

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

PART 3010—RULES OF PRACTICE AND PROCEDURE

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Subpart A—General Provisions

§ 3010.100 Applicability and scope.

(a) The rules in this part apply to practice before the Postal Regulatory Commission.

(b) When a general rule conflicts with a rule governing a specific practice

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

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

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

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

§ 3010.101 Definitions.

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

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

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

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

(e) *Hearing on the record* means a hearing conducted under sections 556 and 557 of title 5, U.S.C. (80 Stat. 386), as provided by section 3661 of the Act or in any other proceeding noticed by the Commission for a hearing on the record.

(f) *Negotiated service agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, which provides for customer-specific rates or fees and/or terms of service in accordance with the terms and conditions of the contract. A rate associated with a negotiated service agreement is not a rate of general applicability.

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

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

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

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

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

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

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

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

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

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

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

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to all mailers equally on the same terms and conditions.

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

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

(t) *Small business concern* means a for-profit business entity that:

(1) Is independently owned and operated;

(2) Is not dominant in its field of operation;

(3) Has a place of business located in the United States;

(4) Operates primarily within the United States or makes a significant contribution to the United States economy by paying taxes or using American products, materials, or labor; and

(5) Together with its affiliates, qualifies as *small* in its primary industry under the criteria and size standards established by the Small Business Administration in 13 CFR 121.201 based on annual receipts or number of employees.

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

§ 3010.102 Commission dockets.

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

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

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

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

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

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

(ii) Annual Compliance Report (ACR);

(iii) Complaint (C);

(iv) Competitive Product Rates (CP);

(v) General (G);

(vi) International Mail (IM);

(vii) Mail Classification (MC);

(viii) Market Test (MT);

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

(x) Public Inquiry (PI);

(xi) Market Dominant Rates (R);

(xii) Rulemaking (RM);

(xiii) Special Studies (SS); and

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

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

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

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

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

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

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

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

§ 3010.103 Procedural schedules in docketed proceedings.

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

§ 3010.104 Consolidation and severance of proceedings.

The Commission may order proceedings involving related issues or facts to be consolidated for consideration of any or all matters at issue in such proceedings. The Commission may sever proceedings which have been consolidated or order separate proceedings on any issue presented if it appears that separate proceedings will be more convenient, expeditious, or otherwise appropriate.

§ 3010.105 Consideration of matters before the Commission.

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

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

§ 3010.106 Presiding officers.

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

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

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

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

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

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

(3) Issue presiding officer information requests;

(4) Administer oaths and affirmations;

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

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

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

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

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

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

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

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

(12) Take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authorities under which the Commission functions and with the rules, regulations, and policies of the Commission.

(d) *Conduct of hearings.* It is the duty of the presiding officer to conduct fair and impartial hearings and to maintain order. Any disregard by participants or counsel of presiding officer rulings on matters of order or procedure shall be noted on the record, and where the presiding officer deems it necessary shall be made the subject of a special written report to the Commission. In the event that participants or counsel should be guilty of disrespectful, disorderly, or contumacious language or conduct in connection with any hearing, the presiding officer may immediately submit to the Commission a report thereon, together with recommendations, and in the presiding officer's discretion, suspend the hearing.

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

§ 3010.107 Appeals from interlocutory rulings by presiding officers.

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

(b) *Appeals certified by the presiding officer.* (1) Rulings of the presiding officer may be appealed to the Commission when the presiding officer certifies in writing that an interlocutory appeal is

warranted. The presiding officer shall not certify an appeal unless the officer finds that:

(i) The ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion; and

(ii) An immediate appeal from the ruling will materially advance the ultimate termination of the proceeding or subsequent review will be an inadequate remedy.

(2) A request for the presiding officer to certify an appeal shall be made by motion within five days after the presiding officer's ruling has been issued. The request shall set forth with specificity the reasons that a participant believes that an appeal meets the criteria of paragraphs (b)(1)(i) and (ii) of this section. Such requests shall also state in detail the legal, policy, and factual arguments supporting the participant's position that the ruling should be modified. If the appeal is from a ruling rejecting or excluding evidence, such request shall include a statement of the substance of the evidence which the participant contends would be adduced by the excluded evidence and the conclusions intended to be derived therefrom.

(3) The presiding officer may request responsive pleadings from other participants prior to ruling upon the request to certify an appeal to the Commission.

(c) *Appeals not certified by the presiding officer.* A participant may request Commission review of a presiding officer's decision denying certification of an appeal by motion within five days of the decision. If the presiding officer fails to act on a request for certification within 15 days of the issuance of the ruling in question, the participant seeking certification may apply for review by the Commission within 20 days of the ruling in question. Unless the Commission directs otherwise, its review of the application for review will be based on the record and pleadings filed before the presiding officer pursuant to paragraph (b) of this section.

(d) *Action by the Commission.* (1) The Commission may dismiss an appeal certified by the presiding officer if it determines that:

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(i) The objection to the ruling should be deferred until the Commission's consideration of the entire proceeding; or

(ii) Interlocutory review is otherwise not warranted or appropriate under the circumstances.

(2) When the presiding officer declines to certify an appeal, the Commission will not permit an interlocutory appeal unless it determines:

(i) That the presiding officer should have certified the matter;

(ii) That extraordinary circumstances exist; and

(iii) That prompt Commission decision is necessary to prevent grave detriment to the public interest.

(3) If the Commission fails to issue an order permitting an interlocutory appeal within 15 days after the presiding officer certifies the appeal or a participant files an application for review, the appeal shall be deemed denied. If the Commission issues an order permitting an appeal, it may rule upon the merits of the appeal in that order or at a later time.

(e) *Effect of appeals.* Unless the presiding officer or the Commission so orders, the certification of an appeal or the filing of an application for review shall not stay the proceeding or the effectiveness of any ruling.

(f) *Review at conclusion of proceeding.* If the Commission does not entertain an interlocutory appeal of a presiding officer's ruling, objection to the ruling may be raised:

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

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

§ 3010.108 Computation of time.

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

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

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

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

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

§ 3010.109 Automatic closure of inactive dockets.

