

Postal Regulatory Commission



RULES OF PRACTICE AND PROCEDURE

39 CFR 3001, 3010, 3015, 3020

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F O R W A R D

This document revises and replaces the version of the Rules of Practice and Procedure published November 16, 2006 by the Commission. The following changes are made pursuant to PRC Order No. 43, (72 Fed. Reg. 63662 (November 9, 2007)), and are effective December 10, 2007:

- (1) Revisions to part 3001, section 3001.5—Definitions;
- (2) Addition of part 3010—Regulations of Rates for Market Dominant Products;
- (3) Addition of part 3015—Regulation of Rates for Competitive Products; and
- (4) Addition of part 3020—Product Lists.

Please note this document incorporates a new system of page numbering. To facilitate updating, each subpart is numbered separately. For example, part 3010, subpart C, § 3010.20 is listed in the table of contents as page 1 under the heading 3010-C-.

The Rules of Practice and Procedure are also available on our website.

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PART 3001—RULES OF PRACTICE AND PROCEDURE**Subpart A—Rules of General Applicability****§ 3001.1 Construction of rules.**

The rules in this part shall be liberally construed to secure just and speedy determination of issues.

§ 3001.2 [Reserved]**§ 3001.3 Scope of rules.**

The rules of practice in this part are applicable to proceedings before the Postal Rate Commission under the Act, including those which involve a hearing on the record before the Commission or its designated presiding officer. They do not preclude the informal disposition of any matters coming before the Commission not required by statute to be determined upon notice and hearing.

§ 3001.4 Method of citing rules.

This part shall be referred to as the "rules of practice." Each section, paragraph, or subparagraph shall include only the numbers and letters to the right of the decimal point. For example, "3001.24 Prehearing conferences" shall be referred to as "section 24" or "rule 24."

§ 3001.5 Definitions.

(a) *Act* means the Postal Reorganization Act (84 Stat. 719, title 39, U.S.C.), as amended.

(b) *Postal Service* means the U.S. Postal Service established by the Act.

(c) *Commission* or *Commissioner* means, respectively, the Postal Rate Commission established by the Act or a member thereof.

(d) *Secretary* means the Secretary or the Acting Secretary of the Commission.

(e) *Presiding officer* means the Chairman of the Commission in proceedings conducted by the Commission en banc or the Commissioner or employee of the Commission designated to preside at hearings or conferences.

(f) *Person* means an individual, a partnership, corporation, trust, unincorporated association, public or private organization, or governmental agency.

(g) *Party* means the Postal Service, a complainant, an appellant, or a person who has intervened in a proceeding before the Commission.

(h) *Participant* means any party and the officer of the Commission who is designated to represent the interests of the general public and, for purposes of §§ 3001.11(e), 3001.12, 3001.21, 3001.23, 3001.24, 3001.29, 3001.30, 3001.31, and 3001.32 only, it also means persons who are limited participators.

(i) *Complainant* means a person or interested party who as permitted by § 3662 of the Act files a complaint with the Commission in the form and manner hereinafter prescribed.

(j) *Hearing* means a hearing under §§ 556 and 557 of title 5, U.S.C. (80 Stat. 386), as provided by §§ 3624, 3661, and 3662 of the Act.

(k) *Record* means the transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, which constitutes the exclusive record for decision.

(l) *Effective date* of an order or notice issued by the Commission or an officer thereof means the date of issuance unless otherwise specifically provided.

(m) *Appellant* means a person who as permitted by 39 U.S.C. § 404(b) appeals to the Commission a determination of the Postal Service to close or consolidate a post office.

(n) *Commission meeting* means the deliberations of at least three Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, but does not include deliberations required or permitted by § 3001.43(d) or § 3001.43(e).

(o) *Ex parte communication* means an oral or written communication not on the public record with respect to which reasonable prior notice to all participants and limited participators is not given, but it shall not include requests for status reports on any matter or proceeding covered by subchapter II of chapter 5 of title 5 or a proceeding conducted pursuant to Subpart H of this part.

(p) *Domestic Mail Classification Schedule* means the classification schedule, including schedules of full and phased rates and fees, adopted by the Decision of the Governors of the U.S. Postal Service Re Recommended Decision of the Postal Rate Commission Regarding the Proper Scope and Extent of the Mail Classification Schedule, issued April 3, 1979, and any amendments thereto adopted pursuant to the procedures of subchapter III, chapter 36, title 39 of the U.S. Code.

(q) *Office of the Consumer Advocate* or *OCA* means the officer of the Commission designated to represent the interests of the general public in a Commission proceeding.

(r) *Negotiated service agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that 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.

(s) *Postal service* refers to the delivery of letters, printed matter, or mailable

packages, including acceptance, collection, sorting, transportation, or other functions ancillary thereto.

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

(u) *Rate or class of general applicability* means a rate or class that is available to all mailers equally on the same terms and conditions.

§ 3001.6 Appearances.

(a) *By whom.* An individual may appear in his/her own behalf; a member of a partnership may represent the partnership; and an officer may represent a corporation, trust, unincorporated association, or governmental agency. 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 of any participant or an attorney acting in a representative capacity appears in person, submits a document to the Commission online as a Principal Account Holder, or signs a paper filed with the Commission, his/her personal appearance, online submission, or signature, shall constitute a representation to the Commission that he/she is authorized to represent the particular participant in whose behalf he/she acts. Any person 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 his/her 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 represen-

tative capacity for a participant in a proceeding 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 participant whom he/she represents as a person to whom communications from the Commission in regard to the filing are to be addressed. A person whose authority to represent a participant 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 in the courts of the United States.

(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 ground 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.

§ 3001.7 Ex parte communications.

(a) *Definitions.*

(1) *Decision-making Commission personnel.* Subject to the exception stated in paragraph (a)(2)(ii) of this section, the following categories of persons are designated "decision-making Commission personnel":

(i) The Commissioners and their personal office staffs;

(ii) The General Counsel and his/her staff;

(iii) The Director of the Office of Rates Analysis and Planning and his/her staff;

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

(2) *Non-decision-making Commission personnel.* The following categories of persons are designated "non-decisionmaking Commission personnel":

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

(ii) Decision-making Commission personnel not participating in the decisional process owing to the prohibitions of § 3001.8 or 39 CFR 3000.735, Subpart C.

(b) *Prohibition.* In any agency proceeding that is required to be conducted in accordance with § 556 of title 5 or a proceeding conducted pursuant to Subpart H of this part, except to the extent required for the disposition of ex parte matters as authorized by law:

(1) Interested persons outside the Commission and non-decision-making Commission personnel shall not make or knowingly cause to be made to any Commission decision-making personnel ex parte communications relevant to the merits of the proceeding;

(2) Commission decision-making personnel shall not make or knowingly cause to be made to any interested person outside the Commission or to non-decision-making Commission personnel ex parte communications relevant to the merits of the proceeding;

(3) 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 commu-

nicator that he/she will not consider the communication 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.

(4) Commission decision-making personnel who receive, or who make or knowingly cause to be made, communications prohibited by this paragraph shall place on the public record of the proceeding:

(i) All such written communications;

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

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraphs (b)(4)(i) and (b)(4)(ii) of this section.

(5) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which have been placed on the public record of the proceeding pursuant to paragraph (b)(4) 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. Generally, in lieu of actually receiving rebuttal material, the Commission will direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

(c) *Applicability.*

(1) The prohibitions of paragraph (b) of this section shall apply beginning at the time at which a proceeding is noticed for hearing or appeal unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply begin-

ning at the time of his/her acquisition of such knowledge.

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

(d) *Violations of ex parte rules.*

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

(2) 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 paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly committed such violation or knowingly caused such violation to occur.

§ 3001.8 No participation by investigative or prosecuting officers.

In any proceeding noticed pursuant to § 3001.17, no officer, employee or agent of the Commission who appears in the hearing 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 except as a witness or counsel in public proceedings.

§ 3001.9 Filing of documents.

(a) *Filing with the Commission.* The filing of each written document required

or authorized by these rules or any applicable statute, rule, regulation, or order of the Commission, or by direction of the presiding officer shall be made using the Internet (Filing Online) pursuant to § 3001.10(a) at the Commission's website *www.prc.gov*, unless a waiver is obtained. If a waiver is obtained, a hardcopy document may be filed either by mailing or by hand delivery to the Office of the Secretary, Postal Rate Commission, 901 New York Avenue NW, Suite 200, Washington, DC 20268-0001 during regular business hours on a date no later than that specified for such filing.

(b) *Account holder.* In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a Principal Account Holder or an Agent Account Holder [Filing Online Account Holder]. The authority of the Principal Account Holder to represent the participant on whose behalf the document is filed must be valid and current, in conformance with § 3001.6. The authority of an Agent Account Holder to submit documents in his/her authority to represent participants in a proceeding or any change in the authority delegated to an Agent Account Holder to submit documents on his/her behalf.

(c) *Acceptance for filing.* Only such documents as conform to the requirements of this part and any other applicable rule or order authorized by the Commission shall be accepted for filing. In order for a document to be accepted using Filing Online, it must be submitted to the Commission by a Filing Online Account Holder.

(1) Subject to rule 9(d):

(i) A document submitted through Filing Online is filed on the date indicated on the receipt issued by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's website.

(ii) A hardcopy document is filed on the date stamped by the Secretary. It is accepted when the Secretary, after review, has posted it on the Daily Listing page of the Commission's website.

(2) Any document received after the close of regular business hours or on a Saturday, Sunday, or holiday, shall be deemed to be filed on the next regular business day.

(d) *Rejected filings.* Any filing that does not comply with any applicable rule or order authorized by the Commission 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 or the Secretary's designee will 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.

(e) *Account holder exemptions.* Notices of intervention and comments solicited by the Commission may be filed under temporary Filing Online accounts. Temporary Filing Online accounts may be obtained without meeting all of the requirements of paragraphs (b) and (c) of this section, and the subscription requirements of § 11. Other categories of documents may be filed under temporary Filing Online accounts under extraordinary circumstances, for good cause shown.

§ 3001.10 Form and number of copies of documents.

(a) *Documents.* Each document filed with the Commission must be submitted through Filing Online by an Account Holder, unless a waiver is obtained.

(1) The text of documents filed with the Commission shall be formatted in not less than one and one-half spaced lines except that footnotes and quotations may be single spaced. Documents must be

submitted in Arial 12 point font, or such program, format, or font as the presiding officer may designate.

(2) The Secretary may prescribe additional format requirements for documents submitted through Filing Online.

(3) The form of documents filed as library references is governed by § 3001.31(b)(2)(iv).

(4) Requests for changes in rates and classifications, including supporting documentation, shall be filed both online, and in hardcopy form pursuant to paragraph (b).

(5) Documents filed online must satisfy Filing Online system compatibility requirements specified by the Secretary in the Filing Online User Guide, which may be accessed from the Filing Online page on the Commission's website, www.prc.gov.

(6) Documents requiring privileged or protected treatment shall not be filed online.

(b) *Hard copies.* Each document filed in paper form must 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 .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. If the document is bound, it shall be bound on the left side. Copies of documents for filing and service must be printed from a text-based pdf version of the document, where possible. Otherwise, they may be reproduced by any duplicating process that produces clear and legible copies. Participants in proceedings conducted under subpart H who are unable to comply with these requirements may seek to have them waived. Each person filing a hardcopy document with the Commission must provide an original and

2 fully conformed copies of the document required or permitted to be filed under this part, except for a document filed under seal, for which only the original and two (2) copies need be filed. The copies need not be signed but shall show the full name of the individual signing the original document and the certificate of service attached thereto.

(c) *Computer media.* A participant that has obtained a waiver of the online filing requirement of § 3001.9(a) may submit a document on standard PC media, simultaneously with the filing of one printed original and two hard copies, provided that the stored document is a file generated in either Acrobat (pdf), Word, or WordPerfect, or Rich Text Format (rtf).

§ 3001.11 General contents of documents.

(a) *Caption and title.* 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).

(b) *Designation of individuals to receive service.* Each notice of intervention filed pursuant to §§ 3001.20 or 20a must state the name, full mailing address, telephone number, and e-mail address of up to two individuals designated to receive service of hardcopy documents relating to the proceeding.

(c) *Contents.* In the event there is no rule, regulation, or order of the Commission which specifically prescribes the contents of any document to be filed, such document shall contain a proper identification of the parties concerned and a concise but complete statement of the relief

sought and of the facts and citations of authority and precedent relied upon.

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

(e) *Subscription.* Each document filed with the Commission shall be subscribed. Subscription constitutes a certification that he/she has read the document being subscribed and filed; that he/she knows the contents thereof; that if executed in any representative capacity, the document has been subscribed and executed in the capacity specified in the document with full power and authority so to do; that to the best of his/her 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.

(1) For a document filed via the Internet by an account holder, the subscription requirement is met when the document is filed with the Commission.

(2) For a hardcopy document filed under either § 3001.10(b) or (c), the original shall be signed in ink by the individual filing the same or by an authorized officer, employee, attorney, or other representative and all other copies of such document filed with the Commission and served on the participants in any proceeding shall be fully conformed thereto.

(f) *Table of contents.* Each document filed with the Commission consisting of 20 or more pages shall include a table of contents with page references. For briefs see § 3001.34.

(g) *Certificate of service.* A certificate of service signed in ink must be attached to the original of each hardcopy document filed with the Commission showing service on all participants in a proceeding as prescribed by § 3001.12. All copies filed

and served shall be fully conformed thereto.

§ 3001.12 Service of documents.

(a) *Service by account holders.* Each document filed in a proceeding via the Internet by an Account Holder shall be deemed served on all participants when it is accepted by the Secretary and posted on the Commission's website, except that:

(1) A document subject to § 3001.10(a)(4) must meet the service requirements that apply to hardcopy documents as well as those that apply to documents filed online.

(2) A document that must be served on a participant that the Commission or presiding officer has determined is unable to receive service through the Commission's website shall be served on such participant by the Secretary by First-Class Mail.

(b) *Service by others.* If the Commission or presiding officer has determined that a participant is unable to file documents online, documents filed by that participant must be delivered to the Secretary by hand or First-Class Mail. Such documents will be deemed served upon all participants when they are accepted by the Secretary and posted on the Commission's website. If such documents cannot be posted on the Commission's website, they will be deemed served on all participants when the Secretary posts them as First-Class Mail.

(c) *Service by the Commission.* Except as provided in this section, each document issued by the Commission or presiding officer shall be deemed served upon the participants in the proceeding upon its posting by the Commission on its website. Service of Commission documents on any participant that the Commission or presiding officer has determined is unable to receive service through the Commission website shall be by First-Class Mail.

(d) *Hardcopy documents.* Each participant filing a hardcopy document in a proceeding shall serve such document upon each person on the proceeding's service list, unless that person is subject to paragraph (b) of this section, or the Commission or presiding officer otherwise directs.

(e) *Limitation on extent of hardcopy service.* To avoid the imposition of an unreasonable burden upon participants, the Commission or the presiding officer may, by appropriate order, limit service of hardcopy documents to service upon participants intending to actively participate in the hearing, or upon a person or persons designated for properly representative groups, or by requiring the making of documents available for convenient public inspection, or by any combination of such methods.

(f) *Service list.* The Secretary shall maintain a current service list in each proceeding which shall include the participants in that proceeding and up to two individuals designated for service of documents by each participant. The service list for each current proceeding will be available on the Commission's website, *www.prc.gov*. Each participant is responsible for ensuring that its listing on the Commission's website is accurate, and should promptly notify the Commission of any errors.

(g) *Method of hardcopy service.* Service of hardcopy documents may be made by First-Class Mail or personal delivery, to the address shown for the individuals designated on the Secretary's service list. Service of any hardcopy document upon the Postal Service shall be made by delivering or mailing six copies thereof to the address shown for the individual designated in the Secretary's service list.

(h) *Date of hardcopy service.* Whenever service is made by mail, the date of the postmark shall be the date of service. Whenever service is made by personal

delivery, the date of such delivery shall be the date of service.

(i) *Form of hardcopy certificate of service.* The certificate of service of hardcopy documents shall show the name of the participant or his/her counsel making service, the date and place of service, and include the statement that "I hereby certify that I have this day served the foregoing document upon all participants of record in this proceeding in accordance with § 12 of the rules of practice."

§ 3001.13 Docket and hearing calendar.

The Secretary shall maintain a docket of all proceedings, and each proceeding as initiated shall be assigned an appropriate designation. The Secretary shall maintain a hearing calendar of all proceedings that have been set for hearing. Proceedings shall be heard on the date set in the hearing order, except that the Commission may for cause, with or without motion, at any time with due notice to the parties advance or postpone the date of hearing. All documents filed in a docket, other than matter filed under seal, and the hearing calendar may be accessed remotely via the Commission's website, or viewed at the Commission's docket section during regular business hours.

§ 3001.14 Consolidation and separation of proceedings.

The Commission, with or without motion, may order proceedings involving related issues or facts to be consolidated for hearing of any or all matters in 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.

§ 3001.15 Computation of time.

Except as otherwise provided by law, in computing any period of time prescribed or allowed by this part, or by any notice, order, rule or regulation of the Commission or a presiding officer, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or legal holiday for the Commission, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, or holiday. A part-day holiday shall be considered as other days and not as a holiday. In computing a period of time which is 5 days or less, all Saturdays, Sundays, and legal holidays of the Commission are to be excluded.

§ 3001.16 Continuances and extensions of time.

Continuances of any proceeding or hearing and extensions of time for making any filing or performing any act required or allowed to be done within a specified time or by a specified date may be granted by the Commission or the presiding officer upon motion for good cause shown unless the time for performance or filing is limited by statute. Requests for extension of time shall be by written motion timely filed with the Commission stating the facts on which the application rests, except that after a hearing has convened, such requests shall be made by written or oral motion to the presiding officer. Requests for continuances or extensions of time may as a matter of discretion be acted upon without waiting for answers thereto.

§ 3001.17 Notice of proceeding.

(a) *When issued.* The Commission shall issue a notice of a proceeding to be determined on the record with an opportunity for any interested person to request a hearing whenever:

(1) The Postal Service files a formal request that the Commission submit a recommended decision on changes in postal rates or fees or establishing or changing the mail classification schedule;

(2) The Commission proposes on its own initiative to issue a recommended decision on changes in the mail classification schedule;

(3) The Postal Service files a request with the Commission to issue an advisory opinion on a proposed change in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis;

(4) The Commission in the exercise of its discretion determines that an opportunity for hearing should be provided with regard to a complaint filed pursuant to Subpart E of this part; or

(5) The Commission in the exercise of its discretion determines to institute any other proceeding under the Act.

(b) *Appellate proceedings under 39 U.S.C. § 404(b).* The Commission shall issue a notice of proceeding to be determined on a record compiled by the Postal Service whenever:

(1) An appeal of a determination of the Postal Service to close or consolidate a post office is taken to the Postal Rate Commission pursuant to Subpart H of this part; or

(2) An application to suspend the effective date of a determination of the Postal Service to close or consolidate a post office pending appeal to the Postal Rate Commission is made pursuant to Subpart H of this part.

(c) *Publication and service of notice.* Each notice of proceeding shall be published in the Federal Register and served on the Postal Service, the complainant in a complaint proceeding, and the appellant

in the appeal of a Postal Service determination to close or consolidate a post office.

(d) *Contents of notice.* The notice of a proceeding shall include the following:

(1) The general nature of the proceeding involved in terms of categories listed in paragraphs (a) and (b) of this section;

(2) A reference to the legal authority under which the proceeding is to be conducted;

(3) A concise description of proposals for changes in rates or fees, proposals for the establishment of or changes in the mail classification schedule, proposals for changes in the nature of postal services; in the case of a complaint, an identification of the complainant and a concise description of the subject matter of the complaint or, in the case of an appeal, an identification of the appellant and a summarization of the Postal Service determination to close or consolidate under review;

(4) The date by which notices of intervention and requests for hearing must be filed; and

(5) Such other information as the Commission may desire to include.

§ 3001.18 Nature of proceedings.

(a) *Proceedings to be set for hearing.* Except as otherwise provided in these rules, in any case noticed for a proceeding to be determined on the record pursuant to § 3001.17(a), the Commission may hold a public hearing if a hearing is requested by any party to the proceeding or if the Commission in the exercise of its discretion determines that a hearing is in the public interest. The Commission may give notice of its determination that a hearing shall be held in its original notice of the proceeding or in a subsequent notice issued pursuant to paragraph (b) of this section and § 3001.19.

(b) *Procedure in hearing cases.* In proceedings which are to be set for hearing, the Commission shall issue a notice of hearing or prehearing conference pursuant to § 3001.19. After the completion of the hearing, the Commission or the presiding officer shall receive such briefs and hear such oral argument as may be ordered by the Commission or the presiding officer pursuant to §§ 3001.34 to 3001.37, and the Commission shall then issue a recommended decision, advisory opinion, or public report, as appropriate, in accordance with the provisions of §§ 3001.38 to 3001.39.

(c) *Procedure in non-hearing cases.* In any case noticed for a proceeding to be determined on the record in which a hearing is not requested by any party or ordered by the Commission, the Commission or the presiding officer shall issue a notice of the procedure to be followed with regard to the filing of briefs and oral argument, and a recommended decision, advisory opinion, or public report, as appropriate, shall then be issued pursuant to the provisions of §§ 3001.34 to 3001.39. The Commission or presiding officer may, if necessary or desirable, call procedural conferences by issuance of a notice pursuant to § 3001.19.

§ 3001.19 Notice of prehearing conference or hearing.

