

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

(c) *Response.* A response to the request is due within seven calendar days of the filing of the request, unless the Commission otherwise provides. Any response opposing the request shall seek an extension of non-public status by including an application for non-public treatment compliant with §3011.201. This extension application shall also include specific facts in support of any assertion that commercial injury is likely to occur if the information contained in the materials is publicly disclosed despite the passage of ten years or the timeframe established by Commission order.

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

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

(f) *Ruling.* The Commission may grant the request at any time after the response period described in paragraph (c) of this section has expired. The Commission may deny the request and enter an order extending the duration

of non-public status at any time after the reply period described in paragraph (d) of this section has expired. The termination of the Commission shall follow the applicable standard described in §3011.104.

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

APPENDIX A TO SUBPART D OF PART 3011—TEMPLATE FORMS

Before the POSTAL REGULATORY COMMISSION WASHINGTON, DC 20268-0001

(Caption) _____
Docket No. _____

REQUEST FOR MATERIALS FOR WHICH NON-PUBLIC TREATMENT HAS EXPIRED

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

Respectfully submitted,
(signature of representative)

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

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

[85 FR 9644, Feb. 19, 2020]

PART 3012—EX PARTE COMMUNICATIONS

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- 3012.1 Applicability.
- 3012.2 Definition of ex parte communications.
- 3012.3 Definition of a matter before the Commission.
- 3012.4 Definitions of persons subject to ex parte communication rules.
- 3012.5 Prohibitions.
- 3012.6 Required action upon ex parte communication.

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3012.7 Penalty for violation of ex parte communication rules.

AUTHORITY: 39 U.S.C. 404(d)(5); 503; 504; 3661(c); 3662.

SOURCE: 81 FR 42541, June 30, 2016, unless otherwise noted. Redesignated at 85 FR 9615, Feb. 19, 2020.

§ 3012.1 Applicability.

(a) The rules in this section are applicable to all Commission proceedings except for the instances identified in paragraphs (b) through (d) of this section.

(b) The rules in this section are not applicable to public inquiry (PI) proceedings, undertaken to gather information and which are not intended to result in a binding Commission decision.

(c) The rules in this section are not applicable to international mail (IM) proceedings undertaken pursuant to part 3025 of this chapter.

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

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

§ 3012.2 Definition of ex parte communications.

(a) Subject to the exceptions specified in paragraph (b) of this section, ex parte communications include all communications, oral or written (including electronic), between Commission decision-making personnel, and the Postal Service or public stakeholders regarding matters before the Commission.

(b) Ex parte communications do not include:

(1) Documents filed using the Commission's docketing system;

(2) Communications during the course of Commission meetings or hearings, or other widely publicized events where the Commission provides advance public notice of the event indicating the matter to be discussed, the event is open to all persons participating in the matter before the Commission, and a summary of the event is provided for the record;

(3) Communications during the course of off-the-record technical conferences associated with a matter before the Commission, or the pre-filing

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conference for nature of service cases required by § 3020.111 of this chapter, where advance public notice of the event is provided indicating the matter to be discussed, and the event is open to all persons participating in the matter before the Commission;

(4) Questions concerning Commission procedures, the status of a matter before the Commission, or the procedural schedule of a pending matter, where these issues are not contested matters before the Commission; and

(5) Communications not material to the matter before the Commission.

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

§ 3012.3 Definition of a matter before the Commission.

(a) A matter is before the Commission at such time as the Commission may designate, but in no event later than the earlier of the filing of a request to initiate a proceeding or the Commission noticing a proceeding.

(b) A matter is also before the Commission at such time as the person responsible for the communication has knowledge that a request to initiate a proceeding is expected to be filed.

(c) Paragraph (b) of this section does not apply to periodic reviews or reports issued by the Commission, or the 10-year review pursuant to 39 U.S.C. 3622(d)(3).

(d) The following explanations apply:

(1) A matter is no longer before the Commission upon the issuance of the final order or decision in the docketed matter;

(2) A matter is again before the Commission upon the filing of a request for reconsideration. The matter remains before the Commission until resolution of the matter under reconsideration;

(3) A matter is again before the Commission upon the remand of a Commission's final decision or order by an appellate court. The matter remains before the Commission until resolution of the matter under remand; and

(4) The mere potential that a request may be filed does not place a matter before the Commission. An affirmative action announcing, or actively preparing, an actual request with the intent to file within a reasonable period of time must be present.

