



POSTAL REGULATORY COMMISSION

39 CFR Parts 3010 and 3012

[Docket No. RM2025-3; Order No. 9447]

RIN 3211-AA42

Rules Regarding Off-the-Record Procedures

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Notice of Proposed Rulemaking proposes amendments to revise the Commission's rules regarding permissible off-the-record procedures in proceedings with an opportunity for a hearing on the record. The proposed amendments also revise the Commission's rules to clarify that informal off-the-record procedures are consistent with the Commission's *ex parte* rules when participants receive advance notice and an opportunity to participate. This document informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <https://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives. The Rule Summary can be found on the Commission's Rule Summary Page at <https://www.prc.gov/rule-summary-page>.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202-789-6820.

SUPPLEMENTARY INFORMATION:

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I. Background

The Administrative Procedure Act (APA) is a federal law that, among other things, prescribes the procedural framework for formal agency adjudications and hearings required by statute to be made on the record.¹ Commission requirements for proceedings with an opportunity for a hearing on the record are described in 39 CFR part 3010, subpart F. Section 3010.302(e)(12), which governs prehearing conferences, requires the presiding officer and parties to consider and resolve several matters, including “[a]ll other matters which would aid in an expeditious disposition of the proceeding”

The proposed amendments would revise § 3010.302(e)(12) to clarify that, by consent, parties may use informal off-the-record procedures consistent with the APA to expedite resolution of proceedings without compromising on-the-record adjudications. The proposed amendments would also revise the Commission’s rules to clarify that informal off-the-record procedures are consistent with the Commission’s *ex parte* rules as long as certain requirements are met.

II. Basis of Proposed Rules

Pursuant to 39 U.S.C. 503, the Commission proposes two amendments to its rules. First, it proposes revisions to the Commission’s rules of practice and procedure in 39 CFR Part 3010, subpart F governing proceedings conducted

¹ Administrative Procedure Act, Pub. L. 79-404, § 6, 60 Stat. 237 (1946) (codified in 5 U.S.C. 551–559 and 701–706).

with an opportunity for a hearing on-the-record. The Commission proposes to amend existing § 3010.302(e)(12) to add a non-exhaustive list of permissible informal off-the-record procedures, including prehearing conferences, technical conferences, settlement conferences, or alternative dispute resolution.

Second, the Commission proposes revisions to the Commission's rules on *ex parte* communications in 39 CFR part 3012. The Commission proposes to amend existing section 3012.2(b)(3) to exclude from the definition of *ex parte* communications informal off-the-record procedures associated with on-the-record proceedings as long as participants receive advanced notice and an opportunity to participate.

The Commission finds that each of these revisions would align the regulations with APA provisions and current law, ensure consistency across the Commission's rules, and avoid any ambiguity regarding on-the-record proceedings.

III. Proposed Rules

List of Subjects

39 CFR Part 3010

Administrative practice and procedure, Confidential business information, Freedom of information, Sunshine Act.

39 CFR Part 3012

Administrative practice and procedure, Courts.

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

PART 3010—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3010 continues to read as follows:

Authority: 39 U.S.C. 404(d); 503; 504; 3661.

2. Amend § 3010.302 by revising paragraph (e)(12) to read as follows:

§ 3010.302 Prehearing conferences.

* * * * *

(e) * * *

(12) All other matters which would aid in an expeditious disposition of the proceeding, including consent of the parties to use informal off-the-record procedures such as prehearing conferences, technical conferences, settlement conferences, or alternative dispute resolution consistent with 5 U.S.C. 556.

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PART 3012—EX PARTE RULES

3. The authority citation for part 3012 continues to read as follows:

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

4. Amend § 3012.2 by revising paragraph (b)(3) to read as follows:

§ 3012.2 Definition of ex parte communications.

* * * * *

(b) * * *

(3) Communications where advance public notice and an opportunity to participate is provided to all persons participating in the matter before the Commission that occur: during the course of off-the-record technical conferences associated with a matter before the Commission, or communications during the course of off-the-record procedures associated with proceedings with an opportunity for a hearing on-the-record under part 3010, subpart F of this chapter, including without limitation the pre-filing conference for nature of service cases required by § 3020.111 of this chapter; prehearing conferences conducted under § 3010.302(c) of this chapter; settlement conferences under § 3010.320 of this chapter; and alternative dispute resolution

and settlement of complaints by informal procedures under § 3022.40 of this chapter.

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By the Commission.

Mallory S. Richards,

Attorney-Advisor.

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