In any proceeding noticed for a proceeding on the record pursuant to § 3001.17(a), the Commission shall give due notice of any prehearing conference or hearing by including the time and place of the conference or hearing in the notice of proceeding or by subsequently issuing a notice of prehearing conference or hearing. Such notice of prehearing conference or hearing shall give the title and docket designation of the proceeding, a reference to the original notice of proceeding and the date of such notice, and the time and place of the conference or hearing. Such notice shall be published in the Federal Register and served on all participants in the proceeding involved. Notice of the

time and place where a hearing will be reconvened shall be served on all participants in the proceeding unless announcement was made thereof by the presiding officer at the adjournment of an earlier session of the prehearing conference or hearing.

§ 3001.20 Formal intervention.

(a) *Who may intervene.* A notice of intervention will be entertained in those cases that are noticed for a proceeding pursuant to § 3001.17(a) from any person claiming an interest of such nature that intervention is allowed by the Act, or appropriate to its administration.

(b) *Contents.* 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 classifications of postal service utilized by the intervenor giving rise to his/her 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 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 in any notice or order with respect to the proceeding issued by the Commission or its Secretary, unless in extraordinary circumstances for good cause shown, the Commission authorizes a late filing. Notices of intervention shall conform to the requirements of §§ 3001.9 through 3001.12.

(d) *Oppositions.* Oppositions to notices of intervention may be filed by any participant in the proceeding no later than 10 days after the notice of intervention is filed. Pending Commission action, an opposition to intervention shall 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 § 3001.24 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, cross-examining witnesses, filing briefs, and presenting oral arguments to the Commission or presiding officer. No intervention shall be deemed to constitute a decision that the intervening party has such an interest in the proceeding that he/she would be aggrieved by an ultimate decision by order of the Commission.

§ 3001.20a Limited participation by persons not parties.

Notwithstanding the provisions of § 3001.20, any person may appear as a limited participator in any case that is noticed for a proceeding pursuant to § 3001.17(a), in accordance with the following provisions:

(a) *Form of intervention.* Notices of intervention as a limited participator shall be in writing, shall set forth the nature and extent of the intervenor's interest in the proceeding, and shall conform to the requirements of §§ 3001.9 through 3001.12.

(b) *Oppositions.* Oppositions to notices to intervene as a limited participator may be filed by any participant in the proceeding no later than 10 days after the notice of intervention as a limited participator is filed.

(c) *Scope of participation.* Subject to the provisions of § 3001.30(f), limited participators may present evidence which is relevant to the issues involved in the proceeding and their testimony shall be subject to cross-examination on the same terms applicable to that of formal participants. Limited participants may file briefs or proposed findings pursuant to §§ 3001.34 and 3001.35, and within 15 days after the release of an intermediate decision, or such other time as may be fixed by the Commission, they may file a written statement of their position on the issues. The Commission or the presiding officer may require limited participators having substantially like interests and positions to join together for any or all of the above purposes. Limited participators are not required to respond to discovery requests under §§ 3001.25 through 3001.28 except to the extent that those requests are directed specifically to testimony which the limited participators provided in the proceeding; however, limited participators, particularly those making contentions under 39 U.S.C. § 3622(b)(4), are advised that failure to provide relevant and material information in support of their claims will be taken into account in determining the weight to be placed on their evidence and arguments.

§ 3001.20b Informal expression of views by persons not parties or limited participators (commenters).

Notwithstanding the provisions of §§ 3001.20 and 3001.20a, any person may file with the Commission, in any case that is noticed for a hearing pursuant to § 3001.17, an informal statement of views in writing, in accordance with the following provisions:

(a) *Form of statement.* A statement filed pursuant to this section may be submitted as a hardcopy letter mailed to the Secretary or an electronic message entered on the form provided for this purpose under the “Contact Us” link on the Commission’s website, www.prc.gov.

(b) *Contents of statement.* A statement filed pursuant to this section shall set forth the name and full mailing address of the person by whom or on whose behalf it is filed, a concise statement of the issue or issues to which the comments contained therein apply, and a clear statement of any views, opinions, or suggestions which the person filing the statement wishes to lay before the Commission.

(c) *Disposition by the Commission or presiding officer.* Statements filed pursuant to this section shall be made a part of the Commission’s files in the proceeding. The Secretary shall maintain a file of such statements which shall be segregated from the evidentiary record in the proceeding, and shall be open to public inspection during the Commission’s office hours. A statement or exhibit thereto filed pursuant to this section shall not be accepted in the “record,” as defined by § 3001.5(k) except to the extent that it is (1) otherwise formally introduced in evidence, or (2) a proper subject of official notice, pursuant to § 3001.31(j).

(d) *Ex parte communications—exception.* A statement filed pursuant to this section shall not be considered an ex parte communication within the meaning of § 3001.7.

§ 3001.21 Motions.

(a) *Scope and contents.* An application for an order or ruling not otherwise specifically provided for in this part shall be by motion. Motions shall set forth with particularity the ruling or relief sought, the grounds and basis therefor, and the statutory or other authority relied upon, and shall be filed with the Secretary and

served pursuant to the provisions of §§ 3001.9 to 3001.12. All motions to dismiss proceedings or other motions which involve a final determination of the proceeding shall be addressed to the Commission. After a presiding officer is designated in any proceeding, and before the issuance of an initial decision pursuant to § 3001.39 or certification of the record to the Commission pursuant to § 3001.38, all other motions in that proceeding shall be addressed to the presiding officer.

(b) *Answers.* Within 7 days after a motion is filed, or such other period as the rules provide or the Commission or presiding officer may fix, any participant to the proceeding may file and serve an answer in support of or in opposition to the motion pursuant to §§ 3001.9 to 3001.12. Such answers shall state with particularity the position of the participant with regard to the ruling or relief requested in the motion and the grounds and basis and statutory or other authority relied upon. Unless the Commission or presiding officer otherwise provides, no reply to an answer or any further responsive document shall be filed.

(c) *Motions to strike.* Motions to strike are requests for extraordinary relief and are not substitutes for briefs or rebuttal evidence in a proceeding. All motions to strike testimony or exhibit materials are to be submitted in writing at least 14 days before the scheduled appearance of the witness, unless good cause is shown. Responses to motions to strike are due within 7 days.

§ 3001.22 Requests for waiver.

Upon request by motion, any requirement of any subpart of this Part 3001 may be waived in whole or in part to the extent permitted by law upon a showing that such waiver will not unduly prejudice the interests of other participants and is consistent with the public interest and the Commission's expeditious discharge of its responsibilities under the Act. A request

for waiver shall not be entertained unless it is timely filed so as to permit Commission disposition of the request prior to the date specified for the requirement for which waiver is requested. The pendency of a request for waiver does not justify or excuse any person from timely meeting the requirements of this part.

§ 3001.23 Presiding officers.

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

(1) To regulate the course of the hearing, including the recessing, reconvening, and adjournment thereof, unless otherwise directed by the Commission, as provided in § 3001.16;

(2) To administer oaths and affirmations;

(3) To issue subpoenas authorized by law;

(4) To rule upon offers of proof and receive relevant evidence;

(5) To take or authorize that depositions be taken as provided in § 3001.33;

(6) To hold appropriate conferences before or during hearings and to rule on matters raised at such conferences including those specified in paragraph (d) of § 3001.24;

(7) To dispose of procedural requests or similar matters but not, before their initial or recommended decision, to dispose of motions made during hearings to dismiss proceedings or other motions which involve a final determination of the proceeding;

(8) Within their discretion, or upon direction of the Commission, to certify any question to the Commission for its consideration and disposition;

(9) To submit an initial or recommended decision in accordance with §§ 3001.38 and 3001.39; and

(10) To 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.

(b) *Conduct of hearings.* It is the duty of the presiding officer to conduct a fair and impartial hearing and to maintain order. Any disregard by participants or counsel of his/her rulings on matters of order and procedure shall be noted on the record, and where he/she 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 immediately may submit to the Commission a report thereon, together with his/her recommendations, and in his/her discretion, suspend the hearing.

(c) *Ex parte communication.* Except to the extent required for the disposition of ex parte matters as authorized by law and by the rules of the Commission, no presiding officer shall, in any proceeding in which the Commission may so direct, or in any proceeding required by statute to be determined on the record after opportunity for hearing, consult any person on any matter in issue unless upon notice and opportunity for all participants to be heard.

(d) *Disqualification.* A presiding officer may withdraw from a proceeding when he/she deems himself/herself disqualified, or may be withdrawn by the Commission for good cause found after timely affidavits alleging personal bias or other disqualifications have been filed.

§ 3001.24 Prehearing conferences.

(a) *Initiation and purposes.* In any proceeding the Commission or the presiding officer may, with or without motion, upon due notice as to time and place, direct the participants 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 (d) of this section. It is the intent of the Commission to issue its recommended decision or advisory opinion on requests under §§ 3622, 3623, and 3661 of the Act with the utmost practicable expedition. The Commission directs that these prehearing procedures shall be rigorously pursued by the presiding officer and all participants to that end.

(b) *Informal off-the-record procedures.* In order to make the prehearing conference as effective as possible, the presiding officer may, in his/her discretion, direct that conferences be held off the record at the beginning of a prehearing conference or at other appropriate times, without the presiding officer being present. Such informal off-the-record conferences shall be presided over by the Commission's officer designated to represent the interests of the general public or such other person as the participants may select. At such off-the-record conferences the participants 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 (d) of this section. A report on the results of such off-the-record conference shall be made to the presiding officer on the record at a time specified by the presiding officer and he/she shall then determine the further prehearing procedures to be followed.

(c) *Required preparation and cooperation of all parties.* All participants in any proceeding before the Commission are required and expected to come to the prehearing conference fully prepared to dis-

cuss in detail and resolve all matters specified in paragraph (d) of this section, and notice of the prehearing conference, and such other notice or agenda as may have been issued by the Commission or the presiding officer. All participants 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 participants, 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 participant 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 participant with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto.

(d) *Matters to be pursued.* At the prehearing conference in any proceeding, the presiding officer and the participants shall consider and resolve the following matters:

(1) The definition and simplification of the issues including any appropriate explanation, clarification, or amendment of any proposal, filing, evidence, complaint, or other pleading filed by any participant;

(2) Arrangement for timely completion of discovery from the Postal Service or any other participant concerning information desired by any participant concerning any issues in the proceeding or prior filings, evidence or pleadings of any participant;

(3) Agreement as to procedures for timely discovery with regard to any future evidentiary filings of any participant;

(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) Grouping 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, each factor stated in § 3622 or 3623 of the Act;

(7) Limitation of the scope of the evidence and the number of witnesses 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 simultaneous hearings;

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

(11) 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 participants to the conduct of the entire proceedings off the record.

(e) *Rulings by presiding officer.* The presiding officer at such prehearing conference, irrespective of the consent of the participants, shall dispose of by ruling (1) any of the procedural matters itemized in paragraph (d) of this section and (2) such other procedural matters on which he/she is authorized to rule during the course of the hearing if ruling at this stage would expedite the proceeding. 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 participants, the actions taken, and the rulings made by the presiding officer. Such rulings shall control the subsequent course of the proceedings unless modified at the hearing to prevent manifest injustice.

§ 3001.25 Discovery—general policy.

(a) Rules 26 through 28 allow discovery reasonably calculated to lead to admissible evidence during a noticed proceeding. Generally, discovery against a participant will be scheduled to end prior to the receipt into evidence of that participant's direct case. An exception to this procedure shall operate in all proceedings brought under 39 U.S.C. 3622, 3623, 3661 and 3662 when a participant needs to obtain information (such as operating procedures or data) available only from the Postal Service. Discovery requests of this nature 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 rules 26 through 28 are not

exclusive. Participants 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 participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3001.26 to 3001.28, 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 participants obtaining the order, or prohibit the disobedient participant from introducing designated matters in evidence, or strike the evidence, complaint or pleadings or parts thereof.

§ 3001.26 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 participant may propound to any other participant in a proceeding written, sequentially numbered interrogatories, by witness, requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a wit-

ness at the hearing and to state the subject matter on which the witness is expected to testify. The participant propounding the interrogatories shall file them with the Commission in conformance with §§ 3001.9 through 3001.12. 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 participant 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 participant responding to the interrogatories shall file the answers in conformance with §§ 3001.9 through 3001.12 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 bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant 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 answered until a prehearing conference or other later time. Objections shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 within 10 days of the filing of the interrogatories.

(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. Participants 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 participant 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 found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be filed in conformance with §§ 3001.9 through 3001.12 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 participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he/she obtains information upon the basis of which he/she knows that the answer was incorrect when made or is no longer true. Participants shall serve supplemental answers to update or to correct responses whenever necessary, up until the date the answer could have been accepted into evi-

dence as written cross-examination. Participants 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 participant 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 participant or person from undue annoyance, embarrassment, oppression, or expense.

§ 3001.27 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 participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, 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 and that are in the custody or control of the participant 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 participant requesting the production of documents or things shall file its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* The participant responding to the request shall file an answer with the Commission in conformance with §§ 3001.9 through 3001.12 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.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state with particularity the reasons for its applicability. A participant 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 in conformance with §§ 3001.9 through 3001.12 within 10 days of the request for production.

(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. Participants 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 participant 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 found not to be valid. Such compelled documents or things shall be made available to the participant 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. When complying with orders to produce documents or things, notice shall be filed in conformance with §§ 3001.9 through 3001.12. The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in § 3001.26(g) as may be appropriate.

§ 3001.28 Requests for admissions for purpose of discovery.

(a) *Service and content.* In the interest of expedition, any participant may serve upon any other participant 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. The participant requesting the admission shall file its request with the Commission in conformance with §§ 3001.9 through 3001.12.

(b) *Answers.* Each matter of which an admission is requested shall be separately set forth and is admitted unless within 14 days after the request is filed, or within such other period as may be fixed by the Commission or presiding officer, the participant to whom the request is directed files a written answer or objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file its answer with the Commission in conformance with §§ 3001.9 through 3001.12.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant 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 in conformance with §§ 3001.9 through 3001.12 within 10 days of the request for admissions.

(d) *Motions to compel responses to requests for admissions.* 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. Participants who have objected to requests for admissions 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 participant to the proceeding 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 found not to be valid. Such compelled answers shall be filed with the Commission in conformance with §§ 3001.9 through 3001.12 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 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.

§ 3001.29 Settlement conferences.

Any participant in a proceeding may submit offers of settlement or proposals of adjustment at any time and may request a conference between the participants to consider such offers or proposals. The

Commission or the presiding officer shall afford the participants 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 participant claiming such privilege.

§ 3001.30 Hearings.

(a) *How initiated.* Hearings for the purpose of taking evidence shall be initiated by the issuance of a notice by the Commission as provided in § 3001.19.

(b) *Presiding officer.* All hearings shall be held before the Commission sitting en banc, or a duly designated presiding officer.

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

(d) *Order of procedure.* In public hearings before the Commission, the Postal Service shall open and close in proceedings which it has initiated under §§ 3622, 3623, or 3661 of the Act, and a complainant shall open and close in proceedings on complaints filed under § 3662 of the Act. With respect to the order of presentation of all other participants, and in all other proceedings, unless otherwise ordered by the Commission, the presiding officer shall direct the order of presentation of evidence and issue such other procedural orders as may be necessary to assure the orderly and expeditious conclusion of the hearing.

(e) (1) *Presentations by participants.* Any participant shall have the right in public hearings of presentation of evi-

dence, cross-examination (limited to testimony adverse to the participant conducting the cross-examination), objection, motion, and argument. The case-in-chief of participants other than the proponent shall be in writing and shall include the participant's direct case and rebuttal, if any, to the initial proponent's case-in-chief. It may be accompanied by a trial brief or legal memoranda. (Legal memoranda on matters at issue will be welcome at any stage of the proceeding.) There will be an opportunity for participants to rebut presentations of other participants and for the initial proponent to present surrebuttal evidence. New affirmative matter (not in reply to another participant'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 cross-examination.* Written cross-examination will be utilized as a substitute for oral cross-examination whenever possible, particularly to introduce factual or statistical evidence. Designations of written cross-examination should be served in accordance with §§ 3001.9 through 3001.12 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 participant 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, "OCA-T1-17 to USPS witness Jones, answered by USPS witness Smith (March 1, 1997) as updated (March 21, 1997).") When a participant designates written cross-examination, two hard copies of the documents to be included shall simultaneously be submitted to the Secretary of the Commission. The Secretary of the Commission 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. The witness will verify the answers and materials in the packet, and they will be entered into the transcript by the presiding officer. Counsel may object to written cross-examination at that time, and any designated answers or materials ruled objectionable will be stricken from the record.

(3) *Oral cross-examination.* Oral cross-examination will be permitted for clarifying written cross-examination and for testing assumptions, conclusions or other opinion evidence. 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. A participant 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 calendar days (including one working day) 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 participant. If a participant has obtained permission to receive service of documents in hardcopy form, hardcopy notices of intent to conduct oral cross-examination of witnesses for that participant should be delivered to counsel for that participant and served three or more working days before the announced appearance of the witness, and cross-examination exhibits should be delivered to counsel for the witness at least two calendar days (including one working day) before the scheduled appearance of the witness.

(f) *Limitations on presentation of the evidence.* The taking of evidence shall proceed with all reasonable diligence and dispatch, and to that end, the Commis-

sion or the presiding officer may limit appropriately (1) the number of witnesses to be heard upon any issue, (2) the examination by any participant to specific issues, and (3) 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.

(g) *Motions during hearing.* After a hearing has commenced in a proceeding, a request may be made by motion to the presiding officer for any procedural ruling or relief desired. Such motions shall set forth 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 participant shall have the opportunity to answer or object to such motions at the time and in the manner directed by the presiding officer.

(h) *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 his/her intermediate decision. This section shall not preclude a presiding officer, within his/her discretion, from referring any motion made in hearing to the Commission for ultimate determination.

(i) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a mate-

rial substantive error in the transcription made at the hearing.

§ 3001.31 Evidence.

(a) *Form and admissibility.* In any public hearing before the Commission, or a presiding officer, 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 participant 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 participant offering the same to the other participants 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) *Library references.*

(i) The term “library reference” is a generic term or label that participants and others may use to identify or designate certain documents or things (“material”) filed with the Commission’s docket section. To the extent possible, material filed as a library reference shall be identified and referred to by participants in terms of the following categories: Category 1—Reporting Systems Material (consisting of library references relating to the Service’s statistical cost and revenue reporting systems, and their primary outputs); 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); 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); Category 4—Material Provided in Response to Discovery (consisting of material provided in response to discovery requests); 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); Category 6—All Other Material (consisting of library references not fitting any of the other categories).

(ii) The practice of filing a library reference is authorized primarily as a convenience to filing participants and the Commission under certain circumstances. These include when the physical characteristics of the material, such as number of pages, bulk, or format, are reasonably likely to render compliance with the service requirements unduly burdensome; and one of the following considerations apply:

(A) Interest in the material or things so labeled is likely to be so limited that service on the entire list would be unreasonably burdensome, and the participant agrees to serve the material on individual participants upon request within three days of a request, or to provide, within the same period, an explanation of why the material cannot be provided within three days, and to undertake reasonable efforts to promptly provide the material; or

(B) The participant satisfactorily demonstrates that designation of material as a library reference is appropriate because the material constitutes a secondary source. A secondary source is one that provides background for a position or matter referred to elsewhere in a participant's case or filing, but does not constitute essential support and is unlikely to be a material factor in a decision on the merits of issues in the proceeding; or

(C) Reference to, identification of, or use of the material would be facilitated if it is filed as a library reference; or

(D) The material is filed in compliance with a discovery request for production of documents or things.

(iii) *Other circumstances.* If a participant considers it appropriate to file material as a library reference because its physical characteristics render service

unduly burdensome, but cannot satisfy the terms set out in paragraphs (b)(2)(ii)(A) through (D) of this section, the material may be filed (by means of a notice) subject to the following conditions:

(A) Inclusion in the accompanying notice of a detailed explanation of the reason for filing the material under this provision;

(B) Satisfaction of all other applicable requirements relating to library references; and

(C) The Commission's right to refuse acceptance of the material in its docket room and its right to take other action to ensure participants' ability to obtain access to the material.

(iv) *Filing procedure.* Participants filing material as a library reference shall file contemporaneous written notice of this action in conformance with §§ 3001.9 through 3001.12. The notice shall:

(A) Set forth the reason(s) why the material is being designated as a library reference, with specific reference to paragraphs (b)(2)(ii) and (iii) of this section;

(B) 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;

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

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

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

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

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

(H) To the extent feasible, 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).

(v) *Labeling.* Material filed as a library reference shall be labeled in a manner consistent with standard Commission notation and any other conditions the presiding officer or Commission establishes.

(vi) *Optional preface or summary.* Inclusion of a preface or summary in a library reference addressing the matters set out in paragraphs (b)(2)(iv)(A) through (H) of this section is encouraged but optional.

(vii) *Electronic version.* Material filed as a library reference shall also be made available on standard PC media, absent a showing of why a version on PC media cannot be supplied or should not be required to be supplied. The material provided on PC media must be submitted in a form that allows it to be replicated using a publicly available PC application. The library reference documentation shall include file names and corresponding descriptions of file contents, and shall identify the applications necessary to execute the files. This documentation should be included in both the hard copy and the electronic version of the library reference.

(viii) *Number of copies.* Except for good cause shown, two hard copies of each library reference shall be filed.

(ix) *Special requests and motions seeking service.* In situations other than that covered in paragraph (b)(2)(ii)(A) of this section, special requests for service of material contained in a library reference may be made by the participant that filed the interrogatory or inquiry that generated a response in the form of a library reference. Service shall be made within a reasonable time. Others seeking service of the material contained in a library reference shall file a detailed motion setting forth the reasons why service is necessary or appropriate.

(x) *Waiver.* Upon the filing of a motion showing good cause, the Commission may waive one or more of the provisions relating to library references. Motions seeking waiver may request expedited consideration and may seek waiver for categories of library references.

(xi) *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 this section.

(c) *Commission's files.* Except as otherwise provided in § 3001.31(e), in case any matter contained in a report or other document on file with the Commission is offered in evidence, such report or other document need not be produced or marked for identification, but may be offered in evidence by specifying the report, document, or other file containing the matter so offered.

