

notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 26, 2023.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at <http://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.

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

SUPPLEMENTARY INFORMATION:

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I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose 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.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.¹

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory

requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s):* MC2023-271 and CP2023-274; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage Contract 56 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* September 18, 2023; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* September 26, 2023.

This Notice will be published in the **Federal Register**.

Erica A. Barker,
Secretary.

[FR Doc. 2023-20572 Filed 9-21-23; 8:45 am]
BILLING CODE 7710-FW-P

POSTAL REGULATORY COMMISSION

[Docket No. C2023-6; Order No. 6688]

Complaint Proceeding

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is appointing a presiding officer to set a procedural schedule and conduct limited discovery for the purpose of determining disputed issues of fact in the case. This notice informs the public of the filing and takes other administrative steps.

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

SUPPLEMENTARY INFORMATION:

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- I. Introduction
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I. Introduction

On July 7, 2023, Mark Allan Edwards (Complainant) filed a complaint pursuant to 39 U.S.C. 3662(a), 401(2), and 403(c) with the Commission challenging the Postal Service's decision to terminate delivery of oversized

packages to his front door.¹ On July 27, 2023, the Postal Service filed a motion to dismiss the Complaint.² Complainant did not respond to the Motion to Dismiss.

For the reasons discussed below, the Commission concludes that the Complaint raises material issues of fact, and therefore denies in part the Postal Service's Motion to Dismiss pursuant to 39 U.S.C. 3662(b) and 39 CFR 3022.30(a)(1). Accordingly, the Commission appoints a presiding officer to set a procedural schedule and conduct limited discovery for the purpose of determining the disputed issues of fact in the case. 39 CFR 3030.21. The scope of the discovery proceeding will be limited only to fact-finding conducted by the presiding officer on the specific matters of fact identified in this order.

II. Background

A. General Background

Complainant is an individual resident of Clayton, Georgia and resides in the Mountain Creek Estates housing development. Complaint at 2; Motion to Dismiss at 3. The approved method of delivery for Mountain Creek Estates is central delivery with cluster mailboxes located at the entrance of the community, which is more than one-half mile from Complainant's home. Complaint at 1; Motion to Dismiss at 3. The Complaint alleges that from December 2019 until March 2022, the Postal Service delivered oversized packages to his door, even though it was more than one-half mile away from the centralized mailbox location. Complaint at 1.

B. Federal Court Proceedings

After the Postal Service stopped delivery of oversized packages, Complainant filed suit in the Northern District of Georgia, and sought resumption of that delivery and alleged a violation of the Postal Operations Manual. Complaint, *Edwards v. United States Postal Service*, No. 2:22-CV-160-SCJ (N.D. Ga. Aug. 15, 2022); Amended Complaint by Court Order, *Edwards v. United States Postal Service*, No. 2:22-CV-160-SCJ (N.D. Ga. Dec. 15, 2022). The United States filed a Motion to Dismiss in which it argued that the district court lacked subject matter jurisdiction to consider the complaint because Complainant failed to identify a specific statute that expressly waived

¹ Complaint of Mark Allan Edwards, July 7, 2023 (Complaint). Citations to the Complaint will be to the page number of the PDF.

² United States Postal Service's Motion to Dismiss, July 27, 2023 (Motion to Dismiss).

¹ See Docket No. RM2018-3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19-22 (Order No. 4679).

sovereign immunity and the complaint raised a service-related claim over which the Commission has exclusive jurisdiction. Memorandum in Support of Defendant's Motion to Dismiss at 3–8, *Edwards v. United States Postal Service*, No. 2:22–CV–160–SCJ (March 6, 2023). The motion to dismiss is pending before the district court.

C. Complaint

While his case was pending in Federal district court, Complainant filed the Complaint with the Commission. As noted above, he alleges that from December 2019 until March 2022, the Postal Service delivered oversized packages that would not fit into his mailbox to his door. Complaint at 2. The Complaint alleges that because the Postal Service delivered oversized packages to his door for over 2 years, it improperly changed that mode of delivery without his consent in violation of the Postal Operations Manual (POM) sections 631.1 and 631.8 and 39 U.S.C. 401(2). *Id.* at 2–3.

