigator.

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

Subpart D—Proceedings

§ 3030.30 Beginning proceedings on complaints.

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

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

(2) An order dismissing the complaint.

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

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

Subpart E—Settlement

§ 3030.40 Policy on settlement.

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

§ 3030.41 Satisfaction.

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

(1) A statement explaining the resolution; and

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

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

(c) In determining whether to allow the complaint to be dismissed or amended under this section, the Commission will take into consideration whether the issues raised by the complaint may continue to impact a significant segment of the mailing community.

Subpart F—Commission Determinations and Relief

§ 3030.50 Remedies.

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

(1) Achieve compliance with the applicable requirements; and

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

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

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

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

Subpart B—[Reserved]

[FR Doc. E9–8153 Filed 4–9–09; 8:45 am]

BILLING CODE 7710–FW–P