(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.* Participants 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. Absent extraordinary justification, these requests must be made at least 28 days before the date for filing the participant'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. At the time requests for designations and counter-designations are made, the moving participant must submit two copies of the identified material to the Secretary of the Commission.

(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 § 3001.10(a) and (b).

(g) *Copies to participants.* Except as otherwise provided in these rules, copies of prepared testimony and exhibits shall be furnished to the presiding officer and to the participants or counsel, unless the presiding officer otherwise directs. In addition, unless otherwise directed by the presiding officer, eight copies of all prepared testimony and exhibits shall be furnished for the use of the Commission.

(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 general knowledge of the Commission as an expert body: Provided that any participant shall, on timely request, be afforded an opportunity to show the contrary.

(k) *Introduction and reliance upon studies and analyses.*

(1) *General.* 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 (k)(2) and (3) 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. Tabulations of input data shall be made available upon request at the offices of the Commission.

(2) *Statistical studies.* All statistical studies offered in evidence in hearing proceedings or relied upon as support for other evidence shall include a comprehen-

sive description of the assumptions made, the study plan utilized and the procedures undertaken. Where a computer analysis is employed to obtain the result of a statistical study, all of the submissions required by § 3001.31(k)(3) shall be furnished, upon request. In addition, for each of the following types of statistical studies, the indicated information should be furnished:

(i) *Market Research.*

(a) The following data and information shall be provided:

(1) A clear and detailed description of the sample, observational, and data preparation designs, including definitions of the target population, sampling frame, units of analysis, and survey variables;

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

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

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

(5) An assessment of the effects of editing and imputation;

(6) Identification of applicable statistical models, when model-based procedures are employed; and

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

(ii) *Other sample surveys.*

(a) 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

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

(iii) *Experimental analyses.*

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

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

(iv) *Econometric studies.*

(a) A presentation of the economic theory underlying the study;

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

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

(d) 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;

(e) 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;

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

(g) A complete report of the econometric results including, where applicable:

- (I) coefficient estimates,
- (II) standard errors and t-values,
- (III) goodness-of-fit statistics,
- (IV) other appropriate test statistics,
- (V) the variance/covariance matrix of the estimates,
- (VI) computed residuals for results computed from samples composed of fewer than 250 observations, and, upon request, other computed residuals;

(h) Descriptions of all statistical tests of hypotheses and the results of such tests;

(v) *All other studies involving statistical methodology.*

(a) The formula used for statistical estimates;

(b) The standard errors of each component estimated;

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

(d) Summary descriptions of input data, and upon request the actual input

data shall be made available at the offices of the Commission.

(3) *Computer analyses.*

(i) In the case of computer analyses that 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 copy of the input and output data and source codes (or a showing pursuant to paragraph (k)(3)(iii) of this section as to why such codes cannot be so furnished). The copy provided must be submitted in a form that allows it to be replicated using a publicly available PC application. For the purpose of completing such foundation, the following additional items shall be deemed presumptively necessary and shall be furnished upon request of a participant, the Commission, or the presiding officer, unless the presumption is overcome by an affirmative showing.

(a) 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;

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

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

(d) A hard copy of all data bases;

(e) 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;

(f) The source code in hardcopy form;

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

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

(i) 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. Machine-readable data files and program files shall be provided in the form of a compact disk or other media or method approved in advance by the Administrative Office of the Postal Rate Commission. Any machine-readable data file or program file so provided must be identified and described in accompanying hardcopy documentation. In addition, files in text format must be accompanied by hard-copy instructions for printing them. Files in machine code must be accompanied by hardcopy instructions for executing them.

(j) Computer simulation models offered in evidence or relied upon as support for other evidence, shall be bound by all applicable provisions of paragraph (k)(3) of this section and the separate requirements of paragraph (k)(2) 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 modeled, 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.

(ii) Upon timely and otherwise proper request of a participant, or sua sponte, the Commission or the presiding officer may rule that matters other than those listed in paragraphs (k)(3)(i)(a) through (h) of this section are necessary to establish the foundation for reception of the evidence concerned and must be furnished.

(iii) When the requestor is other than the Commission or the presiding officer, the cost of producing the material required in paragraph (k)(3)(i)(d), (f), and (g) 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 requestee.

(iv) If the recipient of a request for materials pursuant to this paragraph (k)(3) of this section 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 (k)(3) of this section. 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 (k)(3)(iii) 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 (k)(3) cannot be provided, the presiding officer shall determine, in his/her discretion, whether evidence that relies upon the materials not provided shall be admissible or afforded limited weight.

(4) *Expedition.* The offeror shall expedite responses to requests made pursuant to this section. Responses shall be served on the requesting party, and notice thereof filed with the Secretary in accordance with the provisions of § 3001.12, no later than 14 days after a request is made.

§ 3001.31a 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.* 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: (1) A description of the documents and testimony; (2) a full statement of the reasons for granting *in camera* treatment; and (3) a full statement of the reasons for the date on which *in camera* treatment expires. 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 § 3001.31a," 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 and shall be subject to the provisions of § 3001.42 of this chapter. 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.

§ 3001.32 Appeals from rulings of the presiding officer.

(a) *General policy.* The Commission will not review a ruling of the presiding officer prior to its consideration of the entire proceeding except in extraordinary circumstances. This section specifies the showing which participants must make in order to appeal interlocutory rulings.

(b) *Appeals certified by the presiding officer.*

(1) Before the issuance of an initial decision pursuant to § 3001.39(a) or the certification of the record to the Commission pursuant to § 3001.38(a), rulings of the presiding officer may be appealed 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 within 5 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 partici-

pants prior to ruling upon the request to certify an appeal.

(c) *Appeals not certified by the presiding officer.* If the presiding officer declines to certify an appeal, a participant who has requested certification may apply to the Commission for review within 10 days. Unless the Commission directs otherwise, its review of the application 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 (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) Where the presiding officer has declined to certify an appeal, the Commission will not allow an application for review 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) The Commission may issue an order accepting an interlocutory appeal within 15 days after the presiding officer certifies the appeal or a participant files an application for review. If the Commission fails to issue such an order, leave to appeal from the presiding officer's interlocutory ruling shall be deemed to be denied. If the Commission issues an order accepting 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 an interlocutory appeal is not allowed or requested, objection to the ruling may be raised on review of the presiding officer's initial decision, or, if the initial decision is omitted, at the conclusion of the proceeding.

(g) *Form, filing, and service of documents.* Requests for certification, applications for review, and any responses shall be in writing and shall be in conformity with §§ 3001.10 and 3001.11. They shall be filed and served pursuant to §§ 3001.9 and 3001.12.

§ 3001.33 Depositions.

(a) *When permissible.* The testimony of a witness may be taken by deposition upon authorization by the Commission or the presiding officer on application of any participant 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, or (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 participant and will not result in undue delay or an undue burden to other participants.

(b) *Application.* An application for authorization to take testimony by deposition shall be filed in duplicate 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 participants 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, and 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 participant 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 his/her direction and in his/her presence, record the examination of the witness. The examination shall be transcribed in the form specified in § 3001.10(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 required 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 participant 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. Participants shall have the right of cross-examination and objection. In lieu of participation in the oral examination, participants 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 participant, any other participant may require him/her to introduce all of it which is relevant to the part introduced, and any participant 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 participant or participants on whose application the deposition was taken.

§ 3001.34 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 a recommended decision or advisory opinion to the Postal Service within the contemplation of §§ 3641(a) and 3661 of the Act. In addition, subject to such consideration, due regard shall be given to the nature of the proceeding, the

complexity and 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 shall generally direct that each participant shall file a single brief at the same time. In cases where, because of the nature of the issues and the record or the limited number of participants 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 participants may be directed to file more than one brief and at different times rather than a single brief at the same time. The presiding officer or the Commission 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 participant;

(3) A clear, concise and definitive statement of the position of the filing participant as to the proposals of the Postal Service, the subject matter of the complaint, or recommended decision, advisory opinion, or public report 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 in the form and manner and served as required by §§ 3001.9 to 3001.12.

§ 3001.35 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.

§ 3001.36 Oral argument before the presiding or other designated officer.

In any case in which the presiding officer is to issue an initial or recommended decision, or another designated officer of the Commission is to issue a recommended decision, such officer may permit the presentation of oral argument when, in his/her 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. Such officer shall determine the time and place for oral argument. He/she 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 participant. A request for oral argument before the issuance of an intermediate

decision shall be made during the course of the hearing on the record.

§ 3001.37 Oral argument before the Commission.

(a) *When ordered.* In any proceeding before the Commission for decision, the Commission, upon the request of any participant 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 participant in a proceeding before the Commission for decision may request oral argument before the Commission by filing a timely motion pursuant to § 3001.21. 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. Motions requesting oral argument may be included in briefs or briefs on exceptions or in a separate document.

(c) *Notice of oral argument.* The Commission shall rule on requests for oral argument, and if argument is allowed, the Commission shall notify the participants of the time and place set for argument, the amount of time allowed each participant, 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 7 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.

§ 3001.38 Omission of intermediate decisions.

(a) *Basis of omission.* In any proceeding noticed pursuant to § 3001.17, the Commission, on the motion of any participant or on its own initiative, may direct the certification of the record to the Commission and omit any intermediate decision upon a finding on the record that due and timely execution of its functions imperatively and unavoidably so requires. In proceedings in which all participants concur in a request by any participant that any intermediate decision be omitted, the Commission shall direct the certification of the record to the Commission and forthwith render a final decision unless the Commission denies such request within 10 days next following its filing or referral by the presiding officer.

(b) *Requests for omission.* Requests for omission of the intermediate decision in any proceeding shall be made by motion pursuant to § 3001.21 or made orally on the record before the presiding officer who shall promptly refer the same to the Commission. Such requests shall specify (1) the concurrence of other parties and (2) whether opportunity for 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 mat-

ters 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 § 3622 or 3623 of the Act shall include a statement specifically responsive to the criteria established under § 3622 or 3623 of the Act, as the case may be; and an intermediate decision in a proceeding under § 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 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 interme-

mediate 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.

§ 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.

§ 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.

§ 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 website,

www.prc.gov. Commission recommended decisions, advisory opinions and public reports, orders, and intermediate decisions will be released to the press and made available to the public promptly by posting on the Commission's website.

(b) *Public records.* Except as provided in § 3001.31a of this chapter, the public records of the Commission include:

(1) All submittals and filings as follows:

(i) Requests of the Postal Service for recommended decisions or advisory opinions, public reports, complaints (both formal and informal), and other papers seeking Commission action;

(ii) Financial, statistical and other reports to the Commission, and other filings and submittals to the Commission in compliance with the requirements of any statute, Executive order, or Commission rule, regulation, or order;

(iii) All answers, replies, responses, objections, protests, motions, stipulations, exceptions, other pleadings, notices, depositions, certificates, proofs of service, transcripts, and briefs in any matter or proceeding;

(iv) All exhibits, attachments and appendices to, amendments and corrections of, supplements to, or transmittals or withdrawals of, any of the foregoing;

(v) Any Commission correspondence relating to any of the foregoing.

(2) All other parts of the formal record in any matter or proceeding set for formal or statutory hearing and any Commission correspondence related thereto. "Formal record" includes in addition to all the filings and submittals, any notice or Commission order initiating the matter or proceeding, and, if a hearing is held, the following: the designation of the presiding officer, transcript of hearings, all exhibits received in evidence, offers of proof,

motions, stipulations, proofs of service, referrals to the Commission, and determination made by the Commission thereon, certifications to the Commission, and anything else upon which action of the presiding officer or the Commission may be based; it does not include any unaccepted offer of settlement made by a party in the course of a proceeding and not formally submitted to the Commission.

(3) Any proposed testimony or exhibit filed with the Commission but not yet offered or received in evidence.

(4) All presiding officer actions and all presiding officer correspondence and memoranda to or from others except within his/her own office.

(5) All Commission orders, notices, findings, determinations, and other actions in any matter or proceeding and all Commission minutes which have been approved.

(6) All Commission correspondence relating to any furnishing of data or information by the Postal Service.

(7) Commission correspondence with respect to the furnishing of data, information, comments, or recommendations to or by another branch, department, or agency of the Government where furnished to satisfy a specific requirement of a statute or where made public by that branch, department or agency.

(8) Commission correspondence and reports on legislative matters under consideration by the Office of Management and Budget or Congress but only if and after made public or released for publication by that Office or the Commission or Member of Congress involved.

(9) Commission correspondence on the interpretation or applicability of any statute, rule, regulation, recommended decision, advisory opinion, or public report issued or administered by the Commission and letters of opinion on that

subject signed by the General Counsel and sent to others than the Commission, a Commissioner, or any of the staff.

(10) Copies of all filings by the Commission, and all orders, judgments, decrees, and mandates directed to the Commission in Court proceedings involving Commission action and all correspondence with the courts or clerks of court.

(11) The Commission's administrative and operating manuals as issued.

(12) All other records of the Commission except for those that are:

(i) (a) Specifically authorized under criteria established by an Executive order to be kept secret in the interest of national defense or foreign policy and (b) are in fact properly classified pursuant to such Executive order;

(ii) Related solely to the internal personnel rules and practices of the Commission;

(iii) Specifically exempted from disclosure by statute;

(iv) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(v) Interagency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Commission;

(vi) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(vii) Investigatory records compiled for law enforcement purposes, to the extent specified in 5 U.S.C. § 552(b)(7).

(13) The following are examples of information which is not part of the public records of the Commission:

(i) Written communications between or among the Commission, members of the Commission, the Secretary, and expressly designated members of the staff while particularly assigned, in accordance with all applicable legal requirements, to aid the Commission in the drafting of any recommended decision, advisory opinion or public report and findings, with or without opinion, or report in any matter or proceeding;

(ii) Unaccepted offers of settlement in any matter or proceeding unless or until made public by act of the offeror.

(c) *Requests for records.* Requests for records shall be in writing and shall reasonably describe the records sought. Requests shall be addressed to the Secretary at the offices of the Commission. Requests which rely upon the Freedom of Information Act, 5 U.S.C. § 552, shall bear the caption "Freedom of Information Act Request." Within 10 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of a request for a Commission record, the Secretary shall:

(1) *General.* Inform the requestor where and when the records may be inspected and, if ascertainable, of the charge for furnishing copies; or

(2) *Deny the request.* A denial shall be in writing; it shall cite the specific exemption or exemptions under these rules authorizing the withholding of the records sought and shall inform the requestor that he/she may, within 20 days, appeal the denial to the Commission. Appeals to the Commission shall be in writing. The Commission may also review any decision of the Secretary on its own initiative. The Commission will consider all appeals and either grant or deny them in writing, within 20 days (excluding Saturdays, Sundays and legal public holidays) of the date the appeal is received. If on appeal the denial of the request for records is upheld, the Commission shall notify the person making such request of the provisions for judicial review of that

determination pursuant to 5 U.S.C. § 552(c).

(3) *Extensions of time.* The time period for decision on application pursuant to paragraph (c) of this section may be extended up to 10 working days by the Secretary and the time period for decisions on appeals may be extended up to 10 working days by the Commission, provided, however, that the total period of extensions may not exceed 10 working days. Such extensions shall be by written notice determining that an extension is warranted by unusual circumstances as specified in 5 U.S.C. § 552(a)(6)(B).

(4) *Fees—general information.* Documents furnished pursuant to the Freedom of Information Act, as amended, are subject to fees governed by the following provisions. As used herein,

(i) "Direct costs" means expenditures the Commission actually incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee performing work (the basic pay rate of such employee plus 16 percent to cover benefits) and the cost of operating required machinery.

(ii) "Search" means all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

(iii) "Duplication" means making copies of documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

(iv) "Review" means examining documents located in response to a commercial-use request to determine whether any portion is exempt from mandatory disclosure, and processing or preparing documents for release, but not determination

of general legal or policy issues regarding application of exemptions.

(v) A "commercial use" request is a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

(vi) An "educational institution" is a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(vii) A "noncommercial scientific institution" is an institution, not operated on a "commercial" basis (as defined above), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(viii) A "representative of the news media" is any person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information that concerns current events or would be of current interest to the public. Freelance journalists may be regarded as working for a news medium if they demonstrate (for example, by a publication contract or a past record of publication) a solid basis for expecting publication through such organization even though not actually employed by it.

Except in the case of commercial-use requesters, the first 100 pages of duplication and the first two hours of search time will be provided without charge. A "page" for these purposes is a letter- or legal-size

sheet, or the equivalent amount of information in a medium other than paper copy. "Search time" for these purposes refers to manual searching; if the search is performed by computer, the amount not charged for will be the search cost equivalent to two hours' salary of the person performing the search. No requester will be charged a fee when the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for two hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection. Documents will be provided without charge when disclosure of the information would be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(5) *Fees—schedule; administrative provisions.* Fees will be charged in accordance with the following provisions:

(i) The level of fee charged depends on the category of requester:

(a) A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(b) A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(c) A request from a representative of the news media will be charged the cost of

duplication only (excluding charges for the first 100 pages).

(d) A request from any other requester will be charged the full direct cost of searching for and duplicating records responsive to the request, except that the first 100 pages of duplication and the first two hours of search will be furnished without charge.

(e) A request from a record subject for records about himself or herself filed in a Commission system of records will be charged fees under the Privacy Act of 1974 (which permits charges only for duplication).

(ii) Fees shall be calculated as follows:

(a) *Manual search:* At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time will be charged for even if the Commission fails to locate records or if records located are found exempt from disclosure.

(b) *Computer search:* At the actual direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request, runs, and operator salary apportionable to the search.

(c) *Review (commercial-use requests):* At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Only the review necessary at the initial administrative level to determine the applicability of any exemption, and not review at the administrative appeal level of an exemption already applied, will be charged for.

(d) *Duplication:* At 15 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(e) *Additional services:* Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actual cost.

(iii) (a) Should it reasonably appear that a requester, or a group of requesters, have attempted to evade fees by breaking down a request into a series of requests, the Commission will aggregate the separate requests. The period of time within which such multiple requests are filed will be a major consideration in making such a determination. However, multiple requests from one requester covering unrelated subjects will not be aggregated.

(b) Interest at the rate prescribed in 31 U.S.C. § 3717 will be charged on unpaid fee bills, starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

(c) Advance payment may be required only when the allowable fees are likely to exceed \$250, in which case advance payment in part or in full may be required of requesters with no history of prompt payment, and satisfactory assurance of payment from requesters with such history; or when the requester has previously failed to pay a fee timely (within 30 days of the billing date), in which case the Commission may require full payment of the amount owed, plus applicable interest, or a demonstration that the fee has in fact been paid, together with full advance payment of the estimated fee. When advance payment is required, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act (10 working days from receipt of initial requests, 20 working days from receipt of appeals of initial denials, and any permissible extension of these limits) begin only after such payment has been received.

(d) *Procedure in event of subpoena.* If an officer or employee of the Commission is served with a subpoena duces tecum, material which is not part of the public

files and records of the Commission shall be produced only as authorized by the Commission. Service of such a subpoena shall immediately be reported to the Commission with a statement of all relevant facts. The Commission will thereupon enter such order or give such instructions as it deems advisable.

§ 3001.42a Protection of trade secrets and commercial or financial information.

This section describes the procedures for evaluating Freedom of Information Act requests for information provided to the Commission by a submitter who believes it to be exempted from disclosure by 5 U.S.C. § 552(b)(4). Protection of information made available pursuant to proceedings subject to these rules, 39 CFR Part 3001, including information provided pursuant to that subpart requiring the filing of periodic reports, is provided upon request to the Commission as described in rule 3001.31(a). Other information submitted to the Commission which the submitter believes to be a trade secret or commercial or financial information privileged or confidential and thereby exempt from Freedom of Information Act disclosure under 5 U.S.C. § 552(b)(4), should be accompanied by a brief written statement of why that material is exempt. When a request pursuant to rule 3001.42(c) is made for information so designated, the Secretary promptly will notify the submitter, and provide an opportunity for filing an additional explanation of why the material should not be disclosed prior to decision on that request.

§ 3001.43 Public attendance at Commission meetings.

(a) *Open Commission meetings.*

(1) Commissioners shall not jointly conduct or dispose of agency business other than in accordance with this section. Except as provided in paragraph (c) of this section, every portion of every meeting of the Commission shall be open

to public observation. Access to documents being considered at Commission meetings shall be obtained in the manner set forth in § 3001.42.

(2) Members of the public may not participate in open meetings. They may record the proceedings, provided they use battery-operated recording devices at their seats. Cameras may be used by observers to photograph proceedings, provided it is done from their seats and no flash or lighting equipment is used. Persons may electronically record or photograph a meeting, as long as such activity does not impede or disturb the members of the Commission in the performance of their duties, or members of the public attempting to observe, or to record or photograph, the Commission meeting.

(b) *Physical arrangements for open meetings.* The Secretary shall be responsible for seeing that ample space, sufficient visibility, and adequate acoustics are provided for public observation of the Commission meetings.

(c) *Closed Commission meetings.* Except in a case where the Commission finds that the public interest requires otherwise, the second sentence of paragraph (a) shall not apply to any portion of a Commission meeting, and the requirements of paragraphs (d) and (e) shall not apply to any information pertaining to such meeting otherwise required by this section to be disclosed to the public, where the Commission properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(1) Disclose matters that are

(i) specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy and (ii) in fact properly classified pursuant to such Executive order;

(2) Relate solely to the internal personnel rules and practices of the Commission;

(3) Disclose matters specifically exempted from disclosure by statute (other than § 552 of title 5), provided that such statute (i) requires that the matter be withheld from the public in such a manner as to leave no discretion on the issue, or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(5) Involve accusing any person of a crime, or formally censuring any person;

(6) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(7) Disclose investigatory records compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(8) Disclose information contained in or related to examination, operating, or condition reports prepared by, on behalf

of, or for the use of an agency responsible for the regulation or supervision of financial institutions;

(9) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed Commission action, except that paragraph (c)(9) shall not apply in any instance where the Commission has already disclosed to the public the content or nature of its proposed action, or where the Commission is required by law to make such disclosure on its own initiative prior to taking final Commission action on such proposal; or

(10) Specifically concern the Commission's issuance of a subpoena or the Commission's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct or disposition by the Commission of a particular case of formal Commission adjudication pursuant to the procedures in § 554 of title 5 or otherwise involving a determination on the record after opportunity for a hearing as provided by § 3624(a) of title 39.