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

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

(c) *Motions to stay automatic closure.*

(1) Persons, including the Postal Service or a Public Representative, may file a motion to stay automatic closure of a docket and request that the docket remain open for a specified term not to exceed 12 months. Motions to stay automatic closure must be filed at least 15 days prior to the automatic closure date.

(2) The Commission may order a docket remain open for a specified term not to exceed 12 months and must

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

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

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

Subpart B—Filing Requirements

§3010.120 Filing material with the Commission.

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

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

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

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

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

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

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

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

§3010.121 Filing Online system.

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

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

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

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

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

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

(a) *Hardcopy and other forms of material.* A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, posts the document on the Daily Listing page of the Commission's website. Any other form of material filed with the Commission must be accompanied by a hardcopy notice of filing, which describes the material being filed, identifies the person filing the material, and specifies the docket caption and docket number under which the material is being filed. This material is accepted when the Secretary, after review, posts the notice of filing on the Daily Listing page of the Commission's website. Material received after the close of regular business hours or on a Saturday, Sunday, or Federal holiday shall be deemed to be filed on the next regular business day.

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

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

§ 3010.123 Rejected filings.

Any filing that does not comply with an applicable Commission rule or order may be rejected. Any filing that is rejected is deemed not to have been filed with the Commission. If a filing is rejected, the Secretary will attempt to notify the person submitting the filing, indicating the reason(s) for rejection. Acceptance for filing shall not waive any failure to comply with this part, and such failure may be cause for subsequently striking all or any part of any document. Any controversies concerning the acceptability of a filing shall be resolved after review by the Office of General Counsel.

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

(a) *Equivalent paper size.* Each document filed in paper form shall be produced on letter-size paper, 8 to 8½ inches wide by 10½ to 11 inches long, with left- and right-hand margins not less than 1 inch and other margins not less than 0.75 inches, except that tables, charts or special documents attached thereto may be larger if required, provided that they are folded to the size of the document to which they are attached. For a multiple page document, the preference is for the document to be not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent. If the document is bound, it shall be bound on the left side. Each document filed in electronic form must be capable of meeting the above requirements when-printed from a text-based pdf formatted file version of the document. Consideration may be given to alternative file formats where necessary.

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

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

(c) *Caption, title, page numbering, and table of contents.* The caption of each document filed with the Commission in any proceeding shall clearly show the docket designation and title of the proceeding before the Commission. The title of such document shall identify each participant on whose behalf the filing is made and include a brief description of the document or the nature of the relief sought therein (e.g., motion for extension, brief on exceptions, complaint, notice of intervention, answer to complaint). Each page, after the first page, of a document shall be consecutively numbered. Unique page numbers are permissible for introductory material such as cover pages and table of contents, and for appendixes. Each document filed with the Commission consisting of 20 or more pages shall include a table of contents with page references. For briefs also see § 3010.330.

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

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

§ 3010.125 Library references.

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

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

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

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

(2) Category 2—Witness Foundational Material (consisting of material relating to the testimony of specific witnesses, primarily that which is essential to the establishment of a proper foundation for receiving into evidence the results of studies and analyses);

(3) Category 3—Reference Material (consisting of previously published material provided for the convenience of the reader, such as books, chapters or other portions of books, articles, reports, manuals, handbooks, guides, and contracts);

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

(5) Category 5—Disassociated Material (consisting of material filed at the request of another, from which the filing party wishes to be disassociated, is not vouching for or sponsoring the material provided);

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

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

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

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

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

(2) Identify the category into which the material falls and describe in detail what the material consists of or represents, noting matters such as the presence of survey results;

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

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

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

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

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

(8) To the extent feasible, for proceedings scheduled for a hearing on the record, identify portions expected to be entered into the record and the expected sponsor (if the participant filing a library reference anticipates seeking, on its own behalf, to enter all or part

of the material contained therein into the evidentiary record). To the extent feasible, in all other proceeding types, identify portions relevant to the proceeding.

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

§ 3010.126 Subscription.

(a) Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that the person filing the document has read the document being filed; that the person filing the document knows the contents thereof; that if executed in any representative capacity, the document has been subscribed in the capacity specified in the document with full power and authority so to do; that to the best of the person’s knowledge, information and belief every statement contained in the document is true and no such statements are misleading; and that such document is not filed for purposes of delay. This requirement extends to notices of filing for library references or other material, including the underlying library references or other material to the extent referenced in the notice of filing.

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

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

§ 3010.127 Service.

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

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

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

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

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

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

Subpart C—Participation in Commission Proceedings

§ 3010.140 Opportunity for comment.

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

a proceeding as a party in order to submit comments.

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

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

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

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

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

§ 3010.142 Parties to hearings on the record.

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

(b) *Notices of intervention.* A notice of intervention shall clearly and concisely set forth the nature and extent of the intervenor's interest in the issues to be decided, including the postal services utilized by the intervenor giving rise to the intervenor's interest in the proceeding, and to the extent known, the position of the intervenor with regard to the proposed changes in postal rates, fees, classifications, or services, or the subject matter of the complaint, as described in the notice of the proceeding. Such notice shall state whether or not the intervenor requests a hearing or in lieu thereof, a conference, and whether or not the intervenor intends to actively participate in a hearing. Such notice shall also include on page one thereof the name and full mailing address of no more than two persons who are to receive service, when necessary, of any documents relating to such proceeding.

(c) *Form and time of filing.* Notices of intervention shall be filed no later than the date fixed for such filing by the Commission or its Secretary, unless for good cause shown, the Commission authorizes a late filing. Without a showing for good cause, late intervenors shall be subject to and may not challenge decisions by the Commission or presiding officer made prior to acceptance of the request for late intervention.

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

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

(3) Pending Commission action, an opposition to intervention shall, in all proceedings except those considering the change in the nature of a postal service pursuant to part 3020 of this chapter, delay on a day-for-day basis the date for responses to discovery requests filed by that intervenor.

