

§ 3001.39

filing briefs or presenting oral argument to the Commission is desired or waived. Failure of any party to object to such request shall constitute a waiver of any objections.

§ 3001.39 Intermediate decisions.

(a) *Initial decision by presiding officer.* In any proceedings in which a Commissioner or hearing officer has presided at the reception of evidence, such presiding officer, as soon as practicable after the conclusion of the hearing and the filing of briefs, shall certify and file with the Secretary, a copy of the record of the hearing and his/her initial decision on the matters and issues presented for decision in such proceeding.

(b) *Tentative decision.* Prior to the issuance of an initial decision by the presiding officer, the Commission, with notice to the participants or by order in specific cases or by general rule for a class of cases, may direct the certification of the record to the Commission for the purpose of the issuance of a tentative decision. In such cases, the Commission may issue a tentative decision or require that the presiding officer or any designated responsible officer of the Commission recommend a decision.

(c) *Contents.* All intermediate decisions (initial, recommended or tentative) shall include (1) findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record, and (2) the appropriate recommended decision, advisory opinion or public report pursuant to the Act. An intermediate decision in a proceeding under section 3622 or 3623 of the Act shall include a statement specifically responsive to the criteria established under section 3622 or 3623 of the Act, as the case may be; and an intermediate decision in a proceeding under section 3661 of the Act shall include a determination of the question of whether or not the proposed change in the nature of postal service conforms to the policies established under the Act.

(d) *Service and Commission review.* All intermediate decisions shall be part of the record, shall be served on the participants to the proceeding by the Secretary pursuant to § 3001.12 and shall be subject to review by the Commission

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on its own initiative, or the filing of exceptions by the participants pursuant to § 3001.40.

(e) *Unavailability of presiding officer.* In any proceeding in which the intermediate decision is not omitted pursuant to § 3001.38, if a presiding officer becomes unavailable to issue an intermediate decision on a timely basis, the Commission shall, by a notice served on the participants require the record to be certified to it and it shall either designate a qualified responsible officer of the Commission to issue a recommended decision or will itself issue a tentative decision, as the Commission may deem appropriate.

(f) *Effect of intermediate decision.* Unless briefs on exceptions are filed to an intermediate decision pursuant to § 3001.40 or unless the Commission issues an order to review an intermediate decision on its own initiative, the intermediate decision shall become the final action of the Commission after 30 days from the date of issuance thereof. If briefs on exceptions are timely filed or the Commission initiates review on its own motion, the intermediate decision is stayed until further order of the Commission.

[36 FR 396, Jan. 12, 1971, as amended at 58 FR 38976, July 21, 1993]

§ 3001.40 Exceptions to intermediate decisions.

(a) *Briefs on exceptions and opposing exceptions.* Any participant in a proceeding may file exceptions to any intermediate decision by filing a brief on exceptions 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 participant to a proceeding may file a response to briefs 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 § 3001.34. 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 participant to which reference is made.

(c) *Failure to except results in waiver.* Any participant 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.

(84 Stat. 759-761, 764; 39 U.S.C. 3603, 3622-3624, 3661, 3662)

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4329, Feb. 13, 1973]

§ 3001.41 Rulemaking proceedings.

(a) *General notice.* Before the adoption of any rule of general applicability, or the commencement of any hearing on any such proposed rulemaking, the Commission will cause general notice to be given by publication in the FEDERAL REGISTER, such notice to be published therein not less than 30 days prior to the date fixed for the consideration of the adoption of a proposed rule or rules or for the commencement of the hearing, if any, on the proposed rulemaking, except where a shorter period is reasonable and good cause exists therefor. However, where the Commission, for good cause, finds it impracticable, unnecessary, or contrary to the public interest to give such notice, it may proceed with the adoption of rules without notice by incorporating therein a finding to such effect and a concise statement of the reasons therefor. Advance notice shall not be required for rules subject to 5 U.S.C. 553(d).

(b) *Contents of notice.* The notice shall include (1) a statement of the time, place and nature of the public rulemaking proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the

terms or substance of the proposed rule or a description of the subjects and issues involved.

(c) *Participation.* After notice given as provided in paragraph (a) of this section, the Commission shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.

(d) *General statement as to basis and purpose.* After consideration of the relevant matter presented, the Commission shall incorporate in the rules adopted a concise general statement of their basis and purpose.

(e) *Exceptions.* Except when notice or hearing is required by statute, the Commission may issue at any time rules of organization, procedure or practice, or interpretive rules, or statements of policy, without notice or public procedure, and this section is not to be construed as applicable to the extent that there may be involved any military, naval or foreign affairs function of the United States, or any matter relating to the Commission's management or personnel, or to U.S. property, loans, grants, benefits, or contracts.

(84 Stat. 759-761, 764; 39 U.S.C. 3603, 3622-3624, 3661, 3662)

[36 FR 396, Jan. 12, 1971, as amended at 38 FR 4329, Feb. 13, 1973]

§ 3001.42 Public information and requests.

This section prescribes the rules governing: Publication of recommended decisions, advisory opinions, and public reports; and records of the Commission.

(a) *Notice and publication.* Service of intermediate and recommended decisions, advisory opinions and public reports upon parties to the proceedings is provided for in §§ 3001.12(c) and 3001.39(d). Descriptions of the Commission's organization, its methods of operation, statements of policy and interpretations, procedural and substantive rules, and amendments thereto will be filed with and published in the FEDERAL REGISTER, and are available on the Commission's Web site, <http://www.prc.gov>. Commission recommended decisions, advisory opinions