(d) *Procedures for closing meetings.*

(1) Action under paragraph (c) of this section shall be taken only when three Commissioners vote to take such action. A separate vote of the Commissioners shall be taken with respect to each agency meeting a portion or portions of which are proposed to be closed to the public pursuant to paragraph (c) of this section, or with respect to any information which is proposed to be withheld under paragraph (c) of this section. A single vote may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series. The vote of each Commissioner participating in such vote

shall be recorded and no proxies shall be allowed.

(2) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Commission close such portion to the public for any of the reasons referred to in paragraph (c)(5), (6), or (7) of this section, the Commission upon request of any one of its members, shall vote by recorded vote whether to close such meeting.

(3) Within one day of any vote taken pursuant to paragraph (d)(1) or (2) of this section, the Commission shall make publicly available a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Commission shall, within 1 day of the vote taken pursuant to paragraph (d)(1) or (2) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

(4) Any person may protest a Commission decision to hold a closed meeting under paragraph (d)(1) or (2) of this section by filing a motion to open the meeting. Such motion shall be addressed to the Commission and shall set forth with particularity the statutory or other authority relied upon, the reasons for which the movant believes the meeting should not be closed, and the reasons for which the movant believes that the public interest requires the meeting to be open. Such motion shall be filed with the Secretary no later than 24 hours prior to the time for which the closed meeting is scheduled.

(5) The Commission has determined that a majority of its meetings may be closed to the public pursuant to paragraph (c)(4), (8) or (10) of this section or any combination thereof. Therefore, pursuant to 5 U.S.C. § 552b(d)(4), Commission meetings shall be closed to the public pursuant to paragraphs (c)(4), (c)(8) or

(c)(10) of this section or any combination thereof when three Commissioners vote by recorded vote at the beginning of such meeting, or portion thereof, to close the exempt portion or portions of the meeting, and a copy of such vote, reflecting the vote of each Commissioner on the question, is made available to the public. The provisions of paragraphs (d)(1), (2), (3), and (e) of this section shall not apply to any portion of a meeting to which paragraph (d)(5) of this section applies: Provided, that the Commission shall, except to the extent that such information is exempt from disclosure under the provisions of paragraph (c) of this section, provide the public with public announcement of the time, place, and subject matter of the meeting and of each portion thereof at the earliest practicable time.

(e) *Scheduling and public announcement.*

(1) In the case of each meeting, the Commission shall make public announcement, at least 1 week before the meeting, of the time, place, and subject matter of the meeting, whether it is to be open or closed to the public, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting. Such announcement shall be made unless three Commissioners determine by a recorded vote that Commission business requires that such meeting be called at an earlier date, in which case the Commission shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(2) The time or place of a meeting may be changed following the public announcement required by paragraph (e)(1) of this section only if the Commission publicly announces such change at the earliest practicable time. The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or a portion of a meeting, to the

public, may be changed following the public announcement required by paragraph (e)(1) only if (i) three Commissioners determine by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and (ii) the Commission publicly announces such change and the vote of each Commissioner upon such change at the earliest practicable time.

(3) Immediately following each public announcement required by paragraph (e) of this section, notice of the time, place, and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the Commission to respond to requests for information about the meeting, shall also be submitted for publication in the Federal Register.

(4) The public announcement required by this section may consist of the Secretary:

(i) Publicly posting a copy of the document in the office of the Secretary of the Commission at 901 New York Avenue NW, Suite 200, Washington, D.C. 20268-0001;

(ii) Mailing a copy to all persons whose names are on a mailing list maintained for this purpose;

(iii) Operating a recorded telephone announcement, giving the announcement; and

(iv) Any other means which the Secretary believes will serve to further inform any persons who might be interested.

(f) *Certification of closed meetings; transcripts, electronic recordings, and minutes.*

(1) Before any meeting to be closed pursuant to paragraphs (c)(1) through (10) of this section, the General Counsel of the Commission, or in the General

Counsel's absence, the senior advisory staff attorney available, should publicly certify that, in his/her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Commission. The Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting, or portion of a meeting, closed to the public pursuant to paragraph (c)(8) or (10) of this section, the Commission shall maintain either such a transcript or recording, or a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of the views expressed on any item and the record of any roll call vote (reflecting the vote of each Commissioner on the question). All documents considered in connection with any action shall be identified in such minutes.

(2) The Commission shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes (as required by paragraph (f)(1) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines by a majority vote of all its members (i) contains information which may be withheld under paragraph (c) of this section, and (ii) is not required by the public interest to be made available. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Commission shall maintain a com-

plete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least 2 years after such meeting, or until 1 year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

(g) *Requests to open or close Commission meetings.*

(1) (i) Any person may request in writing that the Commission open to public observation discussion of a matter which it has earlier decided to close.

(ii) Such requests shall be captioned "Request to open ____ (date) Commission meeting on item ____ (number or description)." The request shall state the reason(s) therefore, the name and address of the person making the request and, if desired, a telephone number.

(iii) Ten copies of such requests must be received by the office of the Secretary no later than three working days after the issuance of the notice of meeting to which the request pertains. Requests received after that time will be returned to the requestor with a statement that the request was untimely received and that copies of any nonexempt portions of the transcript or minutes for the meeting in question will ordinarily be available in the office of the Secretary 10 working days after the meeting.

(2) (i) Any person whose interests may be directly affected may request in writing that the Commission close to public observation discussion of a matter which it had earlier decided to open as provided for in paragraph (d)(2) of this section.

(ii) Such requests shall be captioned "Request to Close ____ (date) Commission meeting on item ____ (number or description)," shall state the rea-

son(s) therefore, the name and address of the person making the request and, if desired, a telephone number.

(iii) Ten copies of such requests should be filed with the office of the Secretary as soon as possible after the issuance of the notice of meeting to which the request pertains. However, a single copy of the request will be accepted. Requests to close meetings must be received by the office of the Secretary no later than the time scheduled for the meeting to which such a request pertains.

(3) The Secretary shall retain one copy of timely requests and forward one copy to each Commissioner, one copy to the interested Office, and two copies to the Docket Section, one for entry in the appropriate docket file, if any, and one to be posted on the Public Notice Board located in that section, as an attachment to the Notice of Meeting to which it pertains.

(4) Pleadings replying to requests to open or close shall not be accepted.

(5) Any Commissioner may require that the Commission vote upon the request to open or close. If the request is supported by the votes of a majority of the agency membership, notice of change in meeting shall be issued and the Secretary shall immediately notify the requestor and, before the close of business the next working day, have posted such vote and other material required by paragraphs (d) and (e) of this section on the Commission's Public Notice Board.

(6) If no Commissioner requests that a vote be taken on a request to open or close a Commission meeting, the Secretary shall by the close of the next working day after the meeting to which such request pertains certify that no vote was taken. The Secretary shall forward one copy of that certification to the requestor and two copies of that certification to the Docket Section, one to be placed in the appropriate docket file, if any, and one to

be posted on the Public Notice Board,
where it will be displayed for one week.

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees**§ 3001.51 Applicability.**

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to § 3622 of the Act that the Commission submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal service if the Postal Service determines that such changes would be in the public interest and in accordance with the policies of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart. For requests of the Postal Service based on Negotiated Service Agreements, the rules applicable to Negotiated Service Agreements, Subpart L, supersede the otherwise applicable rules of this subpart.

§ 3001.52 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on changes in rates or fees subject to this subpart, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.54. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the Federal Register.

§ 3001.53 Filing of prepared direct evidence.

(a) *General requirements.* Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on

the record before the Commission to establish that the proposed changes or adjustments in rates or fees are in the public interest and are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) *Overview of filing.* As part of its direct evidence, the Postal Service shall include a single piece of testimony that provides an overview of its filing, including identifying the subject matter of each witness's testimony, explaining how the testimony of its witnesses interrelates, and describing changes in cost methodology, volume estimation, or rate design, as compared to the manner in which they were calculated by the Commission to develop recommended rates and fees in the most recent general rate proceeding. This testimony should also identify, with reference to the appropriate testimony, each witness responsible for addressing any methodological change described in paragraph (c) of this section.

(c) *Proposed changes.* As part of its direct evidence, the Postal Service shall submit testimony that identifies and explains each material change in cost methodology, volume estimation, or rate design, compared to the method employed by the Commission in the most recent general rate proceeding. This requirement shall not apply to any such change adopted by the Commission in an intervening proceeding. The testimony required in this paragraph (c) shall also include a discussion of the impact of each such change on the levels of attributable costs, projected volumes, and rate levels.

§ 3001.54 Contents of formal requests.*(a) General requirements.*

(1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (r) of this section. If a request proposes to change the cost attribution principles applied by the Commission in the most recent general rate proceeding in which its recommended rates were adopted, the Postal Service's request shall include an alternate cost presentation satisfying paragraph (h) of this section that shows what the effect on its request would be if it did not propose changes in attribution principles.

(2) If any information required by paragraphs (b) through (r) of this section is not available and cannot be made available without undue burden, the request shall provide where reference is made to this paragraph, in lieu of such information, a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether reliable estimates are available where such information cannot be furnished and, if so, the specifics of such estimates.

(3) The provisions of paragraph (a)(2) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (r) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(4) The Commission may request information in addition to that required by paragraphs (b) through (r) of this section.

(b) Rates and standards information.

(1) Every formal request shall include schedules of the then-effective rate or rates of postage and fee or fees for all postal services, and, arranged in legislative format, schedules of the rate or rates of postage and fee or fees for all postal services proposed by the Postal Service, as they would appear in the Domestic Mail Classification Schedule. The schedules shall show the full rate and where applicable the phased rate under § 3626 of the Act and any proposed adjustment to such phased rates under § 3627 of the Act indicated by circumstances known at the time of filing.

(2) The schedules required by paragraph (b)(1) of this section shall, for all

classes and subclasses of mail and service, be in summary fashion and tariff-like form. (E.g., there shall be a specification of those rules, regulations and practices which establish the conditions of mailability and the standards of service.) As a part thereof, the schedules shall specifically be addressed to such functions as mail pick-up and delivery, processing and other similar functions.

(3) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of this section shall also contain a statement identifying the degree of economic substitutability between the various classes and subclasses, e.g., a description of cross-elasticity of demand as between various classes of mail.

(4) Subject to paragraph (a)(2) of this section, the schedules required by paragraph (b)(1) of this section shall be accompanied by an identification of all nonpostal services.

(c) *Mail characteristics.* Subject to paragraph (a)(2) of this section, every formal request shall include an identification of the characteristics of the mailer and recipient, and a description of the contents of items mailed within the various classes and subclasses of mail and service.

(d) *Physical attributes of mail.* Subject to paragraph (a)(2) of this section, every formal request shall include an identification of the physical attributes of the items mailed by class and subclass, including shape, weight, and distance.

(e) *Special service arrangements.* Subject to paragraph (a)(2) of this section, every formal request shall contain, to the extent the following information is not expressly included under paragraph (b)(2) of this section, a summary statement describing special service arrangements provided to, or requested or required of, mailers by the Postal Service which bear upon the cost of service or the value of the mail service to both the sender and the

recipient, e.g., services relating to mailer preparations in excess of requirements specified by the Postal Service Manual, pick-up and delivery, expedited or deferred processing, and other similar activities performed.

(f) *Total functionalized accrued costs.*

(1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the total actual accrued costs during the most recent fiscal year for which they are reasonably available. In the event final total actual accrued costs are not yet available for the fiscal year immediately preceding the fiscal year in which the filing is made, a preliminary or pro forma statement of such actual accrued costs shall be furnished. Any preliminary statement shall use, as appropriate, quarterly or accounting period reports for the preceding fiscal year. A final complete statement shall be substituted for any preliminary statement when the former becomes available.

(2) Subject to paragraph (a)(2) of this section, every formal request shall also set forth (i) the estimated total accrued costs of the Postal Service for the fiscal year in which the filing is made and (ii) the estimated total accrued costs of the Postal Service as specified in § 3621 of the Act which form the basis for proposed change in rates or fees. Estimated accrued costs referred to in paragraph (f)(2)(ii) of this section shall be for a fiscal year beginning not more than 24 months subsequent to the filing date of the formal request. These two estimates of accrued costs shall be calculated on two bases: First, assuming the pre-filing rates and fees and, second, assuming the suggested rates and fees. Estimated accrued costs shall be accompanied by an explanation of the methods and procedures used for cost projections. The analyses of estimated costs shall include, but need not be limited to:

(a) An explanation of the projection of total volumes;

(b) An explanation of the effect of the projected volume levels on estimated total costs;

(c) The specification of the cost savings which will be realized from gains and improvements in total productivity, indicating such factors as operational and technological advances and innovations; and

(d) The identification of abnormal costs which are expected to be incurred in the forecasted test period.

(3) Each cost presentation required by paragraphs (f)(1) and (2) of this section shall, subject to paragraph (a)(2) of this section:

(i) Show operating costs in sufficient detail as to the accounting and functional classifications and with such reasonable explanation so that the actual or estimated amount for each item of expense may be readily understood;

(ii) State and fully explain the amounts included for:

(a) Depreciation on capital facilities and equipment;

(b) Debt service;

(c) Contingencies; and

(d) Extraordinary or nonrecurring expenses;

(iii) Assign and distribute costs to each of the functions comprising the mail process. Such presentations shall include:

(a) An itemization of costs by the major accounts as reflected by the Service's books of accounts for all cost segments, such as postmasters, supervisors, etc.;

(b) An itemization of costs by functions such as collection, acceptance, general overheads, etc.;

(c) An assignment and distribution of the costs by account, exemplified in paragraph (f)(3)(iii)(a) of this section, together with related mail volumes, to the functions exemplified in paragraph (f)(3)(iii)(b) of this section;

(d) An assignment and distribution of the costs by account, together with related mail volumes, to such subfunctions within each category for which information is available or can be developed; and

(e) An explanation of the method by which the costs by accounts are assigned and distributed to functions.

(g) *Costs of prior fiscal years.* Subject to paragraph (a)(2) of this section, every formal request shall present the total actual accrued costs for each fiscal year since the last filing pursuant to this section. Such submission should be in a form as nearly consistent as possible with the filing under paragraph (f) of this section, together with explanations of any departures from such form and the effect of such departures.

(h) *Separation, attribution, and assignment of certain costs.*

(1) Every formal request shall separate the Service's actual and estimated total costs, for the fiscal years specified in paragraph (f) of this section, as between postal services (including international mail) and nonpostal services. The presentation shall show the methodology for separating postal costs as between postal services and nonpostal services, and shall be in sufficient detail to allow a determination that no nonpostal costs have been assigned or allocated to postal services.

(2) Subject to paragraph (a)(2) of this section, the costs for postal services, as

set forth by functions pursuant to paragraph (f), shall be separated as between:

(i) Those direct costs which can be attributed to each class of mail or type of mail service;

(ii) Those indirect costs which can be attributed to each class of mail or type of mail service;

(iii) Any other costs of the Service which can be reasonably assigned to each class of mail or type of mail service; and

(iv) Any costs which cannot be attributed or reasonably assigned.¹

(3) The methodology used to derive the costs requested in paragraphs (h)(2)(i) through (iv) of this section shall be set forth in detail.

(4) The attributable and other costs reasonably assignable as provided in paragraphs (h)(2)(i) through (iii) of this section shall separately be attributed to mail classes, subclasses, special services, and, to the extent practical, rate categories of mail service. The submission shall identify the methodology used to attribute or assign each type of such costs and, subject to paragraph (a)(2) of this section, shall also include an analysis of the effect on costs of:

(i) Volume;

(ii) Peaking patterns;

(iii) Priority of handling;

(iv) Mailer preparations;

(v) Quality of service;

(vi) The physical nature of the item mailed;

(vii) Expected gains in total productivity, indicating such factors as operational and technological advances and innovations; and

(viii) Any other factor affecting costs.

(5) The cost forecasting or "roll-forward" model shall be provided. It shall include the following items:

(i) For each cost segment component, a listing of all forecasting factors used in the cost level, mail volume, non-volume workload, additional workday, productivity and other programs effects.

(ii) For each "ripple-affected" cost segment component, a listing of those segments and components that determine its level of attribution or its distribution to mail class, subclass, rate category and service.

(iii) For each longer-run cost segment component:

(a) A listing of all factors used in determining its overall level of attribution, and

(b) A listing of the specific cost segment components used in determining its level of attribution, and its distribution to mail class, subclass, rate category and service.

(iv) Workpapers showing the application of the forecasting factors and procedures to each cost segment component for each time period used in the forecasting process. Such workpapers shall include the quantification, and distribution to mail class, subclass, rate category, and

¹ In his initial decision in Docket R71-1 the presiding officer noted two possible interpretations of 39 U.S.C. § 3622(b)(3) -first, that all costs are either "attributable" or "reasonably assignable" and, second, that there are some "remaining costs which cannot be attributed or reasonably assigned to classes of mail". See Docket R71-1, Vol. I, 1-9. If the first interpretation is deemed to be correct, no costs would be reported in the category denominated by § 3001.54(h)(2)(iv). The Commission was cognizant in writing the rules of the presiding officer's belief that it was not necessary to adopt either reading as exclusive.

service, of each cost segment component, separating the short-run from the longer-run portions. Such workpapers shall conform to the requirements of paragraph (o) of this section. Compliance with the citation requirements of paragraph (o)(4) shall be achieved by providing citations in "roll-forward" workpapers in the following cases:

(a) Workpapers showing the application of the forecasting factors and computational procedures (i.e., computer subroutines described in paragraph (h)(5)(iv)(b) of this section) to representative short run cost segment components and to representative longer run cost segment components for representative time periods used in the forecasting process.

(b) Workpapers showing the application of a computational procedure to a cost segment component, if the application of a forecasting factor or computational procedure to a particular cost segment component deviates from the application of that forecasting factor or computational procedure as presented in the workpapers required by paragraph (h)(5)(iv)(a) of this section.

(v) If the "roll-forward" model is submitted in the form of a computer-generated model, it shall include:

(a) An annotated glossary of input data files, to include, for each time period:

- (I) the name of each input data file,
- (II) a general description of each file in relation to the "roll-forward" process,
- (III) the format for each kind of data record in the file,
- (IV) for each distinct format type used in the file, a brief description of each data item included in the format.

(b) A hard-copy description, in the form of a mathematical equation, of each subroutine in the program.

(c) A copy of the Base Year attributable cost matrix on a 5-inch floppy diskette in MS-DOS format.

(6) Attributable cost final adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(7) "Other services" adjustments by mail class, subclass, rate category and service, details of the development of those adjustments, and an explanation of each adjustment shall be provided.

(8) An overall summary cost table shall be provided. It shall show by mail class, subclass, rate category and service, short-run attributable costs, longer-run attributable costs, assignable costs by category, and all adjustments made to each of the foregoing.

(9) For each cost segment, base-year amounts for each included account and sub-account shall be provided.

(10) The minimum level of disaggregation required for presenting evidence on a cost segment or component is that employed by the Commission in its most recently completed § 3624 proceeding establishing a methodological precedent for that segment or component. This requirement shall not apply:

(i) To presentations that propose to define, attribute, assign, or distribute to mail classes segment or component costs by a method not employed or recommended by the Commission in such proceeding, and the Postal Service has demonstrated that the proposed methodological departure makes the level of disaggregation most recently employed or recommended by the Commission inappropriate;

(ii) Where the Postal Service has demonstrated that changes in mail operations make the level of disaggregation most recently employed or recommended by the Commission inappropriate.

(11) Any nonattributed or unassigned costs specified in paragraph (h)(2)(iv) of this section shall be clearly and separately identified. An explanation shall be furnished as to why such costs cannot be attributed or assigned. To the extent possible, the presentation shall identify all such costs which benefit more than one class of mail or type of service (but not all classes or types), together with the mail classes or types of services so benefited.

(12) The Service shall furnish the data relevant to its analysis of the effect on costs of the factors specified in paragraphs (h)(4)(i) through (viii) of this section.

(i) *Criteria for rate schedule.* There shall be included in every formal request a statement of the criteria employed in constructing the proposed rate schedule. The submission shall include:

(1) The identification of the relationship between the revenues derived from the rates and fees for a particular class and subclass of mail or service and the costs attributed or assigned to that class and subclass or service;

(2) The identification of the procedures and methods used to apportion (to postal services) that part of the total revenue requirement, if any, which is in excess of costs attributed or assigned;²

(3) Such other studies, information and data relevant to the criteria established by § 3622 of the Act with appropriate explanations as will assist the Commission in determining whether or not the proposed rates or fees are in accordance with such criteria.

(j) *Revenues and volumes.*

(1) Subject to paragraph (a)(2) of this section, every formal request shall set forth the actual and estimated revenues of the Postal Service from the then effective postal rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraphs (f) and (g) of this section.

(2) Subject to paragraph (a)(2) of this section, every formal request shall set forth the estimated revenues based on the suggested rates and fees for the fiscal years selected for the presentation of cost information submitted pursuant to paragraph (f)(2) of this section.

(3) Subject to paragraph (a)(2) of this section, the actual and estimated revenues referred to in paragraphs (j)(1) and (2) of this section shall be shown in total and separately for each class and subclass of mail and postal service and for all other sources of revenue. Revenues derived from classes and subclasses of mail shall be disaggregated to each unique rate element.