(e) *Effect of intervention.* A person filing a notice of intervention shall be a

party to the proceeding subject, however, to a determination by the Commission, either in response to an opposition, or *sua sponte*, that party status is not appropriate under the Act. Intervenors are also subject to the right of the Commission or the presiding officer as specified in § 3010.104 to require two or more intervenors having substantially like interests and positions to join together for purposes of service of documents, presenting evidence, making and arguing motions and objections, propounding discovery, cross-examining witnesses, filing briefs, and presenting oral arguments to the Commission or presiding officer. No intervention shall be deemed to constitute a decision by the Commission that the intervenor is aggrieved for purposes of perfecting an appeal of any final order of the Commission.

§ 3010.143 Representation of persons.

(a) *By whom.* An individual may participate on the individual's own behalf; a member of a partnership may represent the partnership; and an officer may represent a corporation, limited liability company, trust, unincorporated association, or governmental entity. A person may be represented in a proceeding by an attorney at law admitted to practice and in good standing before the Supreme Court of the United States, the highest court of any State or Territory of the United States or the District of Columbia, or the Court of Appeals or the District Court for the District of Columbia.

(b) *Authority to act.* When an officer or an attorney acting in a representative capacity appears in person, submits a document to the Commission using the Filing Online system as a principal account holder, or signs a paper filed with the Commission, the personal appearance, online submission, or signature, shall constitute a representation to the Commission that that individual is authorized to represent the particular person on whose behalf the individual acts. Any individual appearing before or transacting business with the Commission in a representative capacity may be required by the Commission or the presiding officer to file evidence of the individual's authority to act in such capacity.

(c) *Notice of appearance and withdrawal of appearance.* An individual intending to appear before the Commission or its presiding officer in a representative capacity in a proceeding before the Commission shall file with the Commission a notice of appearance in the form prescribed by the Secretary unless that individual is named in an initial filing of the person whom the individual represents as the individual to whom communications from the Commission in regard to the filing are to be addressed. An individual whose authority to represent a person in a specific Commission proceeding has been terminated shall file a timely notice of withdrawal of appearance with the Commission.

(d) *Standards of conduct.* Individuals practicing before the Commission shall conform to the standards of ethical conduct required of practitioners by the District of Columbia Rules of Professional Conduct.

(e) *Disqualification and suspension.* After hearing, the Commission may disqualify and deny, temporarily or permanently, the privilege of appearing and practicing before it in any way to any individual who is found not to possess the requisite qualifications, or to have engaged in unethical or improper professional conduct. Contumacious conduct at any hearing before the Commission or its presiding officer shall be grounds for exclusion of any individual from such hearing and for summary suspension for the duration of the hearing by the Commission or the presiding officer.

§ 3010.144 Limitation of participation by investigative or prosecuting officers.

No officer, employee, or agent of the Commission who participates in a proceeding before the Commission as an attorney or witness or who actively participates in the preparation of evidence or argument presented by such persons, shall participate or advise as to the intermediate decision or Commission decision in that proceeding.

Subpart D—Notices, Motions, and Information Requests

§ 3010.150 Notices.

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

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

§ 3010.151 Notices and orders initiating proceeding.

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

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

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

(b) The notice and order shall:

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

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

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

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

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

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

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

(8) Establish procedural deadlines, if known; and

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

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

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

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

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

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

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

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

(b) The document shall specify:

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

(2) The title of each Postal Service request;

(3) The request's acceptance date;

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

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

(6) The comment deadline pertaining to each request.

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

§ 3010.160 Motions.

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

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

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

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

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§ 3010.161 Motions for waiver.

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

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

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

§ 3010.162 Motions for continuances and extensions of time.

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

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

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

§ 3010.163 Motions for late acceptance.

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

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

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

§ 3010.164 Motions to strike.

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

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

§ 3010.165 Motions for reconsideration.

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

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

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

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

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

[87 FR 43214, July 20, 2022]

§ 3010.170 Information requests.

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

(b) Information requests may be used to:

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

can obtain through reasonable effort and expense; or

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

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

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

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

Subpart E—Proceedings Using Notice and Comment Procedures

§ 3010.200 Applicability.

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

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

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

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

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

§ 3010.201 Initiation of a proceeding.

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

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

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

(ii) Identify the subject matter of the petition;

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

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

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

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

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

§ 3010.202 Participation in notice and comment proceedings.

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

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

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

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

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

order additional procedures as appropriate.

§ 3010.203 Commission action.

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

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

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

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

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

§ 3010.300 Applicability.

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

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

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

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

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

§ 3010.301 Notice of proceeding.

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

§ 3010.302 Prehearing conferences.

(a) *Initiation and purposes.* The Commission or the presiding officer, if one has been appointed, may direct the parties in a proceeding to appear for a prehearing conference for the purposes of considering all possible ways of expediting the proceeding, including those in paragraph (e) of this section. Prehearing conference procedures shall be rigorously pursued by all parties.

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

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

which will expedite the proceeding, including the matters specified in the notice of the prehearing conference, in the ruling of the presiding officer directing that the off-the-record conference be held, and in paragraph (e) of this section. A report on the results of off-the-record conferences shall be made to the presiding officer on the record at a time specified by the presiding officer. The presiding officer shall then determine the further prehearing procedures, if any, to be followed.

(d) *Required preparation and cooperation of all parties.* All parties in any proceeding before the Commission are required and expected to come to prehearing conferences fully prepared to discuss in detail and resolve all matters, such as those specified in paragraph (e) of this section, in the notice of the prehearing conference, and in such other notice or agenda as may have been issued by the Commission or the presiding officer. All parties are required and expected to cooperate fully at all stages of the proceeding to achieve these objectives through thorough advance preparation for the prehearing conference, including informal communications between the parties, requests for discovery and appropriate discovery procedures at the earliest possible time and no later than at the prehearing conference, and the commencement of preparation of evidence and cross-examination. The failure of any party to appear at the prehearing conference or to raise any matters that could reasonably be anticipated and resolved at the prehearing conference shall not be permitted to unduly delay the progress of the proceeding and shall constitute a waiver of the rights of the party with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.