The Complaint further asserts that Complainant was given inconsistent reasons for the change in the method of delivery. *Id.* at 4–6. First, he asserts, he was told the change was prompted by safety concerns in that his driveway was “too narrow for a safe turnaround for the carrier.” *Id.* at 4–5. Complainant then asserts that after he filed an informal complaint with the Commission, a letter carrier informed him that delivery of oversized packages to his door was discontinued because his home was too far from the central delivery point. *Id.* at 5. The Complaint alleges that this constituted improper retaliation. *Id.* at 4–5.

Finally, the Complaint also alleges that because, currently, the Postal Service “delivers to homes on the first western circular road with the furthest home getting oversized package delivery just over ½ mile from the [cluster] mailboxes[,]” discontinuing delivery to Complainant's home, which is similarly situated to other homes that receive delivery of oversized packages, constitutes discrimination in violation of 39 U.S.C. 403(c). *Id.* at 4–6. Complainant requests that the Commission order the Postal Service to resume delivery of oversized packages to his door as a remedy to this alleged discrimination. *Id.* at 9–10.

D. Motion To Dismiss

In its Motion to Dismiss, the Postal Service asserts that the Commission lacks jurisdiction over the claims related to POM section 631.81 and retaliation because those claims do not fall under the enumerated bases for jurisdiction set

forth in 39 U.S.C. 3662(a). Motion to Dismiss at 6–10. While the Complaint references 39 U.S.C. 401(2), which is an enumerated basis to bring a complaint, that statute applies only to scenarios where the Postal Service adopts, amends, or repeals rules or regulations inconsistent with title 39. *Id.* at 8–9. Since, according to the Postal Service, application of POM section 631.8, even if incorrect, does not involve the Postal Service “adopting, amending, or repealing” a rule or regulation in a manner that is inconsistent with title 39, the Commission lacks jurisdiction over the claim. *Id.* at 9–10.

Regarding, the 39 U.S.C. 403(c) discrimination claim, the Postal Service asserts that Complainant fails to state a claim for which relief may be granted. *Id.* at 11–14. For purposes of the Motion to Dismiss, the Postal Service accepted as fact that “customers in Mountain Creek Estates and elsewhere in Rabun County who live more than one-half mile from the carrier's line of travel or delivery route” receive delivery of oversized packages to their doors. *Id.* at 12. Still, the Postal Service argues, Complainant cannot succeed on a 39 U.S.C. 403(c) claim because there is a rational and legitimate basis to deny the same delivery to Complainant—it “is contrary to section 331.21 of PO–603, which limits door delivery of oversized packages to residences and businesses ‘on the line of travel, or within one-half mile of the route’” *Id.* (quoting the Postal Service's Rural Carrier Duties and Responsibilities Handbook (PO–603) section 331.21).

III. Commission Analysis and Limited Discovery

The Commission finds that the pleadings raise issues of fact relevant to whether the actions or inactions of the Postal Service violate 39 U.S.C. 403(c). Viewed in the light most favorable to Complainant, the allegations in the Complaint may raise a cognizable claim of undue or unreasonable discrimination. The Commission also recognizes that the Postal Service has the legal obligation to “adopt, amend, and repeal such rules and regulations, . . . as may be necessary in the execution of its functions” under title 39.³ Accordingly, the Commission's role in this inquiry is not to question that obligation, but to determine if the current postal policy, as applied to the Complainant, presents a potential violation of 39 U.S.C. 403(c).⁴

³ See 39 U.S.C. 401(2).