(4) Each revenue presentation required by paragraphs (j)(1), (2), and (3) of this section shall, subject to paragraph (a)(2) of this section, be documented in sufficient detail to allow independent replication. Revenue estimates shall be supported by exhibits or workpapers that reference the source of all data used, including volume levels, billing determinants, and adjustment factors. References may be to published documents, library references, or companion testimony, and shall include document identity, page, and line, as appropriate. All assumptions used to estimate revenue for new or redesigned rate elements shall be identified and explained.

(5) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request, for each class and subclass of mail and postal service, the following:

² See footnote 1, *supra*.

(i) An econometric demand study relating postal volumes to their economic and noneconomic determinants including postal rates, discounts and fees, personal income, business conditions, competitive and complementary postal services, competitive and complementary nonpostal activities, population, trend, seasonal patterns and other factors.

(ii) The actual or estimated volume of mail at the prefiled rates for each postal quarter beginning with the first quarter of the most recent complete fiscal year and ending one year beyond the last quarter of the future fiscal year.

(iii) The estimated volume of mail assuming the effectiveness of the suggested rates for each postal quarter beginning with the quarter in which the rates are assumed to become effective and ending one year beyond the last quarter of the future fiscal year.

(6) The estimated volumes and revenues referred to in paragraphs (j)(2), (j)(3) and (j)(5) of this section shall be derived from the econometric demand study referred to in paragraph (j)(5)(i) of this section. Supporting rationale shall be provided for any departure from the assumptions and specifications in the demand study made in estimating volumes of any class, subclass, or rate category of mail. Supporting rationale shall be provided for using billing determinants to estimate revenues for any class, subclass, or rate category of mail that differ from the billing determinants implicit in the estimate of volumes for that class, subclass, or rate category.

(i) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast volumes for each class and subclass of mail and postal service. Representative derivations of these forecasts from the econometric demand study shall be presented in detail for two major mail classes, showing each intermediate value

or factor employed. For remaining classes and subclasses of mail, such derivations may be summarized, except where their derivations depart from the representative methods presented.

(ii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a detailed explanation of the methodology employed to forecast changes in revenues for each class and subclass of mail and postal service resulting from changes in rates and fees.

(iii) Subject to paragraph (a)(2) of this section, there shall be furnished in every formal request a computer implementation of the methodology employed to forecast volumes and revenues for each class and subclass of mail and postal service.

(iv) The computer implementation described in paragraph (j)(6)(iii) of this section shall be able to compute forecasts of volumes and revenues compatible with those referred to in paragraphs (j)(2), (j)(3) and (j)(5) of this section for:

(a) Any set of rates and fees within a reasonable range of the prefiled and suggested rates,

(b) Any date of implementation within the range spanned by the assumed date and the start of the future fiscal year,

(c) Alternative forecasts of the economic determinants of postal volumes other than postal rates and fees, and

(d) Alternative values of any parameters with assigned values that are based upon unverifiable judgments.

(v) The computer implementation described in paragraph (j)(6)(iii) of this section shall comply with § 3001.31(k)(3).

(7) Subject to paragraph (a)(2) of this section, there shall be made available at the offices of the Commission with every formal request, in a form that can be read

directly by a standard digital computer, the following:

(i) All of the input files and programs needed to replicate the econometric demand study referred to in paragraph (j)(5)(i) of this section;

(ii) Any input files and programs employed to derive a price index for any class or subclass of mail or postal service from postal rates, discounts and fees;

(iii) Any input files and programs used to prepare data for use in the econometric demand study referred to in paragraph (j)(5)(i) of this section.

(k) *Financial statements and related information.*

(1) Subject to paragraph (k)(3) of this section, every formal request shall include, for the 2 fiscal years immediately preceding the fiscal year in which the date of formal filing occurs, the Balance Sheet, the Statement of Income and Expense, basic statistical information and the Statement of Income and Expense by budget categories of the Postal Service. This information shall include data with respect to:

(i) Balance Sheet and a supporting schedule for each item appearing thereon;

(ii) Statement of Income and Expense and a supporting schedule for each item appearing thereon;

(iii) As appropriate, statistical data with respect to revenue, pieces (by physical attributes, showing separately amounts of mail identified as stamped, metered, and imprinted, or other), weight, distance, postal employees (number, total payroll, productivity, etc.), postal space, post offices (number, classes, etc.), and any other pertinent factors which have been utilized in the development of the suggested rate schedule;

(iv) Statement of Income and Expense by cost segment.

(2) A reconciliation of the budgetary information with actual accrued costs shall be provided for the most recent fiscal year.

(3) If the fiscal information for the immediately preceding fiscal year is not fully available on the date of filing, a preliminary or pro forma submittal shall be made and upon final completion an updated report shall be filed in substitution therefor.

(l) *Billing determinants.*

(1) A statement, which can be in workpaper form, indicating for each class and subclass of mail and postal service the relevant billing determinants (e.g., the volume of mail related to each rate element in determining revenues) separately for the current rates and the proposed rates. Proposed changes in rate design and the related adjustments of billing determinants should be explained in detail.

(2) For third-class bulk mail, subject to paragraph (a)(2) of this section, every formal request shall set forth separately for regular and preferred, by presort level, the base year volume by ounce increment for each shape (letter-size, flat, irregular parcels, parcels).

(m) *Continuing and phasing appropriations.* A statement, which can be in workpaper form, presenting detailed calculations of continuing appropriations according to 39 U.S.C. § 2401(c) and phasing appropriations under 39 U.S.C. § 3626 and any proposed adjustment to such phased rates under 39 U.S.C. § 3627 indicated by circumstances known at the time of the filing. Calculation of all the phased rates for the entire applicable phasing period should be explained in detail.

(n) *Performance goals.*

(1) Every formal request shall identify any performance goals which have been established for the classes and subclasses of mail.

(2) Subject to paragraph (a)(2) of this section, the request shall identify the achieved levels of service for those classes and subclasses of mail and mail services for which performance goals have been set. This information may be provided by reference to published documents or otherwise.

(o) *Workpapers.*

(1) Whenever the Service files a formal request it shall accompany the request with 7 sets of workpapers, 5 for use by the Commission staff and 2 which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (n) of this section in such fashion and content so as to permit independent analysis of each cost segment and an independent attribution or assignment of costs to classes and subclasses and the assignment of nonattributed or unassigned costs to classes and subclasses;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) Summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(v) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions supplied in response to paragraphs (b) through (n) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

(p) *Certification by officials.*

(1) Every formal request shall include one or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books.

(2) The certificates required by paragraph (p)(1) of this section shall be signed by one or more representatives of the Postal Service authorized to make such certification. The signature of the official signing the document constitutes a representation that the official has read the document and that, to the best of his/her knowledge, information and belief, every statement contained in the instrument is proper.

(q) *Opinion of independent public accountant.* Every formal request shall include an opinion from an independent public accountant to the extent required by 39 U.S.C. § 2008(e).

(r) *Special waiver provision for minor rate cases.* The Commission may, upon the filing of a proper motion by the Postal Service, together with a showing of good cause therefor, waive certain of the filing requirements of paragraphs (b) through (q) of this section if in the Commission's judgment it has been demonstrated that the proposed change in a rate or rates of postage and a fee or fees for postal service does not significantly change the then effective rates and fees or alter the cost-revenue relationships of the various classes and types of postal services.

(s) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with any requirements of this subpart.

§ 3001.55 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the intervenors as provided in § 3001.12. Service shall also be made on persons who are limited participators.

§ 3001.56 Failure to comply.

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The

Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

§ 3001.57 Market Response Rate Requests for Express Mail service purpose and duration of rules.

(a) This section and §§ 3001.58 through 3001.60 only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to § 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case.

(b) This section and §§ 3001.58 through 3001.60 remain in effect until November 16, 2011.

§ 3001.58 Market Response Rate Requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in

paragraphs (c) through (i) shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by subsections 3001.54 (b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 58 shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extent practicable, the factors identified in rule 54 (j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.60 shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accor-

dance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by a statement of the actual Express Mail revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable

cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) rates remain at their existing levels, and

(2) rates are changed after 90 days to the levels suggested in the request.

(j) (1) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at:

(A) up to 1/2 pound,

(B) 1/2 pound up to 2 pounds,

(C) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.60 the Postal Service shall provide, one year after the conclusion of the test period, the data described in § 3001.58(j)(1)(i-iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall include analyses to demonstrate:

(1) that the proposed rates are consistent with the factors listed in 39 U.S.C. § 3622 (b),

(2) that the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) that the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through 3001.60 shall be accompanied by a certificate that service of the filing in accordance with § 3001.59 (c) has been made.

§ 3001.59 Market Response Rate Requests—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.60 rates lower than:

(1) the average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) the average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.58 (e) for the most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c) (1) Persons who are interested in participating in Express Mail Market

Response Rate Request cases may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.60. Parties may withdraw from a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60 it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.60, it shall on that same day file a notice that briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.60, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e) (1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response

to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.60 unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be filed within 10 days in the form of a Motion to Excuse from Answering. Responses to Motions to Excuse from Answering must be filed within 7 days, and should such a motion be denied, the answers to the discovery in question are due within 7 days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is

needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. §§ 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6), below, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

§ 3001.60 Express Mail Market Response—rule for decision.

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.60 is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule**§ 3001.61 Applicability.**

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to § 3623 of the Act that the Commission submit a recommended decision on establishing or changing the mail classification schedule. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart. For requests of the Postal Service based on Negotiated Service Agreements, the rules applicable to Negotiated Service Agreements, Subpart L, supersede the otherwise applicable rules of this subpart.

§ 3001.62 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on establishing or changing the mail classification schedule, the Postal Service shall file with the Commission a formal request for a recommended decision. Such request shall be filed in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.64. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the Federal Register.

§ 3001.63 Filing of prepared direct evidence.

(a) *General requirements.* Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the mail classification

schedule or changes therein proposed by the Postal Service are in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

(b) *Requests affecting more than one subclass.* Each formal request filed under this subpart affecting more than one subclass or special service is subject to the requirements of § 3001.53(b) and (c).

§ 3001.64 Contents of formal requests.

(a) *General requirements.*

(1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed new mail classification schedule or the proposed changes therein and to show that the mail classification schedule as proposed to be established or changed is in accordance with the policies and the applicable criteria of the Act. To the extent the information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (h) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (h) of this section is not available and cannot be made available without undue burden, the request shall provide where reference is made to this paragraph, in lieu of such information, a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether reliable estimates are available where such information cannot be furnished and, if so, the specifics of such estimates.

(3) The provisions of paragraph (a)(2) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (h) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(4) The Commission may request information in addition to that required by paragraphs (b) through (h) of this section.

(b) *Classification and standards information.*

(1) Every formal request shall include copies of the then effective Domestic Mail Classification Schedule and the proposed changes therein, including, in legislative format, all proposed changes in the schedules of rate or rates of postage and fee or fees for postal services that appear therein.

(2) The schedules required by paragraph (b)(1) of this section shall, for all classes and subclasses of mail and service, be in summary fashion and tariff-like form. (E.g., there shall be a specification of those rules, regulations, and practices which establish the conditions of mailability and the standards of service.) As a part thereof, schedules shall specifically be addressed to such functions as mail pickup and delivery, processing, and other similar functions.

(3) The schedules required by paragraph (b)(1) of this section shall also contain a statement identifying the degree of economic substitutability between the various classes and subclasses, e.g., a description of cross-elasticity of demand as between various classes of mail.

(4) The schedules required by paragraph (b)(1) of this section shall be accompanied by an identification of all nonpostal services.

(c) *Mail characteristics.* Every formal request shall include such studies, information and data on the characteristics of the users of the Postal Service, the nature of the items mailed and the nature of the methods of mailing, which will assist the Commission in determining whether or not the proposed mail classification schedule or the proposed changes therein are in accordance with the policies and the applicable criteria of the Act. Included, subject to paragraph (a)(2) of this section, shall be:

(1) An identification of the characteristics of the mailer and recipient, and a description of the contents of items mailed within the various classes and subclasses of mail and service;

(2) An identification of the physical attributes of the items mailed by class and subclass, including shape, weight, and distance;

(3) To the extent the following information is not expressly included under

paragraph (b)(2) of this section, a summary statement describing special service arrangements provided to, or requested or required of, mailers by the Postal Service which bear upon the cost of service or the value of the mail service to both the sender and the recipient, e.g., services relating to mailer preparations in excess of requirements specified by the Postal Service Manual, pick-up and delivery, expedited or deferred processing, and other similar activities performed.

(d) *Effects of proposed changes.*

(1) Subject to paragraph (a)(2) of this section, every formal request shall include a statement showing the effects of the proposed changes in the then effective classification schedule upon:

(i) The costs attributed and assigned to each class and subclass of mail or service as developed pursuant to § 3001.54(h);

(ii) The total accrued costs of the Postal Service developed pursuant to § 3001.54(f); and

(iii) The total revenues of the Postal Service and the revenues of each class and subclass of mail or service developed pursuant to § 3001.54(j).

(e) *Interclass changes.* Subject to paragraph (a)(2) of this section, whenever it is proposed that a portion of one existing class or subclass of mail or service be reassigned to another existing class or subclass of mail or service, every formal request shall include a comparison of the before and after costs and revenues associated with handling the relevant classes or subclasses of mail or service, and the before and after costs and revenues of the portion which is to be reassigned.

(f) *Statement of reasons.* Every formal request shall include a complete statement of the reasons and bases for the Postal Service's proposed mail classifi-

cation schedule or proposed changes therein.

(g) *Workpapers.*

(1) Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (f) of this section;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) Summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(v) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions supplied in response to paragraphs (b) through (f) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations

themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

(h) *Matters affecting rates and fees.*

(1) This paragraph applies to any proposed change in the then-effective classification schedule which would result:

(i) In a change in the rates or fees for any existing class or subclass of mail and service, or

(ii) In the establishment of a new class or subclass of mail or service for which rates or fees are to be established, or

(iii) In a change in the relationship of the costs attributed or assigned to any class or subclass of mail or service to the revenues of that class or subclass of mail or service, or

(iv) In a change in the relationship of the total costs of the Postal Service to the total revenues.

(2) In the case of any proposed change in the then-effective classification schedule covered by paragraph (h)(1) of this section, every formal request shall include, subject to paragraph (a)(2) of this section:

(i) The information required by paragraphs (b) through (h), (j) through (l), and (o) through (p) of § 3001.54, together with the statement and opinion required by paragraphs (q) and (r) of § 3001.54; and

(ii) A statement explaining to what extent the Postal Service has considered the criteria of § 3622 of the Act as justify-

ing the rate consequences of the proposed classifications. The submission shall also include the identification of the relationship between the rates and fees for a particular class and subclass or service, the identification of the procedures and methods used to relate the residual costs which have not been attributed to any class and subclass of mail or service or groups thereof, and such other studies, information, and data relevant to the criteria established by § 3622 of the Act with appropriate explanations.

(3) The Commission may, upon the filing of a proper motion by the Postal Service, together with a showing of good cause therefor, waive certain of the above requirements if in the Commission's judgment it has been demonstrated that the proposed change in the classification schedule does not significantly change the rates and fees or the cost-revenue relationships referred to in paragraphs (h)(1)(i) through (iv) of this section.

(i) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with the requirements of this subpart.

§ 3001.65 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for a recommended decision and its prepared direct evidence upon such officer and the intervenors as provided in § 3001.12. Service shall also be made on persons who are limited participators.

§ 3001.66 Failure to comply.

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding

officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

§ 3001.67 Requests involving experimental changes.

(a) This section and § 3001.67a through § 3001.67d apply in cases where the Postal Service requests a recommended decision pursuant to § 3623 of the Postal Reorganization Act and denominates the new service or change in an existing service as experimental in character. These sections do not apply to the situation in which a request not denominated as experimental by the Postal Service, either at the time of its filing or subsequently, is found to be justified by the Commission only on an experimental basis, following analysis of the record made in the proceedings on such a request.

(b) This section and § 3001.67a through § 3001.67d are not intended to substitute for the rules generally governing requests for changes in the Domestic Mail Classification Schedule in cases where the treatment of the proposed changes as experimental is not justified by the character of those changes. The Commission reserves the right, in appropriate cases, to require that the normal procedures prescribed for nonexperimental cases under § 3623 be used. In determining whether the procedures for experimental cases may be used in a particular case, the Commission will consider:

(1) The novelty of the proposed change;

(2) The magnitude of the proposed change, including its effect on postal costs, postal revenues, mailing costs and practices of users of the mails, and persons or firms offering services competitive with or alternative to the service offerings of the Postal Service;

(3) The ease or difficulty of generating or gathering data with respect to the proposed change; and

(4) The desired duration of the experiment as indicated by the Postal Service in its request and, specifically, in its proposed Domestic Mail Classification Schedule language.

(c) In the case of a proposal denominated as an experiment by the Postal Service, the Commission will entertain representations by parties to the case that the proposal should not be considered as an experiment and should follow the normal mail classification change procedures. The Commission does not contemplate entertaining representations by parties to a case filed under the normal procedures that the matter should be treated as an experiment under this section and § 3001.67a through § 3001.67d.

§ 3001.67a Requests involving experimental changes—procedures for limitation of issues.

(a) The purpose of this section is to provide a mechanism for the limiting of issues on which a trial-type hearing is required. It recognizes that in a proceeding properly designated as experimental under § 3001.67, some issues will be appropriate for determination on the basis of a less formal type of presentation and counterpresentation. It is the policy of this section to identify these issues at the earliest possible time and to employ less formal procedures to resolve them where the interests of expedition will be served thereby.

(b) At the earliest possible time following the filing of a request designated as experimental, or following the determination of any question as to whether such designation is proper, holding that such designation is proper, the parties will be required to file statements of the issues they perceive in the case. Each such statement shall designate with particularity those issues the party believes to be or involve genuine issues of material fact. Any party designating an issue as a genuine issue of material fact wholly or in part because of the Postal Service's statement that data called for by § 3001.64 are unavailable shall comply with the requirements of § 3001.67b. Responsive statements will be permitted within 10 days of the filing of initial statements.

(c) Following the exchange of statements of issues called for by paragraph (b) of this section, the Commission will determine which issues constitute genuine issues of material fact and concomitantly order the limitation of trial-type hearing procedures to those issues. The order issued for this purpose will also set forth to the greatest extent feasible the procedures to be followed in disposing of issues not found to be genuine issues of material fact. According to the nature of the individual issue, these procedures may include:

- (1) Filing of written comments and reply comments;
- (2) Conference procedures, followed or accompanied by the filing of written comments and reply comments; and
- (3) Briefing and argument.

In determining the procedures to be followed with respect to issues not requiring a trial-type hearing, the Commission will seek to accommodate the needs of expedition and procedural fairness in accordance with § 3624(b) of the Act.

§ 3001.67b Requests involving experimental changes—unavailability of data.

If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability as required by § 3001.64(a)(2)(i), (ii), and (iv). In particular, if the experimental character of the request bears on the unavailability of the data in question, the Postal Service shall explain in detail the nexus between these circumstances. A satisfactory explanation of the unavailability of data will be grounds for excluding from the proceeding a contention that the absence of the data should form a basis for rejection of the request, unless the party desiring to make such contention (a) demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the data which are unavailable, or (b) demonstrates other compelling and exceptional circumstances requiring that the absence of the data in question be treated as bearing on the merits of the proposal.

§ 3001.67c Requests involving experimental changes—plans for data collection.

(a) In any instance in which the Postal Service designates as unavailable data called for by § 3001.64, it shall, as part of its initial filing under that rule, either

(1) Describe with particularity the means it proposes to employ to collect those data, or

(2) State with particularity the reasons it believes establish that such data are unnecessary. The Commission may by order require data to be collected during the course of the experiment which the Postal Service has not planned to collect, if it finds that a statement under paragraph (a)(2) of this section does not

justify the omission to collect the particular data in issue.

(b) In the case of data which are not required to be filed under § 3001.64, but which the Postal Service intends to collect during and for the purposes of the proposed experimental change, the Postal Service shall include in its initial filing a detailed description of the data involved, the uses to which they would be put, and the methods to be employed in collecting them.

§ 3001.67d Requests involving experimental changes—time limit.

The Commission will treat cases falling under §§ 3001.67 through 3001.67d as subject to the maximum expedition consistent with procedural fairness. The schedule for adoption of a recommended decision will therefore be established, in each such case, to allow for issuance of such decision not more than 150 days from the determination of any issue as to the propriety of experimental treatment under § 3001.67(b) and (c) in a sense favorable to such treatment, or from the date of the filing of the request, whichever occurs later. Nothing in this section shall be construed to affect the rights of the Postal Service or of other parties with respect to the temporary implementation of changes pursuant to § 3641 of the Act.

§ 3001.68 Text of the Domestic Mail Classification Schedule.

The Domestic Mail Classification Schedule established in accordance with Subchapter II of chapter 36 of title 39 of the United States Code appears (with blank rate schedules) as Appendix A to this subpart. [Note to the user: Appendix A is omitted.]

§ 3001.69 Expedited minor classification cases.

(a) *Applicability.* This section applies when the Postal Service requests a recom-

mended decision pursuant to § 3623 and seeks expedited review on the ground that the requested change in mail classification is minor in character. The requirements and procedures specified in this section apply exclusively to Commission consideration of requested mail classification changes which the Postal Service denominates as, and the Commission finds to be, minor in character.

(b) *Considerations.* A requested classification change may be considered to be minor in character if it:

(1) Would not involve a change in any existing rate or fee;

(2) Would not impose any restriction in addition to pre-existing conditions of eligibility for the entry of mail in an existing subclass or category of service or for an existing rate element or worksharing discount; and

(3) Would not significantly increase or decrease the estimated institutional cost contribution of the affected subclass or category of service.