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

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

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complaint or other pleading filed by any party;

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

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

(4) Stipulations, admissions or concessions as to evidentiary facts, and agreements as to documentary matters, exhibits and matters of official notice, which will avoid unnecessary proof or dispute;

(5) The possible grouping of parties with substantially like interests for purposes of presenting evidence, making and arguing motions and objections, cross-examining witnesses, filing briefs, and presenting oral argument to the Commission or presiding officer;

(6) Disclosure of the number, identity and qualifications of witnesses, and the nature of their testimony, particularly with respect to the policies of the Act and, as applicable according to the nature of the proceeding;

(7) Limitation of the scope of the evidence and the number of witnesses in order to eliminate irrelevant, immaterial, or cumulative and repetitious evidence;

(8) Procedures to direct and control the use of discovery prior to the hearing and submission of written testimony and exhibits on matters in dispute so as to restrict to a bare minimum the amount of hearing time required for oral cross-examination of witnesses;

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

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

(11) The order of presentation of the evidence and cross-examination of witnesses so that the hearing may proceed in the most expeditious and orderly manner possible; and

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the

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

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

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

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

(2) Either on the record at the conclusion of such prehearing conference, or by order issued shortly thereafter, the presiding officer shall state the agreements reached by the parties, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified during the hearing to prevent manifest injustice.

§ 3010.303 Hearing format.

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

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

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

§ 3010.304 Scheduling order.

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

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

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

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

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

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

(15) A deadline for filing briefs;

(16) A deadline for filing reply briefs; and

(17) A deadline for requesting oral argument.

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

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

§ 3010.310 Discovery—general policy.

(a) Sections 3010.311 through 3010.313 allow discovery reasonably calculated to lead to admissible evidence during a proceeding noticed for hearing on the record. In general, discovery against a party will be scheduled to end prior to the receipt into evidence of that party's direct case. An exception to this procedure shall operate in all proceedings set for hearing when a party needs to obtain information (such as operating procedures or data) available only from the Postal Service. Such discovery requests are permissible only for the purpose of the development of

rebuttal testimony and may be made up to 20 days prior to the filing date for final rebuttal testimony.

(b) The discovery procedures set forth in §§3010.311 through 3010.313 are not exclusive. Parties are encouraged to engage in informal discovery whenever possible to clarify exhibits and testimony. The results of these efforts may be introduced into the record by stipulation, by supplementary testimony or exhibit, by presenting selected written interrogatories and answers for adoption by a witness at the hearing, or by other appropriate means. In the interest of reducing motion practice, parties also are expected to use informal means to clarify questions and to identify portions of discovery requests considered overbroad or burdensome.

(c) If a party or an officer or agent of a party fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§3010.311 through 3010.313, the Commission or the presiding officer may make such orders in regard to the failure as are just, and among others, may direct that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the parties obtaining the order, or prohibit the disobedient party from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

§3010.311 Interrogatories for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any party may propound to any other party in a proceeding written, sequentially numbered interrogatories, by witness, requesting non-privileged information relevant to the subject matter and reasonably calculated to lead to the discovery of admissible evidence in such proceeding, to be answered by the party served, who shall furnish such information as is available to the requesting party. A party through interrogatories may require any other party to identify each person whom the other

party expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The party propounding the interrogatories shall file them with the Commission and serve them on the answering party. Follow-up interrogatories to clarify or elaborate on the answer to an earlier discovery request may be filed after the initial discovery period ends. They must be filed within seven days of receipt of the answer to the previous interrogatory unless extraordinary circumstances are shown.

(b) *Answers.* Answers to discovery requests shall be prepared so that they can be incorporated as written cross-examination. Each answer shall begin on a separate page, identify the individual responding and the relevant testimony number, if any, the party who asked the question, and the number and text of the question. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The party responding to the interrogatories shall file the answers with the Commission and serve them on the requesting party within 14 days of the filing of the interrogatories or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(c) *Objections.* In the interest of expedition, the grounds for every objection shall be clearly and fully stated. If an objection is made to part of an interrogatory, the part shall be specified. A party claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A party claiming undue burden shall state with particularity the effort that would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be

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

(d) *Motions to compel responses to discovery.* Motions to compel a more responsive answer, or an answer to an interrogatory to which an objection was interposed, should be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Parties who have objected to interrogatories which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission, or the presiding officer, upon motion of any party to the proceeding, may compel a more responsive answer, or an answer to an interrogatory to which an objection has been raised if the objection is overruled, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be filed with the Commission and served on the compelling party within seven days of the date of the order compelling an answer or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

(f) *Supplemental answers.* The individual or party who has answered interrogatories is under the duty to seasonably amend a prior answer if the individual or party obtains information upon the basis of which the individual or party knows that the answer was incorrect when made or is no longer true. Parties shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evidence as written cross-examination. Parties filing supplemental answers shall indicate whether the answer merely supplements the previous answer to make it current or whether

it is a complete replacement for the previous answer.

(g) *Orders.* The Commission or the presiding officer may order that any party or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

§ 3010.312 Requests for production of documents or things for purpose of discovery.

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any party may serve on any other party to the proceeding a request to produce and permit the party making the request, or someone acting on behalf of the requesting party or the requesting party's agent to inspect and copy any designated documents or things that constitute or contain matters, not privileged, that are relevant to the subject matter involved in the proceeding or reasonably calculated to lead to the discovery of admissible evidence and that are in the custody or control of the party to whom the request is addressed. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The party requesting the production of documents or things shall file its request with the Commission and serve the request on the responding party.

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

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

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

(d) *Motions to compel requests for production of documents or things for purposes of discovery.* Motions to compel shall be filed within 14 days of the answer or objection to the discovery request. The text of the discovery request, and any answer provided, should be provided as an attachment to the motion to compel. Parties who have objected to requests for production of documents or things which are the subject of a motion to compel shall have seven days to answer. Answers will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* Upon motion of any party to the proceeding to compel a response to discovery, as provided in paragraph (d) of this section, the Commission or the presiding officer may compel production of documents or things to which an objection is overruled. Such compelled documents or

things shall be made available to the party making the motion within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or presiding officer, but before the conclusion of the hearing.

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

§3010.313 Requests for admissions for purpose of discovery.

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

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

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

(c) *Objections.* If an objection is made, the grounds for such objection shall be clearly and fully stated. If an objection is made to part of an item, the part to which an objection is made shall be specified. A party claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A party claiming undue burden shall state with particularity the effort that would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections shall be filed with the Commission and served on the requesting party, within ten days of the request for admissions.