⁴ The Commission's authority, should a complaint be justified, is to “order that the Postal Service take such action as the Commission

A. Violations of POM Section 631.8 and Retaliation

The Commission has jurisdiction over complaints that meet the statutory requirements of 39 U.S.C. 3662(a). Section 3662(a) permits any interested person, including the Public Representative, to file a complaint with the Commission if they believe the Postal Service is not operating in conformance with the requirements of 39 U.S.C. chapter 36; 39 U.S.C. 101(d), 401(2), 403(c), 404a, or 601; or any regulations promulgated under any of these provisions.⁵ Within 90 days after receiving a complaint under section 3662(a), the Commission must either (1) begin proceedings on the complaint upon finding that such complaint raises material issues of fact or law; or (2) issue an order dismissing the complaint.⁶ The Commission must issue a written statement setting forth the bases of its determination. 39 U.S.C. 3662(b)(1)(B).

The first two claims raised by Complainant are (1) that the Postal Service violated POM section 631.8 and (2) the Postal Service improperly retaliated against him for making a complaint after the Postal Service discontinued door delivery of oversized packages. While the alleged violation of POM section 631.8 refers to 39 U.S.C. 401(2), which is an enumerated basis of the Commission's complaint jurisdiction, because Complainant alleges that the Postal Service is violating a provision of the POM untethered to any statute or regulation, it fails to invoke the Commission's jurisdiction under 39 U.S.C. 3662(a).

As the Postal Service argues, and the Commission has previously concluded,⁷ the mere reference to 39 U.S.C. 401(2) does not create a tether for jurisdiction over the claim because it applies only to scenarios where the Postal Service adopts, amends, or repeals rules or regulations inconsistent with title 39. Motion to Dismiss at 8–9. And because, as the Postal Service correctly argues, application of POM section 631.8, even if incorrect, does not involve the Postal Service “adopting, amending, or repealing” a rule or regulation in a

considers appropriate in order to achieve compliance with the applicable requirements and to remedy the effects of any noncompliance” See 39 U.S.C. 3662(c).

⁵ 39 U.S.C. 3662(a); see 39 CFR 3022.2. The Public Representative is an officer of the Commission representing the interests of the general public. 39 U.S.C. 3662(a), 505.

⁶ 39 U.S.C. 3662(b)(1)(A); see 39 CFR 3022.30(a).

⁷ See Docket No. C2015–1, Order Granting Motion to Dismiss, March 4, 2015, at 6–7 (Order No. 2377); Docket No. C2015–3, Order Dismissing Complaint, August 26, 2015, at 18 (Order No. 2687).

manner that is inconsistent with title 39, *id.* at 9–10, the Commission lacks jurisdiction over the claim. Second, a claim for retaliation does not fall within any of the enumerated bases of the Commission's complaint jurisdiction as it does not implicate the requirements of 39 U.S.C. chapter 36; 39 U.S.C. 101(d), 401(2), 403(c), 404a, or 601; or any regulations promulgated under any of these provisions.⁸

Complainant objects to the Postal Service's alleged noncompliance with its own regulations, not to the regulations themselves. Thus, the Complaint does not fall within the Commission's jurisdiction under 39 U.S.C. 401(2) and neither of the first two claims are encompassed under the Commission's complaint jurisdiction. Therefore, the Postal Service's Motion to Dismiss is granted as to these two claims.

B. Undue Discrimination

Complainant's third claim alleges a potential violation of 39 U.S.C. 403(c) because other similarly situated members of his community are receiving delivery of oversized packages to their doors. Complaint at 4–6. The Postal Service is prohibited from making any undue or unreasonable discrimination among mail users. 39 U.S.C. 403(c). When evaluating claims of discrimination among mail users, the Commission follows the guidance set forth in *Egger v. USPS*, 436 F. Supp. 138 (W.D. Va. 1977). In *Egger*, the district court held that it is "obvious that the Postal Service may provide different levels of delivery service to different groups of mail users so long as the distinctions are reasonable." *Egger*, 436 F. Supp. at 142. Thus, the Postal Service may differentiate among customers where the differences have a rational basis.⁹

Thus, in order to state a claim for a violation of 39 U.S.C. 403(c), the Commission requires a complainant to plead three things: (1) the complainant is receiving less favorable services than those provided to one or more other postal customers, (2) the complainant is similarly situated to those postal customers receiving more favorable service, and (3) there is no rational or legitimate basis for denying the complainant the more favorable service currently being provided to those similarly situated postal customers.¹⁰