(c) *Filing of formal request and prepared direct evidence.* Whenever the Postal Service determines to file a request under this section, it shall file a request for a change in mail classification pursuant to § 3623 that comports with the requirements of this section and of subpart C of the rules of practice. Each such formal request shall include the following information:

(1) A description of the proposed classification change or changes, including proposed changes in the text of the Domestic Mail Classification Schedule and any pertinent rate schedules;

(2) A thorough explanation of the grounds on which the Postal Service submits that the requested change in mail classification is minor in character; and

(3) An estimate, prepared in the greatest level of detail practicable, of the overall impact of the requested change in mail classification on postal costs and revenues, mail users and competitors of the Postal Service.

(d) *Data and information filing requirements.* Formal requests generally require the submission of the data and information specified in § 3001.64.

(1) If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability as required by § 3001.64(a)(2)(i), (ii), and (iv).

(2) If the Postal Service believes that data or other information required to be filed under § 3001.64 should not be required in light of the minor character of the requested change in mail classification, it shall move for a waiver of that requirement. The motion shall state with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement.

(3) A satisfactory explanation of the unavailability of information required under § 3001.64 or of why it should not be required to support a particular request will constitute grounds for excluding from the proceeding a contention that the absence of the information should form a basis for rejection of the request, unless the party desiring to make such a contention:

(i) Demonstrates that, considering all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the information and submitted it in accordance with § 3001.64; or

(ii) Demonstrates other compelling and exceptional circumstances requiring that the absence of the information in question be treated as bearing on the merits of the proposal.

(e) *Expedited procedural schedule.* The Commission will treat requests under this section as subject to the maximum expedition consistent with procedural fairness.

(1) Persons who are interested in participating in proceedings initiated under this section may intervene pursuant to Subpart A of the rules of practice. Parties may withdraw from a proceeding by filing a notice with the Secretary of the Commission.

(2) When the Postal Service files a request under this section, it shall comply with the Filing Online procedures of §§ 3001.9 through 3001.12.

(3) When the Postal Service files a request under this section, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a request for a minor change in mail classification to be considered under this section.

(4) Within 5 days after receipt of a Postal Service request invoking §§ 3001.69, the Commission shall issue a notice of proceeding and provide for intervention by interested persons pursuant to Subpart A of the rules of practice. The notice of proceeding shall state that the Postal Service has denominated the mail classification change as a minor change, and has requested expedited consideration pursuant to § 3001.69. The notice shall further state the grounds on which the Postal Service submits that the requested change in mail classification is minor in character and shall afford all interested persons a minimum of 15 days after filing of the Postal Service's request within which to intervene, submit responses to the Postal Service's request for consideration of its proposed mail classification change under § 3001.69, and request a hearing.

(5) Within 28 days after publication of the notice of proceeding pursuant to

paragraph (e)(4) of this section, the Commission shall decide whether to consider the request under this section and shall issue an order incorporating that ruling. The Commission shall order a request to be considered under this section if it finds:

(i) the requested classification change is minor in character; and

(ii) the effects of the requested change are likely to be appropriately limited in scope and overall impact.

(6) If the Commission determines that a Postal Service request is appropriate for consideration under this section, those respondents who request a hearing shall be directed to state with specificity within 14 days after publication of that determination the issues of material fact that require a hearing for resolution. Respondents shall also identify the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the fact or facts and the evidence it intends to provide in support of its position.

(7) The Commission will hold hearings on a Postal Service request considered under this section when it determines that there are genuine issues of material fact to be resolved and that a hearing is needed to resolve those issues. Hearings on a Postal Service request will commence within 21 days after issuance of the Commission determination pursuant to paragraph (e)(5) of this section. Testimony responsive to the Postal Service's request will be due 14 days after the conclusion of hearings on the Postal Service request.

(8) If the Commission determines that a request of the Postal Service is not appropriate for consideration under this section, the request will be considered in accordance with appropriate provisions of the Commission's rules.

(f) *Time limits.* The schedule involving a request under this section will allow for issuance of a recommended decision:

(1) Not more than 90 days after the filing of a Postal Service request if no hearing is held; and

(2) Not more than 120 days after the filing of a request if a hearing is scheduled.

Subpart D—Rules Applicable to Requests for Changes in the Nature of Postal Services**§ 3001.71 Applicability.**

The rules in this subpart govern the procedure with regard to proposals of the Postal Service pursuant to § 3661 of the Act requesting from the Commission an advisory opinion on changes in the nature of postal services which will generally affect service on a nationwide or substantially nationwide basis. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart.

§ 3001.72 Filing of formal requests.

Whenever the Postal Service determines to request that the Commission issue an advisory opinion on a proposed change in the nature of postal services subject to this subpart, the Postal Service shall file with the Commission a formal request for such an opinion in accordance with the requirements of §§ 3001.9 to 3001.11 and 3001.74. Such request shall be filed not less than 90 days in advance of the date on which the Postal Service proposes to make effective the change in the nature of postal services involved. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the Director of the Federal Register for publication in the Federal Register.

§ 3001.73 Filing of prepared direct testimony.

Simultaneously with the filing of a formal request for an advisory opinion under this subpart, the Postal Service shall file all of the prepared direct evidence upon which it proposes to rely in the proceeding on the record before the Commission to establish that the proposed change in the nature of postal services is in accordance with and conforms

to the policies of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits which shall be filed in accordance with § 3001.31.

§ 3001.74 Contents of formal requests.

(a) *General requirements.* Each formal request filed under this subpart shall include such information and data and such statements of reasons and basis as are necessary and appropriate to fully inform the Commission and the parties of the nature, scope, significance and impact of the proposed change in the nature of postal services and to show that such change in the nature of postal service is in accordance with and conforms to the policies established under the Act. Detailed data and information and statements of reasons or basis set forth in the Postal Service's prepared direct evidence may be relied upon for purposes of the formal request without restatement therein by reference in the request to the portions of the prepared direct evidence relied upon.

(b) *Specific information.* Subject to the right of the Commission to request additional information, each formal request shall include the following:

(1) A detailed statement of the present nature of the postal services proposed to be changed and the change proposed;

(2) The proposed effective date for the proposed change in the nature of postal services;

(3) A full and complete statement of the reasons and basis for the Postal Service's determination that the proposed change in the nature of postal services is in accordance with and conforms to the policies of the Act.

§ 3001.75 Service by the Postal Service.

Immediately after the issuance of an order or orders by the Commission designating an officer of the Commission to represent the interests of the general public in a proceeding before the Commission under this subpart, the Postal Service shall serve copies of its formal request for an advisory opinion and its prepared direct evidence upon such officer and the intervenors as provided by § 3001.12. Service shall also be made on persons who are limited participators.

Subpart E—Rules Applicable to Rate and Service Complaints**§ 3001.81 Applicability.**

The rules in this subpart govern the procedure with regard to rate and service complaints filed under § 3662 of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on such complaints.

§ 3001.82 Scope and nature of complaints.

Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in the Act, or who believe that they are not receiving postal service in accordance with the policies of such title, may file and serve a written complaint with the Commission in the form and manner required by §§ 3001.9 to 3001.12. The Commission shall entertain only those complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Act; thus, complaints raising a question as to whether the Postal Service has properly applied its existing rates and fees or mail classification schedule to a particular mail user or with regard to an individual, localized, or temporary service issue not on a substantially nationwide basis shall generally not be considered as properly raising a matter of policy to be considered by the Commission. The Commission shall, in the exercise of its discretion, decline to entertain a complaint during the period the complainant is continuing to pursue the general subject matter of the complaint before an Administrative Law Judge or the judicial officer of the Postal Service.

§ 3001.83 Contents of complaints.

Subject to the right of the Commission to require the furnishing of additional information, each complaint shall include the following information:

(a) The full name and address of the complainant(s);

(b) A full and complete statement of the grounds for such complaint, including specific reference to the postal rates or services involved and the policies to which it is claimed they do not conform;

(c) A list or description of all persons or classes of persons known or believed to be similarly affected by the rates or services involved in the complaint;

(d) A statement of the specific relief or redress requested;

(e) Copies of all correspondence or written communications between the complainant, his/her agent, representative, or attorney, and the Postal Service or any officer, employee or instrumentality thereof, which relate to the subject matter of the complaint; provided, however, that any such documents which are a part of a public file in any proceeding before an Administrative Law Judge or the Judicial Officer of the Postal Service need not be included if the complaint states the title, docket reference, nature, current status, and disposition of such proceeding.

§ 3001.84 Answers by the Postal Service.

Within 30 days after the filing of a complaint with the Commission (unless more time is allowed under § 3001.85(a)), the Postal Service shall file and serve an answer. Such answer shall be in the form and manner required by §§ 3001.9 to 3001.12, and shall include the following:

(a) Specific admission, denial or explanation of each fact alleged in the complaint or, if the Postal Service is without knowledge thereof, a statement to that effect. Each fact alleged in a complaint not thus specifically answered shall be deemed to have been admitted;

(b) A statement as to the position of the Postal Service on the allegations in the

complaint that the rates or service involved are not in accord with the policies of the Act, and the facts and reasons in support of such position;

(c) The position of the Postal Service on the specific relief or redress requested by the complainant, the disposition of the complaint recommended by the Postal Service, including whether or not a hearing should be held, and a statement of any facts and reasons in support of such position.

§ 3001.85 Informal procedures.

(a) In case of a complaint alleging service not in accordance with the policies of the Act, the Commission, acting through such appropriate Commission employees as the Chairman shall designate, may use correspondence, conferences, or other appropriate informal inquiry methods to define the issues, further the exchange of information and explanations between the Postal Service and the complainant, and facilitate negotiated settlement. On receiving a service complaint, the Commission will give a notice of whether or not it intends to use informal procedures. In either case, it will give the Postal Service such additional time to answer the complaint as is just and appropriate. After expeditiously conducting informal inquiries, it will issue an order summarizing the results. All correspondence and other documents issued by or lodged with the Commission during informal inquiries will be part of the public record of the case.

(b) It shall be the general policy and practice of the Commission to encourage the resolution and settlement of complaints by informal procedures, including correspondence, conferences between the parties, and the conduct of proceedings off the record with the consent of the parties.

§ 3001.86 Proceedings on the record.

If a complaint is not resolved or settled under informal procedures, the Commission shall consider whether or not, in its discretion, a proceeding on the record with an opportunity for hearing should be held on such complaint. If the Commission has reason to believe that the complaint may be justified and that a hearing may otherwise be appropriate in the exercise of its discretion, the Commission shall issue a notice of proceeding pursuant to § 3001.17, and further formal proceedings shall then be held as appropriate under the Commission's rules in Subpart A of this part.

§ 3001.87 Commission determinations.

If the Commission determines, after the completion of proceedings which provide an opportunity for hearing, that a complaint is justified in whole or in part, the Commission shall issue a recommended decision to the Postal Service if the complaint involves a matter of rates and fees or mail classification and shall render a public report if the complaint involves other matters. The Commission shall notify the complainant, the Postal Service, and any other parties in each complaint proceeding of the action taken or the final disposition of the complaint.

Subpart F—Rules Applicable to the Filing of Testimony by Intervenor**§ 3001.91 Applicability and general policy.**

(a) The rules in this subpart identify those areas in which intervenors in rate and classification proceedings could assist the Commission. Intervenor is free to file any relevant and material evidence which is not unduly repetitious or cumulative.

(b) Intervenor is invited to submit the information specified in § 3001.92(a) through (l) on a voluntary basis as part of their own direct cases. The Commission's request that intervenors voluntarily file such information is not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of such or other information. Intervenor, particularly those making contentions under § 3622(b)(4) of the Act, shall be aware that their failure to provide relevant and material information will be taken into account in determining the weight which the Commission accords to their arguments and evidence.

(c) All evidence shall be filed in accordance with § 3001.31. The Rules of General Applicability of Subpart A of this part are also applicable to filings subject to this subpart.

§ 3001.92 Submissions by intervenors.

In addition to any other direct testimony submitted by an intervenor in a rate or classification proceeding, and in addition to further requests for information by the Commission, the Commission requests that the following information be submitted where applicable and where it is within the ability of the intervenor to produce it. If it is alleged that such information is representative of a significant segment of a rate-category of mail or of

the users thereof it should be accompanied by a demonstration to that effect.

(a) *Description of intervenor.* A statement as to the nature of the business and operations of the intervenor. If the intervenor is an association, the names of the members of the association and a general description of their business and operations.

(b) *Usage of postal services.* An identification of the extent to and method by which the postal services are used including an estimated itemization of the postage cost by class and rate.

(c) *Intervenor's mailing operations.* A description of the mailing and handling operations of the intervenor for items which are to pass through the Postal Service. Descriptions of pre-mailing operations should include the details as to any special arrangements with the Postal Service. Also, a statement as to the total mail handling costs exclusive of Postal Service payments including a breakdown of such costs by, and identification of, the functions for which the costs are incurred.

(d) *Intervenor's postage costs.* A statement of the relative importance of postage costs to other expenses. An estimated itemization of postage costs by class of mail as related to total operating expenses. If more than one major product is affected by postage costs, data should be presented for each, e.g., each periodical of a firm in the publishing business.

(e) *Financial impact of rate or classification changes.* An estimate of the financial impact of the proposed rate or classification changes on the intervenor, or aggregate data for members of mail user associations, together with details of the basis of estimates and supporting data.

(f) *Absorption/avoidance of rate changes.* An analysis as to the ability or inability of the intervenor to absorb, avoid, or pass on postal rate changes, to

customer groups (or advertisers or sponsoring organizations, if any). The analysis should include an analysis of the intervenor's customers' demand for the product of the intervenor's industry.

(g) *Demand for postal services.* An indication of the demand of the intervenor's industry for postal services including an estimate of the elasticity of such demand.

(h) *Competitor operations.* If the intervenor is a competitor of the Postal Service, a definition of the areas of competition between the intervenor and the Postal Service and a demonstration of the intervenor's ability or inability to meet postal competition. Include a brief historical description of the company's operations during the past 5 years, showing growth in each major segment of the company's business and a statement of the current rates and all conditions of service applicable to the portion of the intervenor's operations which is affected by comparable service of the Postal Service. The statement should include data on the costs of the services which the intervenor contends are competitive with services of the Postal Service. The statement of costs should identify by character and amount those attributed to the competitive service and the intervenor's rationale (i.e., cost and pricing hypothesis) for such attribution.

(i) *Impact of rate changes on users' suppliers.* If the intervenor is a manufacturer or supplier of goods or services provided to users of the Postal Service, a statement of the impact on expenses and revenues resulting from postage changes, together with statistical or other accounting data and the reasons supporting such statement.

(j) *Statement of revenues, volumes, costs, and profits.* For all intervenors, a certified statement of the total revenues, costs, and profits for each of the last 5 years together with an estimate of the impact of the proposed postal changes on

total revenues, costs, and profits. Also the intervenor's volume of mail passing through the Postal Service (by class and subclass) and the comparable volume of traffic moving by competitive services (or the volume of services performed in competition with the Postal Service, or the volume of materials manufactured for or supplied to the Postal Service or users of the Postal Service). Volume data should be presented for each of the 5 years for which total revenues, costs, and profits are reported. An estimate of the impact on volume resulting from the proposed postal increases should be included.

(k) *User studies of Postal Service.* Any studies of the Postal Service's costs, revenues, or operations which would be of help to the Commission in evaluating the merits of the Postal Service's request.

(l) *Workpapers.*

(1) Whenever an intervenor presents evidence it shall accompany such evidence with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission offices. Two additional sets shall be delivered to counsel for the U.S. Postal Service.

(2) Workpapers shall contain the data and analyses underlying the submissions, including:

(i) A description of the methods used in collecting, summarizing and expanding the data and a clear indication of how the workpapers relate to the various submissions;

(ii) Summaries of sample data and other data used; and

(iii) Any special studies made.

(3) Workpapers shall be neat and legible.

(4) Workpapers shall include citations sufficient to enable a reviewer to

trace any number used but not derived in the associated testimony back to published documents, or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, e.g., by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

Subpart G—Rules Applicable to the Filing of Reports by the U.S. Postal Service

§ 3001.101 Applicability and general policy.

The rules in this subpart identify reports,³ financial statements and cost analyses which the Postal Service will file with the Secretary of the Commission on a periodic basis.

§ 3001.102 Filing of reports.

Each report listed in this section shall be filed with the Secretary of the Commission within two weeks of its presentation for use by postal management, unless otherwise noted. Each report should be provided in a form that can be read by publicly available PC software. A processing program that was developed specifically to produce an accompanying workpaper must be provided in a form that can be executed by publicly available PC software. COBOL processing programs in use prior to FY 2003 are exempt from this requirement. The reports and information required to be provided by this subpart need not include matters that are exempt from disclosure by law. Whenever a specific source is cited in this section, that citation includes any successor or substituted source.

(a) *Annual reports.* The following information will be filed by the Postal Service annually. If it is presented for use by postal management at more frequent intervals, it shall be filed at those intervals:

(1) All input data and all processing programs that have changed since the most recently completed general rate proceeding, if they are used to produce the Cost and Revenue Analysis Report (CRA).

³ It is realized that some items, characterized as "reports," are not reports in the true sense of the word since they are not published and heretofore have only been intended for internal use.

Each change in attribution principles or methods from the previous report will be identified. The Postal Service shall submit a CRA-USPS Version, followed within two weeks by a CRA-PRC Version. Documentation of both versions of the CRA shall include, but not be limited to, the following:

(i) Spreadsheet workpapers underlying the development of segment costs by cost component. These workpapers should include the updated factors, and data from the supporting data systems used, including the In-Office Cost System (IOCS), Management Operating Data System (MODS), City Carrier Cost System (CCCS), Rural Carrier Cost System (RCCS), and National Mail Count.

(ii) Documentation of any special study that has a substantial effect on estimated costs in any cost segment and was not documented in the most recently completed general rate proceeding.

(A) Documentation shall consist of all input data and all processing programs used to obtain the results of the special study.

(B) The Postal Service may elect to provide a written or oral presentation describing the data and the estimating techniques used, as well as the results of the special study, and to apply for a waiver of the requirement in paragraph (a) of this section.

(2) Cost Segments and Components Report. Documentation shall include, but not be limited to, the following:

(i) Cost segments and components reconciliation to financial statements and account reallocations.

(ii) The Manual Input Requirement, the "A" report, and the "B" report;

(iii) The control string commands for the "A" report, the "B" report (including

the PESSA factor calculations), and the “C” report;

(iv) The master list of cost segment components, including the components used as distribution keys in the development of the “B” report and the “C” report.

(3) City delivery information, including the number of routes by type, the number of possible deliveries by type, the number of collection boxes, and the number of businesses served (120 days from the close of the fiscal year).

(4) Rural carrier information, including the number of routes by type and miles, stops, boxes served, and mail pieces by route type (120 days from the close of the fiscal year).

(5) Civil Service Retirement Fund Deficit Report (two weeks after release of the Annual Report of the Postmaster General).

(6) Worker's Compensation Report, including summary workpapers (two weeks after release of the Annual Report of the Postmaster General).

(7) Annual Report of the Postmaster General.

(8) Congressional Budget Submission, including workpapers. The Postal Service will also file concurrently Summary Tables SE 1, 2, and 6 (coinciding with their submission to Congress).

(9) Audit Adjustment Vouchers, if any.

(10) Billing Determinants, at the level of detail employed in the most recent formal request for a change in rates or fees. The provision of billing determinants for Express Mail, Priority Mail, and parcel post may be delayed up to 12 months from the close of the fiscal year to which they apply.

(11) USPS Integrated Financial Plan.

(12) Input data and calculations used to produce annual Total Factor Productivity estimates.

(b) *Quarterly reports.* The following information will be filed by the Postal Service quarterly:

(1) Revenue, Pieces, and Weight, by rate category and special service.

(2) Origin/Destination Information Report National Service Index.

(c) *Accounting period reports.* The following information will be filed by the Postal Service each accounting period:

(1) Summary Financial and Operating Report.

(2) National Consolidated Trial Balances and the Revenue and Expense Summary.

(3) National Payroll Hours Summary.

(4) On-Roll and Paid Employee Statistics (OPRES).

(5) Postal Service Active Employee Statistical Summary (HAT report).

(d) *Miscellaneous reports.* The following information will be filed by the Postal Service:

(1) Before/After Pay Increase Reports.

(2) Before/After COLA Cost Reports.

(3) A master list of publications and handbooks including those related to internal information procedures, when changed.

(4) Data collection forms and corresponding training handbooks, when changed.

(5) Notice of changes in data reporting systems, 90 days before those changes are implemented.

§ 3001.103 Filing of reports required by 39 U.S.C. § 3663(b).

Each report listed in this subsection shall be filed with the Secretary of the Commission on or before March 15th of each year unless a later date is specified, and shall cover the most recent full fiscal year. Information contained in these reports that is considered to be commercially sensitive should be identified as such, and will not be publicly disclosed except as required by applicable law. Specific sources cited in this section should be understood to include any successor or substituted source.

(a) The International Cost and Revenue Analysis-PRC Version.

(b) The international Cost and Revenue Analysis-USPS Version, by May 15.

(c) The Cost and Revenue Analysis Report—PRC Version. If an unaudited version is provided on March 15, provide an audited version no later than May 15. The audited version shall include a statement describing all adjustments that affect international mail.

(d) The Cost Segments and Components Report-PRC Version. If an unaudited version is provided on March 15, provide an audited version no later than May 15. The audited version shall include a statement describing all adjustments that affect international mail.

(e) Documentation and workpapers for the ICRA, including those related to

- (1) Terminal dues,
- (2) Air conveyance dues,
- (3) Transit charges,
- (4) Imbalance charges,

(5) Inward land charges,

(6) Description of cost allocation procedures,

(7) Identification of costs that are exclusive to international mail,

(8) The cost of joint ventures with other postal administrations,

(9) International billing determinants,

(10) The data for Direct Entry separated between inbound and outbound as in the Postal Service's response to Item 1 of Order No. 1246; and

(11) The attributable costs for ValuePost/Canada developed in accordance a procedure deemed appropriate as a basis for setting the rates for ValuePost/Canada. Costs for ValuePost/Canada should be separated between publications and all other printed matter.