(d) *Motions to compel responses to requests for admissions.* The party who has requested an admission may move to determine the sufficiency of the answers or objections. Motions to compel a more responsive answer, or an answer to a request to which an objection was interposed, shall be filed within 14 days of the answer or objection to the request for admissions. The text of the request for admissions, and any answer provided, should be provided as an attachment to the motion to compel. Parties who have objected to requests for admissions which are the subject of a motion to compel shall have seven days to file a response. Responses will be considered supplements to the arguments presented in the initial objection.

(e) *Compelled answers.* The Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is overruled. Such compelled answers shall be filed with the Commission and served on the requesting party within seven days of the date of the order compelling production or within such other period as may be fixed by the Commission or the presiding officer, but before the conclusion of the hearing. If the Commission or presiding officer determines that an

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answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be filed.

§ 3010.320 Settlement conferences.

Any party to a proceeding may submit offers of settlement or proposals of adjustment at any time and may request a conference between the parties to consider such offers or proposals. The Commission or the presiding officer shall afford the parties appropriate opportunity prior to or during the hearing for conferences for the purpose of considering such offers or proposals as time, the nature of the proceeding, and the public interest permit. Unaccepted offers of settlement or adjustment and proposed stipulations not agreed to shall be privileged and shall not be admissible in evidence against any party claiming such privilege.

§ 3010.321 Hearings.

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

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

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

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

(c) *Entering of appearances.* The presiding officer before whom the hearing is held will cause to be entered on the record all appearances together with a notation showing on whose behalf each such appearance has been made.

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

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

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

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

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

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

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

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

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

by a trial brief or legal memoranda. Legal memoranda on matters at issue are generally welcome at any stage of the proceeding. Parties will be given an opportunity to rebut presentations of other parties, including an opportunity for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another party's direct case) should not be included in rebuttal testimony or exhibits. When objections to the admission or exclusion of evidence before the Commission or the presiding officer are made, the grounds relied upon shall be stated. Formal exceptions to rulings are unnecessary.

(2) *Written testimony.* (i) Written testimony shall be offered in evidence by motion. The motion shall be made orally during a hearing, or in writing when the hearing is conducted by the written submission of testimony only. When a party moves to enter testimony into the record, three hard copies of the document shall simultaneously be submitted to the Commission for the record. The copies are to be printed single-sided, and not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent.

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

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

be granted only under extraordinary circumstances.

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

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

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

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

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

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

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

(ii) Designations of written cross-examination should be filed with the Commission and served on the answering party no later than three working days before the scheduled appearance of a witness. Designations shall identify every item to be offered as evidence, listing the party who initially posed the discovery request, the witness and/or party to whom the question was addressed (if different from the witness answering), the number of the request and, if more than one answer is provided, the dates of all answers to be included in the record. (For example, “PR-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997)).” When a party designates written cross-examination, three hard copies of the documents to be included shall simultaneously be submitted to the Secretary. The documents are to be printed single-sided, and not stapled, hole-punched, or bound, but may be fastened together by paper or binder clip, or equivalent. The Secretary shall prepare for the record a packet containing all materials designated for written cross-examination in a format that facilitates review by the witness and counsel.

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

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

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

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

(ii) Notices of intent to conduct oral cross-examination should be filed three or more working days before the announced appearance of the witness and should include specific references to the subject matter to be examined and page references to the relevant direct testimony and exhibits. If no notices are filed, and the Commission or presiding officer has no other reason for the witness to appear, the Commission or the presiding officer, in their discretion, may excuse the witness from appearing at the hearing and direct that the witness's testimony be entered by counsel.

(iii) A party intending to use complex numerical hypotheticals, or to question using intricate or extensive cross-references, shall provide adequately documented cross-examination exhibits for the record. Copies of these exhibits should be filed at least two full business days before the scheduled appearance of the witness. They may be filed online or delivered in hardcopy form to counsel for the witness, at the discretion of the party. When presented, examination exhibits are not to be considered record evidence. They are to be transcribed into the record for reference only. If adopted by the witness, the examination exhibit may be offered in evidence by motion.

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

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

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

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

(i) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commission or the presiding officer may limit appropriately the number of witnesses to be heard upon any issue, the examination by any party to specific issues, and the cross-examination of a witness to that required for a full and true disclosure of the facts necessary for the disposition of the proceeding and to avoid irrelevant, immaterial, or unduly repetitious testimony.

(j) *Motions during hearing.* After a hearing has commenced, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall specify the ruling or relief sought, and state the grounds therefor and statutory or other supporting authority. Motions made during hearings may be stated orally upon the record, except that the presiding officer may require that such motions be reduced to writing and filed separately. Any party shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(k) *Rulings on motions.* The presiding officer is authorized to rule upon any such motion not formally acted upon by the Commission prior to the commencement of a prehearing conference or hearing where immediate ruling is essential in order to proceed with the prehearing conference or hearing, and upon any motion to the presiding officer filed or made after the commencement thereof, except that no motion made to the presiding officer, a ruling upon which would involve or constitute a final determination of the proceeding, shall be ruled upon affirmatively by the presiding officer except as a part of a presiding officer's intermediate decision. This section shall not preclude a presiding officer, within the presiding officer's discretion, from referring any motion made in hearing

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to the Commission for ultimate determination.

(l) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a material substantive error in the transcription made at the hearing. Any request to correct a transcript shall be by motion filed no later than seven days after the transcript, or notice of the availability of a confidential transcript, is posted to the Commission's website. Corrections or changes to actual testimony shall not be allowed.

§ 3010.322 Evidence—general.

(a) *Form and admissibility.* In all hearings, relevant and material evidence which is not unduly repetitious or cumulative shall be admissible. Witnesses whose testimony is to be taken shall be sworn, or shall affirm, before their testimony shall be deemed evidence in the proceeding or any questions are put to them.