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§ 3012.4 Definitions of persons subject to ex parte communication rules.

(a) Commission decision-making personnel include:

(1) The Commissioners and their staffs;

(2) The General Counsel and staff;

(3) The Director of the Office of Accountability and Compliance and staff;

(4) Contractors, consultants, and others hired by the Commission to assist with the Commission's analysis and decision; and

(5) Any other employee who may reasonably be expected to be involved in the decisional process.

(b) The Postal Service includes all Postal Service employees, contractors, consultants, and others with an interest in a matter before the Commission. Any interaction between the Postal Service and Commission decision-making personnel concerning a matter before the Commission expresses an interest in the matter before the Commission.

(c) Public stakeholders include all other persons not previously described, with an interest in a matter before the Commission. This includes the Commission non-decision-making personnel identified in paragraph (d) of this section. Any interaction between a public stakeholder and Commission decision-making personnel concerning a matter before the Commission expresses an interest in the matter before the Commission.

(d) Commission non-decision-making personnel include:

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

(2) Commission personnel not participating in the decisional process owing to the prohibitions of §3010.144 of this chapter regarding no participation by investigative or prosecuting officers;

(3) The Public Representative and other Commission personnel assigned to represent the interests of the general public pursuant to 39 U.S.C. 505 in the specific case or controversy at issue (regardless of normally assigned duties); and

(4) Contractors, consultants, and others hired by the Commission to provide an independent analysis of issues be-

fore the Commission (and Commission employees assigned thereto).

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

§ 3012.5 Prohibitions.

(a) Ex parte communications between Commission decision-making personnel, and the Postal Service or public stakeholders is prohibited.

(b) Commission decision-making personnel shall not rely upon any information obtained through ex parte communications unless the communications are made part of the record of the proceeding, where an opportunity for rebuttal has been provided, and reliance on the information will not cause undue delay or prejudice to any party.

(c) Paragraph (a) of this section does not constitute authority to withhold information from Congress.

§ 3012.6 Required action upon ex parte communications.

(a) Commission decision-making personnel who receive ex parte communications relevant to the merits of the proceeding shall decline to listen to such communications and explain that the matter is pending for determination. Any recipient thereof shall advise the communicator that the communication will not be considered, and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action.

(b) Commission decision-making personnel who receive, or who make or knowingly cause to be made, ex parte communications prohibited by this part shall promptly place, or cause to be placed, on the public record of the proceeding:

(1) All such written communications;

(2) Memoranda stating the substance of all such oral communications; and

(3) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(1) and (2) of this section.

(c) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which have been placed on

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the public record of the proceeding pursuant to paragraph (b) of this section may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. In lieu of actually receiving rebuttal material, the Commission may in its discretion direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

§ 3012.7 Penalty for violation of ex parte communication rules.

(a) The penalties for violation of ex parte communication rules specified in this section are applicable only to:

(1) Nature of postal service proceedings conducted pursuant to 39 U.S.C. 3661(c);

(2) Appeal of Postal Service decisions to close or consolidate any post office conducted pursuant to 39 U.S.C. 404(d)(5); and

(3) Rate or service complaints conducted pursuant to 39 U.S.C. 3662.

(b) Upon notice of a communication knowingly made or knowingly caused to be made by a participant in violation of § 3012.5(a), the Commission or presiding officer may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the participant to show cause why the participant's claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(c) The Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, consider a violation of § 3012.5(a) sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

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

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

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3013.21 Authority to order depositions and responses to written interrogatories.

APPENDIX A TO PART 3013—SUBPOENA FORM

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

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

Subpart A—General

§ 3013.1 Scope and applicability of other parts of this title.

(a) The rules in this part govern the procedures for compelling the production of information by the Postal Service pursuant to 39 U.S.C. 504(f).

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

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

§ 3013.2 Terms defined for purposes of this part.

(a) *Administrative law judge* means an administrative law judge appointed by the Commission under 5 U.S.C. 3105.

(b) *Chairman* means the Chairman of the Commission.

(c) *Covered person* means an officer, employee, agent, or contractor of the Postal Service.