(12) Revenues and volumes for Value Post/Canada separated between publications and all other printed matter.

(f) Handbooks pertaining to the collection of volume and revenue data (MIDAS, SIRVO, SIRVI, Other) if they were revised or replaced since they were last submitted.

(g) International CRA manual input, A, B, C, and factor reports on a CD-ROM.

(h) A hard copy of the International CRA manual input and the C report International CRA manual input, A, B, C, and factor reports on a CD-ROM.

(i) Cost Segment 3 CRA Worksheets and all supporting files, including the MODS-Based Costing Studies-PRC Version. Include all databases, SAS and other programs, and output worksheets.

(j) Cost Segment 7 CRA Worksheets and all supporting files.

(k) The number of weighted tallies by international service separately for clerks and mailhandlers, and for city delivery carriers in-office; clerk and mailhandler tallies should be further separated for mail processing, window service, and all other.

(l) Coefficients of variation for

(1) IOCS clerk and mailhandler tallies by mail processing, window service, and all other,

(2) IOCS city delivery carriers in-office,

(3) TRACS for purchased transportation by international, air, railroad, and other,

(4) Outbound volume by international service, and

(5) Inbound volume by international service.

(m) The percentage of household mail and the percentage of non-household mail for each outbound mail service.

(n) The percentage of single-piece mail and bulk mail for each outbound service.

Subpart H—Rules Applicable to Appeals of Postal Service Determinations To Close or Consolidate Post Offices**§ 3001.110 Applicability.**

Rules in this subpart govern the procedure regarding the appeal of a determination of the Postal Service to close or consolidate a post office by patrons of the post office in question. Pursuant to § 404(b) of the Act any decision to close or consolidate a post office must be preceded by 60 days notice to persons served by such post office, the opportunity for such persons to present their views, and a written determination based upon consideration of each of the factors listed in § 404(b)(2) of the Act. This notice must include a provision stating that, pursuant to Pub.L. 94-421, a final Postal Service determination to close or consolidate a post office may be appealed to the Postal Rate Commission at 901 New York Avenue NW, Suite 200, Washington, D.C. 20268-0001, within 30 days after the issuance of a written determination by the Postal Service. The rules of general applicability in Subpart A of this part, which do not relate solely to evidentiary proceedings on the record, are also applicable to proceedings subject to this subpart.

§ 3001.111 Initiation of review proceedings.

(a) *Petition for review.* Review of a determination of the Postal Service to close or consolidate a post office shall be obtained by filing a petition for review with the Secretary of this Commission. Such petition must be received by the Commission within 30 days after the Service has made available to persons served by that post office the written determination to close or consolidate required by 39 U.S.C. § 404(b)(3) through (4). The petition shall specify the parties seeking review, all of whom must be persons served by the post office proposed to be closed or consolidated and shall identify the Postal Service as respondent. The

Commission encourages parties seeking review to attach a copy of the Postal Service written determination, as the appeal process is thereby expedited. If two or more persons are entitled to petition for review of the same determination and their interests are such as to make joinder practicable, they may file a joint petition for review and may thereafter proceed as a single petitioner.

(b) *Intervention.* A person served by the post office to be closed or consolidated pursuant to the Postal Service written determination under review who desires to intervene in the proceeding, or any other interested person, or any counsel, agent or other person authorized or recognized by the Postal Service as such interested person's representative or the representative of such interested person's recognized group, such as Postmasters, shall file with the Secretary of the Commission and serve upon all parties a notice of intervention in a form prescribed by § 3001.20. The notice shall contain a concise statement of the interest of the moving party and the grounds upon which intervention is sought. A notice of intervention shall be filed within 25 days of the date on which the notice for review is filed. The provisions of § 3001.20 (d) and (e) of Subpart A of this part shall apply to notices of intervention in review proceedings.

§ 3001.112 The record on review.

The written determination sought to be reviewed or enforced, the conclusions and findings upon which it must be based under § 404(b)(3) of the Act, the notices to local patrons and the evidence contained in the entire administrative record before the Postal Service shall constitute the record on review. The record shall contain all evidence considered by the Postal Service in making its determination and shall contain no evidence not previously considered by the Postal Service.

§ 3001.113 Filing of the record.

(a) *Time for filing of the record by the Postal Service.* The Postal Service shall file the record with the Secretary of the Commission within 15 days after the date on which the petition for review is filed with the Commission. The Commission may shorten or extend the time prescribed above. The Secretary shall give notice to all parties of the date on which the record is filed.

(b) *Composition of the filing.* The Postal Service may file the entire record or such parts thereof as the parties may designate by stipulation filed with the Postal Service. The original papers in the Postal Service proceeding or certified copies thereof may be filed. All parts of the record retained by the Postal Service shall be a part of the record on review for all purposes.

§ 3001.114 Suspension pending review.

(a) *Application.* Application for suspension of a determination of the Postal Service to close or consolidate any post office pending the outcome of an appeal to the Postal Rate Commission shall be made at the time of the filing of a petition for review or of the filing of a notice of intervention in an extant appellate proceeding. The application shall show the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute the application shall be supported by affidavits or other sworn statements or copies thereof. The applicant must be a person served by the affected post office. Immediate notice of the application shall be given to all parties to the proceeding. The application shall be filed with the Secretary of the Commission.

(b) *Answer and filing of the relevant record by the U.S. Postal Service.* Within 10 days after the application for suspension is filed, the Postal Service shall file with the Secretary of the Commission and

serve on the petitioners an answer to the application supported by affidavits or other sworn statements or copies thereof. The Postal Service, within 10 days from the date of filing of the application, shall file with the Secretary such parts of the record as are relevant to the relief sought.

§ 3001.115 Participant statement or brief.

(a) *Participant statement.* Upon the filing of the petition for review of a decision to close or consolidate a post office, the Secretary shall furnish the petitioner with a copy of PRC Form 61, a form designed to permit the appellant to make a concise statement of his/her arguments in support of the petition and the instructions regarding its use. In addition to eliciting this information, the instructions for Form 61 shall provide: (1) Notification that, if the appellant prefers, he/she may file a brief as described in paragraph (b) of this section presenting the arguments, in lieu of completing PRC Form 61; (2) a concise explanation of the purpose of the form, and (3) notification that the completed form, or a brief as described in paragraph (b) of this section, in lieu thereof, must be filed with the Commission not more than 35 days following the date of filing of the petition (which date shall be set forth, as it appears in the Commission's records).

(b) *Appellant's initial brief.* The initial brief of the appellant shall be filed with the Secretary of the Commission and served on all parties 35 days after the filing of the petition for review of a decision to close or consolidate a post office. The brief will be limited in length to 30 pages, typewritten and double spaced, 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 (which need not be included in the page count);

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

(3) A clear, concise and definitive statement of the position of the author as to the merits of the determination under review;

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

(5) Proposed holding with appropriate references to the record or the prior discussion of the evidence and authorities relied upon, and to the appellate criteria of § 404(b)(5) of the Act. Briefs before the Commission shall be completely self-contained and shall not incorporate by reference any portion of any other brief, pleading or document. Testimony and exhibits shall not be quoted or included in briefs except for short excerpts pertinent to the argument presented.

(c) *Answering brief of the Postal Service.* The answering brief of the Postal Service shall be filed 20 days after the date designated for filing of the appellant's brief and shall follow the format detailed in paragraph (b) of this section.

(d) *Reply by appellant.* The appellant may file a written response to the brief of the Postal Service 15 days after the date designated for filing of that brief, which shall be strictly limited in content to reply to arguments made by the Postal Service. If presented as a brief, such reply brief shall conform to the format detailed in paragraph (b) of this section.

(e) *Intervenor statements or briefs.* An intervenor shall file its brief within the time allowed for initial and reply, or answering, briefs, as appropriate. The Secretary shall furnish to each intervenor a copy of PRC Form 61 as soon as intervenor status is granted. If the intervenor chooses to file a brief, the brief shall follow

the format detailed in paragraph (b) of this section.

§ 3001.116 Oral argument.

Oral argument will be held in these appeal cases only when a party has made a showing that, owing to unusual circumstances, oral argument is a necessary addition to the written filings. Any request for oral argument shall be filed within 7 days of the date on which reply briefs are due. If a request for oral argument is granted, it will be held at the Postal Rate Commission's offices at 901 New York Avenue NW, Suite 200, Washington, D.C. 20268-0001.

§ 3001.117 Posting of documents by Postal Service for inspection by affected postal patrons.

In all proceedings conducted pursuant to this Subpart H, the Postal Service shall cause to be displayed prominently, in the post office or offices serving the patrons affected by the determination to close or consolidate a post office which is under review, a copy of the service list and all pleadings, notices, orders, briefs and opinions filed in such proceedings. Failure by the Postal Service to display prominently any such document shall be deemed sufficient reason to suspend the effectiveness of the Postal Service determination under review until final disposition of the appeal.

Subpart I—Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes**§ 3001.161 Applicability.**

This section and §§ 3001.162 through 3001.166 apply in cases in which the Postal Service requests a recommended decision pursuant to § 3623 preceded by testing in the market in order to develop information necessary to support a permanent change. The requirements and procedures specified in these sections apply exclusively to the Commission's determination to recommend in favor of or against a market test proposed by the Postal Service, and do not supersede any other rules applicable to the Postal Service's request for recommendation of a permanent change in mail classification. In administering this subpart, it shall be the policy of the Commission to recommend market tests that are reasonably calculated to produce information needed to support a permanent change in mail classification, and that are reasonably limited in scope, scale, duration, and potential adverse impact. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend market tests of more than one year in duration; however, this limitation is not intended to bar the Postal Service from conducting more than one market test in support of a potential permanent change in mail classification in appropriate circumstances.

§ 3001.162 Filing of market test proposal and supporting direct evidence.

Whenever the Postal Service determines to request that the Commission submit a recommended decision on a change in mail classification preceded by testing in the market, the Postal Service shall file with the Commission, in addition to its request for a permanent change in mail classification pursuant to § 3623, a request for a recommended decision in

favor of its proposed market test of the requested change in mail classification. Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance and impact of the proposed market test, and to show that it is in the public interest and in accordance with the policies of the Act and the applicable criteria of the Act. Each formal request shall also include the following particular information:

(a) A description of the services to be provided in the market test, and the relationship between the services to be provided and the permanent change or changes in the mail classification schedule requested by the Postal Service;

(b) A statement of each rate or fee to be charged for each service to be provided during the market test, together with all information relied upon to establish consistency of those rates and fees with the factors specified in § 3622(b);

(c) A description of the number and extent of the service areas in which the market test will be conducted, including the number and type of postal facilities which will be used;

(d) A statement of the planned duration of the market test;

(e) Proposed Domestic Mail Classification Schedule provisions which incorporate the information required in subsections (a) through (d);

(f) A statement of the goals and objectives of the proposed market test, supported by quantitative projections of anticipated results to the extent practicable.

(g) A statement of those features of the proposed market test that, in the opinion of the Postal Service, cannot be

modified without significantly impairing the value of the test;

(h) An estimate of the number of customers who will participate in the market test to the extent that such an estimate is practicable, together with a description of the means by which the Postal Service plans to provide equal access to all potential users in the test market service areas; and

(i) A plan for testing the proposed change or changes in the market, including a plan for gathering the data needed to support a permanent change in mail classification and for reporting the test data to the Commission. If periodic reporting of the test data would be harmful to the purposes of the test, such as by revealing information that might encourage competitors or mailers to take actions that would affect the test results, the plan may provide for presentation of the test data as part of the subsequent filing of data supporting a permanent mail classification change.

§ 3001.163 Procedures—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service proposes to conduct a market test of a requested change in mail classification it has submitted to the Commission pursuant to § 3623.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests to conduct a market test may intervene pursuant to Subpart A of the rules of practice. Parties may withdraw from a particular case by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall comply with the standard

Filing Online procedures of §§ 3001.9 through 3001.12.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. This notice shall indicate on its first page that it is a notice of a Market Test Request to be considered under §§ 3001.161 through 3001.166.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide interested persons a minimum of 15 days after filing of the Postal Service request within which to intervene. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.164 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed market test in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed market test which the Postal Service has identified in accordance with § 3001.162(g). The purpose of this subpart is to allow for consideration of proposed market tests within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.165 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a market test requested by the Postal Service, and the Board of Governors has put the market test recommended by the Commission into effect, the Postal Service shall gather test data and report them to the Commission in accordance with the plan submitted pursuant to § 3001.162(h). If the Postal Service's plan for reporting test data does not provide for periodic reporting during the conduct of the test, the Postal Service shall submit all test data to the Commission no later than 60 days following the conclusion of the test.

§ 3001.166 Suspension, continuation or termination of proceeding.

(a) In any case in which the Commission has issued a recommended decision in favor of a market test requested by the Postal Service, and the Board of Governors has put the market test recommended by the Commission into effect, the Postal Service may move for suspension of the proceeding in which its request for a permanent change in mail classification is to be considered. The Commission shall grant the Postal Service's motion for suspension if, in the Commission's opinion, it would be reasonable under the circumstances to defer consideration of the request until the information to be produced in connection with the market test becomes available.

(b) At any time during the pendency of a market test recommended by the Commission pursuant to this subpart, or following the completion of such a market test, the Postal Service may move to revise or withdraw its request for a permanent change in mail classification. If the Postal Service moves to revise its request, it shall file with the Commission all data necessary to support its amended request. If the Postal Service moves to withdraw its

request, it shall explain the circumstances leading to its motion, but need not produce the test data that would otherwise be submitted pursuant to § 3001.165.

Subpart J—Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration**§ 3001.171 Applicability.**

This section and §§ 3001.172 through 3001.176 apply in cases in which the Postal Service requests that the Commission recommend the establishment of a provisional service which will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration. The requirements and procedures specified in these sections apply exclusively to the Commission's determination to recommend in favor of or against a provisional service proposed by the Postal Service, and do not supersede the rules applicable to requests for permanent changes in rates, fees, mail classifications, and in the nature of postal services. In administering this subpart, it shall be the policy of the Commission to recommend the introduction of provisional services that enhance the range of postal services available to the public, without producing a material adverse effect overall on postal revenues or costs, and without causing unnecessary or unreasonable harm to competitors of the Postal Service. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend provisional services of more than two years in duration; however, the Commission may grant a request to extend a provisional service for an additional year if a Postal Service request to establish the provisional service as a permanent mail classification is pending before the Commission.

§ 3001.172 Filing of formal request and prepared direct evidence.

(a) Whenever the Postal Service determines to request that the Commission submit a decision recommending the establishment of a provisional service of limited and fixed duration, it shall file a

request for a change in mail classification pursuant to § 3623 that comports with the requirements of this subpart and of subpart C of the rules of practice. Each formal request shall include the following particular information:

(1) A description of the proposed classification, including proposed Domestic Mail Classification Schedule language and rate schedules;

(2) A statement of the goals and objectives of introducing the proposed provisional service, supported by quantitative projections of anticipated results to the extent practicable.

(3) A statement of those features of the proposed provisional service that, in the opinion of the Postal Service, cannot be modified without significantly reducing the benefits of introducing the proposed service;

(4) An explanation and complete documentation of the development of the rates proposed for the provisional service;

(5) A termination date on which the proposed provisional service will be discontinued;

(6) An estimate of the effect of implementing the proposed provisional service on overall Postal Service costs and revenues during the period in which it is in effect; and

(7) A plan for meeting the data collection and reporting requirements specified in § 3001.175.

(b) If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability, as required by § 3001.64(a)(2)(i), (ii), and (iv). In particular, if the provisional character of the request bears on the unavailability of the data in question, the Postal Service shall explain in detail the nexus between these circumstances. A satisfactory explanation

of the unavailability of data will be grounds for excluding from the proceeding a contention that the absence of the data should form a basis for rejection of the request, unless the party desiring to make such contention:

(1) Demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the data which are unavailable, or

(2) Demonstrates other compelling circumstances requiring that the absence of the data in question be treated as bearing on the merits of the proposal.

§ 3001.173 Procedures—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings in which the Postal Service requests that the Commission recommend the establishment of a provisional service which will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration.

(b) Persons who are interested in participating in a proceeding to consider Postal Service requests to establish a provisional service may intervene pursuant to Subpart A of the rules of practice. Parties may withdraw from a proceeding by filing a notice with the Secretary of the Commission.

(c) When the Postal Service files a request under the provisions of this subpart, it shall comply with the standard Filing Online procedures of §§ 3001.9 through 3001.12.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day file a notice that briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of a Request for Establish-

ment of a Provisional Service to be considered under §§ 3001.171 through 3001.176.

(e) Within 5 days after receipt of a Postal Service request under the provisions of this subpart, the Commission shall issue a notice of proceeding and provide interested persons a minimum of 15 days after filing of the Postal Service request within which to intervene. In the event that a party wishes to dispute a genuine issue of material fact to be resolved in the consideration of the Postal Service's request, that party shall file with the Commission a request for a hearing within the time allowed in the notice of proceeding. The request for a hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the fact or facts and the evidence it intends to provide in support of its position. The Commission will hold hearings on a Postal Service request made pursuant to this subpart when it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve that issue.

§ 3001.174 Rule for decision.

The Commission will issue a decision on the Postal Service's proposed provisional service in accordance with the policies of the Postal Reorganization Act, but will not recommend modification of any feature of the proposed service which the Postal Service has identified in accordance with § 3001.172(a)(3). The purpose of this subpart is to allow for consideration of proposed provisional services within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.175 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a provisional service of limited

duration requested by the Postal Service, and the Board of Governors has put the provisional service recommended by the Commission into effect, the Postal Service shall collect and report data pertaining to the provisional service during the period in which it is in effect in accordance with the periodic reporting requirements specified in § 3001.102. If the Postal Service's regular data reporting systems are not revised to include the provisional service during the period of its effectiveness, the Postal Service shall perform, and provide to the Commission on a schedule corresponding to § 3001.102 reports, special studies to provide equivalent information to the extent reasonably practicable.

§ 3001.176 Continuation or termination of provisional service.

At any time during the period in which a provisional service recommended by the Commission and implemented by the Board of Governors is in effect, the Postal Service may submit a formal request that the provisional service be terminated, or that it be established, either as originally recommended by the Commission or in modified form, as a permanent mail classification. Following the conclusion of the period in which the provisional service was effective, the Postal Service may submit a request to establish the service as a mail classification under any applicable subpart of the Commission's rules.

Subpart K—Rules for Use of Multi-Year Test Periods**§ 3001.181 Use of multi-year test period for proposed new services.**

The rules in §§ 3001.181 and 3001.182 apply to Postal Service requests pursuant to § 3623 for the establishment of a new postal service, with attendant rates, which in the estimation of the Postal Service cannot generate sufficient volumes and revenues to recover all costs associated with the new service in the first full fiscal year of its operation. In administering these rules, it shall be the Commission's policy to adopt tests periods of up to 5 fiscal years for the purpose of determining breakeven for newly introduced postal services where the Postal Service has presented substantial evidence in support of the test period proposed.

(a) This section and § 3001.182 are effective [30 days after publication in the Federal Register through the same date five (5) years thereafter].

§ 3001.182 Filing of formal request and prepared direct evidence.

In filing a request for establishment of a new postal service pursuant to § 3623, the Postal Service may request that its proposal be considered for a test period of longer duration than the test period prescribed in § 3001.54(f)(2). Each such request shall be supported by the following information:

(a) The testimony of a witness on behalf of the Postal Service, who shall provide:

(1) A complete definition of the multi-year test period requested for the proposed new service;

(2) A detailed explanation of the Postal Service's preference of a multi-year

test period, including the bases of the Service's determination that the test period prescribed in § 3001.54(f)(2) would be inappropriate; and

(3) A complete description of the Postal Service's plan for achieving an appropriate contribution to institutional costs from the new service by the end of the requested test period.

(b) Complete documentary support for, and detail underlying, the test period requested by the Postal Service, including:

(1) Estimated costs, revenues, and volumes of the proposed new service for the entire requested test period;

(2) Return on Investment projections and all other financial analyses prepared in connection with determining the cost and revenue impact of the proposed new service; and

(3) Any other analyses prepared by the Postal Service that bear on the overall effects of introducing the proposed new service during the requested test period.

Subpart L—Rules Applicable to Negotiated Service Agreements**§ 3001.190 Applicability.**

(a) The rules in this subpart govern requests of the Postal Service for recommended decisions pursuant to § 3622 or § 3623 that are based on Negotiated Service Agreements. The Rules of General Applicability in subpart A of this part are also applicable to proceedings on requests subject to this subpart. The requirements and procedures specified in these sections apply exclusively to requests predicated on Negotiated Service Agreements. Except where specifically noted, this subpart does not supersede any other rules applicable to Postal Service requests for recommendation of changes in rates, fees, or mail classifications.

(b) In administering this subpart, it shall be the policy of the Commission to recommend Negotiated Service Agreements that are consistent with statutory criteria, and benefit the Postal Service, without causing unreasonable harm to the marketplace. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend Negotiated Service Agreements of more than three years duration; however, this limitation is not intended to bar the Postal Service from requesting:

(1) The renewal of the terms and conditions of a previously recommended Negotiated Service Agreement, *see* § 3001.197; or

(2) Recommendation of a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement, *see* § 3001.196.

§ 3001.191 Filing of formal requests.