The Postal Service, solely for the purposes of the Motion to Dismiss, accepts that Complainant can meet the first two prongs. Motion to Dismiss at 12. The third prong of the test used to determine whether a 403(c) claim is actionable is that there is no rational or legitimate basis for the Postal Service to deny the Complainant the more favorable rates or terms and conditions offered to others.¹¹ The Postal Service argues that delivery to homes outside of the half-mile radius violates Postal Service policy, and that constitutes a legitimate basis for the Postal Service to deny Mr. Edwards more favorable rates, terms, or conditions offered to others. Motion to Dismiss at 12–13.

The Commission finds that this argument ignores the fact that, if Complainant can meet the first two prongs of the test, it means that other customers are receiving those exact "rates or terms and conditions" in violation of Postal Service policy. Accepting the Postal Service's argument on this point would in effect request the Commission to ignore potential discrimination because its preferential treatment of other customers violates its own policies. Thus, the Commission finds the Postal Service's arguments on the Complaint's failure to state a claim unpersuasive. Therefore, the Postal Service's Motion to Dismiss is denied as it relates to the potential violation of 39 U.S.C. 403(c) pursuant to 39 U.S.C. 3662(b).

The outstanding issues of fact required to resolve whether a violation of 39 U.S.C. 403(c) occurred are:

1. Whether any similarly situated postal customers in Complainant's neighborhood are receiving delivery of oversized packages to their doors.
2. Whether postal management followed non-discriminatory processes in the discontinuation of door delivery of oversized packages to Complainant's residence.

Pursuant to 39 CFR 3010.106, the Commission appoints John Avila to serve as presiding officer to ascertain outstanding issues of material fact in this matter. Parties may request that the presiding officer obtain specific discovery but may not independently propound discovery. The presiding officer shall examine the disputed issues identified above and provide a public, written intermediate decision including findings of fact and

conclusions of law on the issues raised in this proceeding. 39 CFR 3010.335.

The Commission finds good cause to waive the appointment of an officer of the Commission designated to represent the interests of the general public in this proceeding as required by 39 CFR 30.30(c) because the violations alleged in the Complaint pertain solely to Complainant rather than the general public.

IV. Ordering Paragraphs

It is ordered:

1. The Commission finds that the Complaint of Mark Allan Edwards, filed July 7, 2023, raises material issues of fact.

2. The United States Postal Service's Motion to Dismiss the Complaint of Mark Allan Edwards, filed July 27, 2023, is granted on all grounds except for the claim related to the alleged violation of 39 U.S.C. 403(c).

3. Pursuant to 39 CFR 3010.106, the Commission appoints John Avila as a presiding officer in this proceeding.

4. Parties may request that the presiding officer obtain specific discovery but may not independently propound discovery.

5. The presiding officer shall, pursuant to 39 CFR 3010.335, provide a public written intermediate decision including findings of fact and conclusions of law on the issues raised in this proceeding.

6. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Erica A. Barker,
Secretary.

[FR Doc. 2023–20560 Filed 9–21–23; 8:45 am]

BILLING CODE 7710-FW-P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–037, OMB Control No. 3235–0031]

**Submission for OMB Review;
Comment Request; Extension: Rule
17f–2(e)**

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 ("PRA") (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of

⁸ 39 U.S.C. 3662(a).

⁹ See Docket No. C2015–2, Order Granting Motion to Dismiss, July 15, 2015, at 12 (Order No. 2585).

¹⁰ See Docket No. C2020–2, Order Granting the Postal Service's Motion to Dismiss Complaint with Prejudice, April 28, 2020, at 8 (Order No. 5491)

(citing Docket No. 2009–1, Order on Complaint, April 20, 2011, at 28 (Order No. 718)).

¹¹ Docket No. C2020–2, Order Granting the Postal Service's Motion to Dismiss Complaint with Prejudice, April 28, 2020, at 8 (Order No. 5491) (citing Docket No. 2009–1, Order on Complaint, April 20, 2011, at 28 (Order No. 718)).