(b) *Documentary material—(1) General.* Documents and detailed data and information shall be presented as exhibits. Exhibits should be self-explanatory. They should contain appropriate footnotes or narrative explaining the source of each item of information used and the methods employed in statistical compilations. The principal title of each exhibit should state what it contains or represents. The title may also contain a statement of the purpose for which the exhibit is offered; however, this statement will not be considered part of the evidentiary record. Where one part of a multi-part exhibit is based on another part or on another exhibit, appropriate cross-references should be made. Relevant exposition should be included in the exhibits or provided in accompanying testimony. Testimony, exhibits and supporting workpapers prepared for Commission proceedings that are premised on data or conclusions developed in a library reference shall provide the location of that information within the library reference with sufficient specificity to permit ready reference, such as the page and line, or the file and the worksheet or spreadsheet page or cell. Where relevant and material matter offered in evidence is embraced in a document containing other matter not

material or relevant or not intended to be put in evidence, the party offering the same shall plainly designate the matter offered excluding the immaterial or irrelevant parts. If other matter in such document is in such bulk or extent as would unnecessarily encumber the record, it may be marked for identification, and, if properly authenticated, the relevant and material parts may be read into the record, or, if the Commission or presiding officer so directs, a true copy of such matter in proper form shall be received in evidence as an exhibit. Copies of documents shall be delivered by the party offering the same to the other parties or their attorneys appearing at the hearing, who shall be afforded an opportunity to examine the entire document and to offer in evidence in like manner other material and relevant portions thereof.

(2) *Status of library references.* Designation of material as a library reference and acceptance in the Commission's docket section do not confer evidentiary status. The evidentiary status of the material is governed by § 3010.321(g)(3).

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

(d) *Public document items.* Whenever there is offered in evidence (in whole or in part) a public document, such as an official report, decision, opinion or published scientific or economic statistical data issued by any of the Executive Departments (or their subdivisions), legislative agencies or committees, or administrative agencies of the Federal Government (including Government-owned corporations) and such document (or part thereof) has been shown by the offeror thereof to be reasonably available to the public, such document need not be produced or physically marked for identification, but may be offered in evidence as a public document item by clearly identifying

the document and the relevant parts thereof.

(e) *Designation of evidence from other Commission dockets.* (1) Parties may request that evidence received in other Commission proceedings be entered into the record of the current proceeding. These requests shall be made by motion, shall explain the purpose of the designation, and shall identify material by page and line or paragraph number.

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

(3) In all other proceedings subject to this section, these requests must, in the absence of extraordinary circumstances, be made at least 28 days before the date for filing the party's direct case. Oppositions to motions for designations and/or requests for counter-designations shall be filed within 14 days. Oppositions to requests for counter-designations are due within seven days.

(4) In all proceedings subject to this section, the moving party must submit two copies of the identified material to the Secretary at the time requests for designations and counter-designations are made.

(f) *Form of prepared testimony and exhibits.* Unless the presiding officer otherwise directs, the direct testimony of witnesses shall be reduced to writing and offered either as such or as an exhibit. All prepared testimony and exhibits of a documentary character shall, so far as practicable, conform to the requirements of § 3010.124(a) and (b).

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

(h) *Reception and ruling.* The presiding officer shall rule on the admissibility of evidence and otherwise control the reception of evidence so as to confine it to the issues in the proceeding.

(i) *Offers of proof.* Any offer of proof made in connection with any ruling of the presiding officer rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and if the excluded evidence consists of evidence in documentary or written form, or of reference to documents or records, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

(j) *Official notice of facts.* Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the knowledge of the Commission as an expert body. Any party shall, on timely request, be afforded an opportunity to show the contrary.

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

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

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

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

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

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

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

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

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

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

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

(i) A clear description of the survey design, including the definition of the universe under study, the sampling frame and units, and the validity and confidence limits that can be placed on major estimates; and

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

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

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

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

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

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

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

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

(iv) For any alternative model whose computed econometric results influenced the choice of the preferred model, a statement of the reasons for rejecting that alternative, an identification of any differences between that alternative and the preferred model with respect to variable definitions, equation forms, data, or estimation methods, and, upon request, the computed econometric results for that alternative;

(v) A reference to a detailed description in a text, manual, or technical journal for every econometric technique used in the estimation process and the reasons for selecting the technique, or, in the alternative, a description and analysis of the technique that is sufficient for a technical evaluation;

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

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

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

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

(i) The formula used for statistical estimates;

(ii) The standard errors of each component estimated;

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

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

(b) *Computer analyses.* (1) In the case of computer studies or analyses which are being offered in evidence, or relied upon as support for other evidence, a foundation for the reception of such materials must be laid by furnishing a general description of the program that includes the objectives of the program, the processing tasks performed, the methods and procedures employed, and a listing of the input and output data and source codes (or a showing pursuant to paragraph (b)(3) of this section as to why such codes cannot be so furnished) and such description shall be furnished in all cases. For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon request of a party, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing. The following information shall be provided:

(i) For all input data, designations of all sources of such data, and explanations of any modifications to such data made for use in the program;

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

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

(iv) For all source codes, documentation sufficiently comprehensive and detailed to satisfy generally accepted software documentation standards appropriate to the type of program and its intended use in the proceeding;

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

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

(vii) An expert on the design and operation of the program shall be provided at a technical conference to respond to any oral or written questions

concerning information that is reasonably necessary to enable independent replication of the program output; and

(viii) Computer simulation models offered in evidence or relied upon as support for other evidence, shall be bound by all applicable provisions of this paragraph (b) and the separate requirements of paragraph (a) of this section, to the extent that portions of the simulation model utilize or rely upon such studies. Information that compares the simulation model output results to the actual phenomena being modelled, using data other than those from which the model was developed, shall be separately identified and submitted as evidence supporting the test and validation of the simulation model. Separate statements concerning the model limitations, including limiting model design assumptions and range of data input utilized in model design, shall be provided. Where test and validation of the entire simulation model are not possible, test and validation information shall be provided for disaggregate portions of the model. If disaggregate testing and validation are not possible, separate statements to that effect and statements regarding operational experts' review of model validity shall be provided.

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

(3) When the requestor is other than the Commission or the presiding officer, the cost of producing the material required in paragraphs (b)(1)(iv), (vi), and (vii) of this section, shall be borne by the requesting party unless otherwise ordered, for good cause shown by the requestor. When the Commission or the presiding officer is the requestor, it may assume or equitably allocate such costs for good cause shown by the requester.

(4) If the recipient of a request for materials pursuant to this paragraph (b) asserts that compliance with the request would conflict with patent, copyright, trade secret or contract rights

applicable to the requested material, the recipient shall immediately notify the requestor and the presiding officer. If valid, the presiding officer shall devise means of accommodating such rights. Such means may include protective orders, including access under protective conditions to the computer facilities of the recipient of a request, making material available for inspection, compensation, or other procedures, according to the nature of the right affected by compliance with this paragraph (b). If the presiding officer determines that compensation is necessary to accommodate the affected right, the cost of compensation shall be borne in the same manner that paragraph (b)(3) of this section prescribes for bearing the costs referenced there. If such right cannot be accommodated by reasonable compensation, or by protective orders or other procedures, and, as a result, materials required by this paragraph (b) cannot be provided, the presiding officer shall determine, in the presiding officer's discretion, whether evidence that relies upon the materials not provided shall be admissible or afforded limited weight.

(c) *Other studies and analyses.* In the case of all studies and analyses offered in evidence in hearing proceedings or relied upon as support for other evidence, other than the kinds described in paragraphs (a) and (b) of this section, there shall be a clear statement of the study plan, all relevant assumptions and a description of the techniques of data collection, estimation and/or testing. In addition, there shall be a clear statement of the facts and judgments upon which conclusions are based, together with an indication of the alternative courses of action considered and the steps taken to ensure the validity, accuracy, and reliability of the evidence. Tabulations of input data, workbooks, and all other materials necessary to replicate results shall be made available upon request at the offices of the Commission.

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

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

§ 3010.324 In camera orders.

(a) *Definition.* Except as hereinafter provided, documents and testimony made subject to *in camera* orders are not made a part of the public record, but are kept confidential, and only authorized parties, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The right of the presiding officer, the Commission, and reviewing courts to disclose *in camera* data to the extent necessary for the proper disposition of the proceeding is specifically reserved.

(b) *In camera treatment of documents and testimony.* (1) Presiding officers shall have authority, but only in those unusual and exceptional circumstances when good cause is found on the record, to order documents or oral testimony offered in evidence whether admitted or rejected, to be placed *in camera*. The order shall specify the date on which *in camera* treatment expires and shall include:

- (i) A description of the documents and testimony;
- (ii) A full statement of the reasons for granting *in camera* treatment; and
- (iii) A full statement of the reasons for the date on which *in camera* treatment expires.

(2) Any party desiring, for the preparation and presentation of the case, to disclose *in camera* documents or testimony to experts, consultants, prospective witnesses, or witnesses, shall make application to the presiding officer setting forth the justification therefor. The presiding officer, in granting such application for good cause found, shall enter an order protecting the rights of the affected parties and preventing unnecessary disclosure of information. *In camera* documents and the transcript of testimony subject to an *in camera* order shall be segregated from the public record and filed in a sealed envelope, bearing the title and docket number of the proceeding, the notation "*In Camera*

Record under § 3010.323," and the date on which *in camera* treatment expires.

(c) *Release of in camera information.* *In camera* documents and testimony shall constitute a part of the confidential records of the Commission. However, the Commission, on its own motion or pursuant to a request, may make *in camera* documents and testimony available for inspection, copying, or use by any other governmental agency. The Commission shall, in such circumstances, give reasonable notice of the impending disclosure to the affected party. However, such notice may be waived in extraordinary circumstances for good cause.

(d) *Briefing of in camera information.* In the submittal of proposed findings, briefs, or other papers, counsel for all parties shall make a good faith attempt to refrain from disclosing the specific details of *in camera* documents and testimony. This shall not preclude references in such proposed findings, briefs, or other papers to such documents or testimony including generalized statements based on their contents. To the extent that counsel consider it necessary to include specific details of *in camera* data in their presentations, such data shall be incorporated in separate proposed findings, briefs, or other papers marked "confidential," which shall be placed *in camera* and become a part of the *in camera* record.

§ 3010.325 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition when authorized by the Commission or the presiding officer on application of any party before the hearing is closed. An authorization to take the deposition of a witness will be issued only if:

- (1) The person whose deposition is to be taken would be unavailable at the hearing;
- (2) The deposition is deemed necessary to perpetuate the testimony of the witness; or
- (3) The taking of the deposition is necessary to prevent undue and excessive expense to a party and will not result in undue delay or an undue burden to other parties.

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(b) *Application.* An application for authorization to take testimony by deposition shall be filed with the Commission or the presiding officer and shall state:

(1) The name, identification, and post office address of the witness;

(2) The subject matter of the testimony.

(3) The time and place of taking the deposition;

(4) The name, identification, and post office address of the officer before whom the deposition is to be taken; and

(5) The reasons why the testimony of such witness should be taken by deposition.

(c) *Authorization.* If the application so warrants, the Commission or the presiding officer will issue and serve or cause to be served on the parties within a reasonable time in advance of the time fixed for taking testimony, an authorization for the taking of such testimony by deposition. Such authorization shall name the witness, the time, place, and officer before whom the deposition shall be taken, and shall specify the number of copies of the deposition to be submitted to the Commission. The authorization may include such terms and conditions as the Commission or the presiding officer deems fair and reasonable.

(d) *Qualifications of officer before whom taken.* Such deposition may be taken before a presiding officer or other authorized representative of the Commission, or any officer, not being counsel or attorney for any party or having an interest in the proceeding, authorized to administer oaths by the laws of the United States or of the place where the deposition is to be taken.

(e) *Oath and reduction to writing.* The officer before whom the deposition is to be taken shall put the witness on oath or affirmation and shall personally, or by someone acting under the officer's direction and in the officer's presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3010.124(a), signed by the witness, and certified in the usual form by the officer. The original of the deposition, together with the number of copies re-

quired by the authorization to be made by such officer, shall be forwarded by the officer to the Secretary by personal delivery or registered mail. Upon receipt, the Secretary shall hold the original for use in the hearing upon request by any party and shall make copies available for public inspection.

(f) *Scope and conduct of examination.* Unless otherwise directed in the authorization, the witness may be questioned regarding any matter which is relevant to the issues involved in the proceeding. Parties shall have the right for cross-examination and objection. In lieu of participation in the oral examination, parties may transmit written interrogatories to the officer who shall propound them to the witness.

(g) *Objections.* The officer before whom the deposition is taken shall not have the power to rule upon procedural matters or the competency, materiality, or relevancy of questions. Procedural objections or objections to questions of evidence shall be stated briefly and recorded in the deposition without argument. Objections not stated before the officer shall be deemed waived.

(h) *When a part of the record.* No portion of a deposition shall constitute a part of the record in the proceeding unless received in evidence by the presiding officer. If only a portion of the deposition is offered in evidence by a party, any other party may require the party to introduce all of it which is relevant to the part introduced, and any party may offer in evidence any other portions.

(i) *Fees.* Witnesses whose depositions are taken and the officer taking the same shall be entitled to the same fees as are paid for like services in the District Courts of the United States to be paid directly by the party or parties on whose application the deposition was taken.

§ 3010.330 Briefs.

(a) *When filed.* At the close of the taking of testimony in any proceeding, the Commission or the presiding officer shall fix the time for the filing and service of briefs, giving due regard to the timely issuance of the decision. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the complexity and

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importance of the issues involved, and the magnitude of the record. In cases subject to a limitation on the time available to the Commission for decision, the Commission may direct each party to file its brief simultaneously with the filing of briefs by other parties. In cases where, because of the nature of the issues and the record or the limited number of parties involved, the filing of initial and reply briefs, or the filing of initial, answering, and reply briefs, will not unduly delay the conclusion of the proceeding and will aid in the proper disposition of the proceeding, the parties may be directed to file more than one brief and at different times rather than a single brief filed simultaneously with briefs filed by other parties. The Commission or presiding officer may also order the filing of briefs during the course of the proceeding.

(b) *Contents.* Each brief filed with the Commission shall be as concise as possible, within any page limitation specified by the Commission or the presiding officer, and shall include the following in the order indicated:

(1) A subject index with page references, and a list of all cases and authorities relied upon, arranged alphabetically, with references to the pages where the citation appears;

(2) A concise statement of the case from the viewpoint of the filing party;

(3) A clear, concise, and definitive statement of the position of the filing party as to the matter before the Commission and the decision to be issued;

(4) A discussion of the evidence, reasons, and authorities relied upon with exact references to the record and the authorities; and

(5) Proposed findings and conclusions with appropriate references to the record or the prior discussion of the evidence and authorities relied upon.

(c) *Incorporation by references.* Briefs before the Commission or a presiding officer shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading, or document.

(d) *Excerpts from the record.* Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(e) *Filing and service.* Briefs shall be filed with the Commission and served on all parties as required pursuant to subpart B of this part.

§ 3010.331 Proposed findings and conclusions.

The Commission or the presiding officer may direct the filing of proposed findings and conclusions with a brief statement of the supporting reasons for each proposed finding and conclusion.

§ 3010.332 Oral argument before the presiding officer.

In any case in which the presiding officer is to issue an intermediate decision, such officer may permit the presentation of oral argument when, in the presiding officer's opinion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and the public interest warrants hearing such argument. The presiding officer shall determine the time and place for oral argument, and may specify the issue or issues on which oral argument is to be presented, the order in which the presentations shall be made, and the amount of time allowed each party. A request for oral argument before the issuance of an intermediate decision shall be made during the course of the hearing on the record.

§ 3010.333 Oral argument before the Commission.

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any party or on its own initiative, may order oral argument when, in the Commission's discretion, time permits, and the nature of the proceedings, the complexity or importance of the issues of fact or law involved, and public interest warrants such argument.

(b) *How requested.* Any party in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion. In a proceeding before the Commission on exceptions to an intermediate decision, such motion shall be filed no later than the date for the filing of briefs on exceptions.

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

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argument, and if argument is allowed, the Commission shall notify the parties of the time and place set for argument, the amount of time allowed each party, and the issue or issues on which oral argument is to be heard. Unless otherwise ordered by the Commission, oral argument shall be limited to matters properly raised on the record and in the briefs before the Commission.

(d) *Use of documents at oral argument.* Charts, graphs, maps, tables, and other written material may be presented to the Commission at oral argument only if limited to facts in the record of the case being argued and if copies of such documents are filed with the Secretary and served on all parties at least seven days in advance of the argument. Enlargements of such charts, graphs, maps, and tables may be used at the argument provided copies are filed and served as required by this paragraph.

§ 3010.334 Commission decisions.

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

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

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

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

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

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

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

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

§ 3010.335 Intermediate decisions.

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

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

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

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

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

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

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

(i) The concurrence of other parties; and

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

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

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

§3010.336 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any party in a proceeding may file exceptions to any intermediate decision by first filing a notice of intent to file a brief on exceptions with the Commission within seven days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. The brief on exceptions shall be filed with the Commission within 30 days after the date of issuance of the intermediate decision or such other time as may be fixed by the Commission. Any party to a proceeding may file a response to a brief on exceptions within 20 days after the time limited for the filing of briefs on exceptions or such other time as may be fixed by the Commission. No further response will be entertained unless the Commission, upon motion for good cause shown or on its own initiative, so orders.

(b) *Filing and contents.* Briefs on exceptions and briefs opposing exceptions shall be filed in accordance with §3010.330. In briefs on exceptions, the discussion of evidence, reasons and authorities shall be specifically directed to the findings, conclusions and recommendations in the intermediate decision to which exception is taken. Briefs on exceptions should not include a discussion of evidence and authorities on matters and issues to which no exception to the intermediate decision is taken. Briefs on exceptions and briefs opposing exceptions need not contain a statement of the case to the extent that it was correctly stated in either the intermediate decision or the brief on exceptions of another party to which reference is made.

(c) *Failure to except results in waiver.* Any party who fails to except or object to any part of an intermediate decision in its brief on exceptions may not thereafter raise such exceptions or objections which shall be deemed to have been waived.

PART 3011—NON-PUBLIC MATERIALS PROVIDED TO THE COMMISSION

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