(a) Whenever the Postal Service proposes to establish or change rates or fees and/or the mail classification schedule based on a Negotiated Service Agreement,

the Postal Service shall file with the Commission a formal request for a recommended decision. The request shall clearly state whether it is a request for a recommended decision pursuant to:

(1) The review of a baseline Negotiated Service Agreement, *see* § 3001.195;

(2) The review of a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement, *see* § 3001.196;

(3) The renewal of the terms and conditions of a previously recommended Negotiated Service Agreement, *see* § 3001.197; or

(4) The modification of the terms and conditions of a previously recommended Negotiated Service Agreement, *see* § 3001.198.

Such request shall be filed in accordance with the requirements of §§ 3001.9 through 3001.12. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the director of the Office of Federal Register for publication in the Federal Register.

(b) The Postal Service shall clearly identify all parties to the Negotiated Service Agreement. Identification by the Postal Service shall serve as Notice of Intervention for such parties. Parties to the Negotiated Service Agreement are to be considered co-proponents, procedurally and substantively, during the Commission's review of the proposed Negotiated Service Agreement.

§ 3001.192 Filing of prepared direct evidence.

(a) Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service and its co-proponents shall file all of the prepared direct evidence upon

which they propose to rely in the proceeding on the record before the Commission to establish that the proposed Negotiated Service Agreement is in the public interest and is in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits, which shall be filed in accordance with § 3001.31.

(b) Direct evidence may be filed in support of the Negotiated Service Agreement prepared by, or for, any party to the Negotiated Service Agreement. Direct evidence in support of the Negotiated Service Agreement prepared by, or for, any party to the Negotiated Service Agreement shall not be accepted without prior Postal Service review. The Postal Service shall affirm that it has reviewed such testimony and that such testimony may be relied upon in presentation of the Postal Service's direct case.

§ 3001.193 Contents of formal requests.

(a) *General requirements.*

(1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates, fees, and/or the mail classification schedule(s) associated with the Negotiated Service Agreement, and to show that the changes or adjustments are in the public interest and in accordance with the policies and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (k) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (k) of this section is not available and cannot be made available without undue burden, the request shall include a request for waiver of that requirement supported by a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether sufficiently reliable estimates are available to mitigate the need for such information, and if so, the specifics of such estimates.

(3) If the Postal Service believes that any of the data or other information required to be filed under § 3001.193 should not be required in light of the character of the request, it shall move for a waiver of that requirement, stating with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement.

(4) Grant of a waiver under (a)(2) or (a)(3) will be grounds for excluding from the proceeding a contention that the absence of the information should form a basis for rejection of the request, unless the party desiring to make such contention:

(i) Demonstrates that, having regard to all the facts and circumstances of

the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the information and submitted it in accordance with § 3001.193; or

(ii) Demonstrates other compelling and exceptional circumstances requiring that the absence of the information in question be treated as bearing on the merits of the proposal.

(5) The provisions of paragraphs (a)(2) and (a)(3) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (k) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(6) The Commission may request information in addition to that required by paragraphs (b) through (k) of this section.

(b) *Negotiated Service Agreement.* Every formal request shall include a copy of the Negotiated Service Agreement.

(c) *Rates and standards information.* Every formal request shall include a description of the proposed rates, fees, and/or classification changes, including proposed changes, in legislative format, to the text of the Domestic Mail Classification Schedule and any associated rate or fee schedule.

(d) *Description of agreement.* Every formal request shall include a statement describing and explaining the operative components of the Negotiated Service Agreement. The statement shall include the reasons and bases for including the components in the Negotiated Service Agreement.

(e) *Financial analysis.* Every formal request shall include an analysis, as

described in § 3001.193(e)(1), of the effects of the Negotiated Service Agreement on Postal Service volumes, costs and revenues in a one-year period intended to be representative of the first year of the proposed agreement. If the agreement is proposed to extend beyond one year, the request shall also include an analysis of the effects of the agreement on Postal Service volumes, costs and revenues in each subsequent year of the proposed agreement, as described in § 3001.193(e)(2). For each year, the analysis shall provide such detail that the analysis of each component of a Negotiated Service Agreement can be independently reviewed, and shall be prepared in sufficient detail to allow independent replication, including citation to all referenced material.

(1) The financial analysis for the one-year period intended to be representative of the first year of the proposed agreement shall:

(i) Set forth the estimated mailer-specific costs, volumes, and revenues of the Postal Service for that year, assuming the then effective postal rates and fees absent the implementation of the Negotiated Service Agreement;

(ii) Set forth the estimated mailer-specific costs, volumes, and revenues of the Postal Service for that year which result from implementation of the Negotiated Service Agreement;

(iii) Include an analysis of the effects of the Negotiated Service Agreement on contribution to the Postal Service for that year (including consideration of the effect on contribution from mailers who are not parties to the agreement);

(iv) Utilize mailer-specific costs for that year, and provide the basis used to determine such costs, including a discussion of material variances between mailer-specific costs and system-wide average costs; and

(v) Utilize mailer-specific volumes and elasticity factors for that year, and provide the bases used to determine such volumes and elasticity factors.

If mailer-specific costs or elasticity factors are not available, the bases of the costs or elasticity factors that are proposed shall be provided, including a discussion of the suitability of the proposed costs or elasticity factors as a proxy for mailer-specific costs or elasticity factors.

(2) The financial analysis for each subsequent year covered by the agreement (if the proposed duration of the agreement is greater than one year) shall:

(i) Identify each factor known or expected to operate in that subsequent year which might have a material effect on the estimated costs, volumes, or revenues of the Postal Service, relative to those set forth in the financial analysis provided for the first year of the agreement in response to § 3001.193(e)(1). Such relevant factors might include (but are not limited to) cost level changes, anticipated changes in operations, changes arising from specific terms of the proposed agreement, or potential changes in the level or composition of mail volumes;

(ii) Discuss the likely impact in that subsequent year of each factor identified in § 3001.193(e)(2)(i), and quantify that impact to the maximum extent practical; and

(iii) Estimate the cumulative effect in that subsequent year of all factors identified in § 3001.193(e)(2)(i) on the estimated costs, volumes, and revenues of the Postal Service, relative to those presented for the first year of the agreement in response to § 3001.193(e)(1).

(f) *Impact analysis.*

(1) Every formal request shall include an analysis of the impact over the duration of the Negotiated Service Agreement on:

(i) Competitors of the parties to the Negotiated Service Agreement other than the Postal Service;

(ii) Competitors of the Postal Service; and

(iii) Mail users.

(2) The Postal Service shall include a copy of all completed special studies that were used to make such estimates. If special studies have not been performed, the Postal Service shall state this fact and explain the alternate bases of its estimates.

(g) *Data collection plan.* Every formal request shall include a proposal for a data collection plan, which shall include a comparison of the analysis presented in § 3001.193(e)(1)(ii) and § 3001.193(e)(2)(iii) with the actual results ascertained from implementation of the Negotiated Service Agreement. The results shall be reported to the Commission on an annual or more frequent basis.

(h) *Workpapers.*

(1) Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (k) of this section;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) Summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(v) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions supplied in response to paragraphs (b) through (k) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, *e.g.*, by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

(i) *Certification by officials.*

(1) Every formal request shall include one or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books.

(2) The certificates required by paragraph (i)(1) of this section shall be signed by one or more representatives of the Postal Service authorized to make such certification. The signature of the official signing the document constitutes a repre-

sentation that the official has read the document and that, to the best of his/her knowledge, information and belief, every statement contained in the instrument is proper.

(j) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with any requirements of this subpart.

§ 3001.194 Failure to comply.

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

§ 3001.195 Requests to recommend a baseline Negotiated Service Agreement.

(a) This section governs Postal Service requests for a recommended decision in regard to a baseline Negotiated Service Agreement, *i.e.*, a Negotiated Service Agreement that is not predicated on a functionally equivalent Negotiated Service Agreement currently in effect. The purpose of this section is to establish procedures which provide for maximum expedition of review consistent with procedural fairness, and which allows for the recommendation of a baseline Negotiated Service Agreement. The Postal Service request shall include:

(1) A written justification for requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification; and

(2) A description of the operational bases of the Negotiated Service Agreement, including activities to be performed and facilities to be used by both the Postal Service and the mailer under the agreement.

(b) The Commission will treat requests predicated on a baseline Negotiated Service Agreement as subject to the maximum expedition consistent with procedural fairness. A schedule will be established, in each case, to allow for prompt issuance of a decision.

§ 3001.196 Requests to recommend a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement.

(a) This section governs Postal Service requests for a recommended decision in regard to a Negotiated Service Agreement that is proffered as functionally equivalent to a Negotiated Service Agreement previously recommended by the Commission and currently in effect. The previously recommended Negotiated Service Agreement shall be referred to as the baseline agreement. The purpose of this section is to establish procedures that provide for accelerated review of functionally equivalent Negotiated Service Agreements. The Postal Service request shall include:

(1) A detailed description of how the proposed Negotiated Service Agreement is functionally equivalent to the baseline agreement;

(2) A detailed description of how the proposed Negotiated Service Agreement is different from the baseline agreement;

(3) Identification of the record testimony from the baseline agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely, including specific citation to the locations of such testimony;

(4) All available special studies developing information pertinent to the proposed Negotiated Service Agreement;

(5) If applicable, the identification of circumstances unique to the request; and

(6) If applicable, a proposal for limitation of issues in the proceeding, except that the following issues will be relevant to every request predicated on a functionally equivalent Negotiated Service Agreement:

(i) The financial impact of the Negotiated Service Agreement on the Postal Service over the duration of the agreement;

(ii) The fairness and equity of the Negotiated Service Agreement in regard to other users of the mail; and

(iii) The fairness and equity of the Negotiated Service Agreement in regard to the competitors of the parties to the Negotiated Service Agreement.

(b) When the Postal Service submits a request predicated on a functionally equivalent Negotiated Service Agreement, it shall provide written notice of its request, either by hand delivery or by First-Class Mail, to all participants in the Commission docket established to consider the baseline agreement.

(c) The Commission will schedule a prehearing conference for each request. Participants shall be prepared at the prehearing conference to address whether or not it is appropriate to proceed under § 3001.196, and to identify any issue(s) that would indicate the need to schedule a hearing. After consideration of the material presented in support of the request, and the argument presented by the participants, if any, the Commission shall promptly issue a decision on whether or not to proceed under § 3001.196. If the Commission's decision is to not proceed under § 3001.196, the request will proceed under § 3001.195.

(d) The Commission will treat requests predicated on functionally equivalent Negotiated Service Agreements as subject to accelerated review consistent with procedural fairness. If the Commission determines that it is appropriate to proceed under § 3001.196, a schedule will be established which allows a recommended decision to be issued not more than:

(1) 60 days after the determination is made to proceed under § 3001.196, if no hearing is held; or

(2) 120 days after the determination is made to proceed under § 3001.196, if a hearing is scheduled.

§ 3001.197 Requests to renew previously recommended Negotiated Service Agreements with existing participant(s).

(a) This section governs Postal Service requests for a recommended decision seeking to extend the duration of a previously recommended and currently in effect negotiated service agreement (existing agreement). The purpose of this section is to establish procedures that provide for accelerated review of Postal Service requests to extend the duration of an existing agreement under substantially identical obligations. In addition to extending the duration of the existing agreement, modifications may be entertained that do not materially alter the nature of the existing agreement for the purposes of: correcting a technical defect, updating the schedule of rates and fees, or accounting for an intervening event since the recommendation of the existing agreement. The Postal Service request shall include:

(1) Identification of the record testimony from the existing agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely, including citation to the locations of such testimony;

(2) A detailed description of all proposed modifications to the existing agreement;

(3) A detailed description of any technical defect, rationale for revising the schedule of rates and fees, or intervening event since the recommendation of the existing agreement, to substantiate the modifications proposed in paragraph (a)(2) of this section;

(4) All special studies developing information pertinent to the request completed since the recommendation of the existing agreement;

(5) A comparison of the analysis presented in § 3001.193(e)(1)(ii) and § 3001.193(e)(2)(iii) applicable to the existing agreement with the actual results ascertained from implementation of the existing agreement, together with the most recent available projections for the remaining portion of the existing agreement, compared on an annual or more frequent basis;

(6) The financial impact of the proposed negotiated service agreement on the Postal Service in accordance with § 3001.193(e) over the extended duration of the agreement utilizing the methodology employed by the Commission in its recommendation of the existing agreement; and

(7) If applicable, the identification of circumstances unique to the request.

(b) When the Postal Service submits a request to renew a negotiated service agreement, it shall provide written notice of its request, either by hand delivery or by First-Class Mail, to all participants in the Commission docket established to consider the original agreement.

(c) The Commission will schedule a prehearing conference for each request. Participants shall be prepared to address at that time whether or not it is appropriate to proceed under § 3001.197, and

whether or not any material issues of fact exist that require discovery or evidentiary hearings. After consideration of the material presented in support of the request, and the argument presented by the participants, if any, the Commission shall promptly issue a decision on whether or not to proceed under § 3001.197. If the Commission's decision is to not proceed under § 3001.197, the docket will proceed under § 3001.195 or § 3001.196, as appears appropriate.

(d) The Commission will treat requests to renew negotiated service agreements as subject to accelerated review consistent with procedural fairness. If the Commission determines that it is appropriate to proceed under § 3001.197, a schedule will be established which allows a recommended decision to be issued not more than: (1) Forty-five (45) days after the determination is made to proceed under § 3001.197, if no hearing is held; or (2) Ninety (90) days after the determination is made to proceed under § 3001.197, if a hearing is scheduled.

§ 3001.198 Requests to modify previously recommended Negotiated Service Agreements.

(a) This section governs Postal Service requests for a recommended decision seeking a modification to a previously recommended and currently in effect negotiated service agreement (existing agreement). The purpose of this section is to establish procedures that provide for accelerated review of Postal Service requests to modify an existing agreement where the modification is necessary to correct a technical defect, to account for unforeseen circumstances not apparent when the existing agreement was first recommended, or to account for an intervening event since the recommendation of the existing agreement. This section is not applicable to requests to extend the duration of a negotiated service agreement. The Postal Service request shall include:

(1) Identification of the record testimony from the existing agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely, including citation to the locations of such testimony;

(2) A detailed description of all proposed modifications to the existing agreement;

(3) A detailed description of the technical defect, unforeseen circumstance, or intervening event since the recommendation of the existing agreement, to substantiate the modifications proposed in paragraph (a)(2) of this section;

(4) All special studies developing information pertinent to the request completed since the recommendation of the existing agreement;

(5) If applicable, an update of the financial impact of the negotiated service agreement on the Postal Service in accordance with § 3001.193(e) over the duration of the agreement utilizing the methodology employed by the Commission in its recommendation of the existing agreement; and

(6) If applicable, the identification of circumstances unique to the request.

(b) When the Postal Service submits a request to modify a negotiated service agreement, it shall provide written notice of its request, either by hand delivery or by First-Class Mail, to all participants in the Commission docket established to consider the original agreement.

(c) The Commission will schedule a prehearing conference for each request. Participants shall be prepared to address at that time whether or not it is appropriate to proceed under § 3001.198, and whether or not any material issues of fact exist that require discovery or evidentiary hearings. After consideration of the material presented in support of the request, and the argument presented by the par-

ticipants, if any, the Commission shall promptly issue a decision on whether or not to proceed under § 3001.198. If the Commission's decision is to not proceed under § 3001.198 the docket will proceed under § 3001.195 or § 3001.196, as appears appropriate.

(d) The Commission will treat requests to modify negotiated service agreements as subject to accelerated review consistent with procedural fairness. If the Commission determines that it is appropriate to proceed under § 3001.198, a schedule will be established which allows a recommended decision to be issued not more than: (1) Forty-five (45) days after the determination is made to proceed under § 3001.198, if no hearing is held; or (2) Ninety (90) days after the determination is made to proceed under § 3001.198, if a hearing is scheduled.

PART 3010—REGULATIONS OF RATES FOR MARKET DOMINANT PRODUCTS**Subpart A—General Provisions****§ 3010.1 Applicability.**

The rules in this part implement provisions in the Postal Accountability and Enhancement Act (PAEA) establishing ratesetting policies and procedures for market dominant products. With the exception of exigency-based rate adjustments, these procedures allow a minimum of 45 days for advance public notice of the Postal Service's planned rate adjustments. Exigency-based rate adjustments require the Postal Service to file a formal request with the Commission and are subject to special procedures.

§ 3010.2 Types of rate adjustments for market dominant products.

(a) There are four types of rate adjustments for market dominant products. A Type 1-A rate adjustment, authorized under 39 U.S.C. 3622(d)(1)(D), is based on the statutory annual limitation. A Type 1-B rate adjustment, authorized under 39 U.S.C. 3622(d)(2)(C), is based on an exception to the annual limitation, and is referred to as unused rate adjustment authority. A Type 2 rate adjustment, authorized under 39 U.S.C. 3622(c)(10), is based on a negotiated service agreement. A Type 3 rate adjustment, authorized under 39 U.S.C. 3622(d)(1)(E), is based on exigent circumstances.

(b) Upon the establishment of unused rate adjustment authority in any class, the Postal Service shall devise and maintain a schedule that tracks the establishment and subsequent use of unused rate adjustment authority.

(c) The Postal Service may combine Types 1-A, 1-B and 2 rate adjustments for purposes of filing with the Commission.

§ 3010.3 Type 1-A rate adjustment—in general.

(a) A Type 1-A rate adjustment represents the usual type of adjustment to rates of general applicability.

(b) A Type 1-A rate adjustment may result in a rate adjustment that is less than or equal to the annual limitation, but may not exceed the annual limitation.

(c) A Type 1-A rate adjustment for any class that is less than the applicable change in CPI-U results in unused rate adjustment authority associated with that class. Part or all of the unused rate adjustment authority may be used in a subsequent adjustment for that class, subject to the expiration terms in § 3010.26(d).

§ 3010.4 Type 1-B rate adjustment—in general.

(a) A Type 1-B rate adjustment is a rate adjustment which uses unused rate adjustment authority in whole or in part. A rate adjustment using unused rate adjustment authority may not result in an increase for the class that exceeds the applicable annual limitation plus 2 percentage points.

(b) Type 1-B rate adjustments filed within 12 months of each other may not apply more than 2 percentage points of unused rate authority to any class.

(c) Unused rate adjustment authority in each class may be applied to rate adjustments in the same class for up to 5 years.

§ 3010.5 Type 2 rate adjustment—in general.

A negotiated service agreement rate adjustment entails a rate adjustment negotiated between the Postal Service and a customer or group of customers.

§ 3010.6 Type 3 rate adjustment—in general.

(a) A Type 3 rate adjustment is a request for an exigency-based rate adjustment. It is authorized only when justified by exceptional or extraordinary circumstances.

(b) An exigency-based rate adjustment is not subject to the inflation-based limitation or the restrictions on the use of unused rate adjustment authority, and does not implement a negotiated service agreement.

(c) A Postal Service request for a Type 3 rate adjustment is subject to public participation and Commission review within 90 days.

§ 3010.7 Schedule of regular rate changes.

(a) The Postal Service shall maintain on file with the Commission a Schedule for Regular and Predictable Rate Changes. The Commission shall display the Schedule for Regular and Predictable Rate Changes on the Commission website, *www.prc.gov*.

(b) The Schedule for Regular and Predictable Rate Changes shall provide mailers with estimated implementation dates for future Type 1–A rate changes for each separate class of mail, should such changes be necessary and appropriate. Rate changes will be scheduled at specified regular intervals.

(c) The Schedule for Regular and Predictable Rate Changes shall provide an explanation that will allow mailers to predict with reasonable accuracy the amounts of future scheduled rate changes.

(d) The initial Schedule for Regular and Predictable Rate Changes must be filed within 90 days of the effective date of this rule. The Postal Service should balance its financial and operational needs

with the convenience of mailers of each class of mail in developing the schedule.

(e) Whenever the Postal Service deems it appropriate to change the Schedule for Regular and Predictable Rate Changes, it shall file a revised schedule and explanation with the Commission.

(f) The Postal Service may, for good cause shown, vary rate adjustments from those estimated by the Schedule for Regular and Predictable Rate Changes. In such case, the Postal Service should provide a succinct explanation for such variation with its Type 1–A filing. No explanation is required for changes involving smaller than predicted rate adjustments.

Subpart B—Rules for Rate Adjustments for Rates of General Applicability (Type 1-A and 1-B Rate Adjustments)

§ 3010.10 Procedures.

(a) The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 1-A or Type 1-B rate adjustment for a market dominant postal product shall:

(1) Provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and

(2) Transmit a notice of rate adjustment to the Commission no later than 45 days prior to the intended implementation date.

(b) The Postal Service is encouraged to provide public notice and to submit its notice of rate adjustment as far in advance of the 45-day minimum as practicable, especially in instances where the intended price changes include classification changes or operations changes likely to have material impact on mailers.

§ 3010.11 Limit on size of rate increases.

(a) Rate increases for each class of market dominant products in any 12-month period are limited.

(b) Rates of general applicability are subject to an inflation-based limitation computed using CPI-U values as detailed in rule 3010.12.

(c) An exception to the inflation-based limitation allows a limited annual recapture of unused rate authority. The amount of unused rate authority is measured separately for each class of mail.

(d) In any 12-month period the inflation-based limitation combined with the allowable recapture of unused rate authority equals the price cap applicable to each class of mail.

§ 3010.12 Source of CPI-U data for purposes of annual limitation.

The monthly CPI-U values needed for the calculation of the annual limitation under this part shall be obtained from the Bureau of Labor Statistics (BLS) Consumer Price Index—All Urban Consumers, U.S. All Items, Not Seasonally Adjusted, Base Period 1982-84 = 100. The current Series ID for the index is “CUUR0000SA0.”

§ 3010.13 Proceedings for Type 1-A and Type 1-B rate adjustment filings.

(a) The Commission will establish a docket for each rate adjustment filing, promptly publish notice of the filing in the *Federal Register*, and post the filing on its website. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority to which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 20 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) Public comments should focus primarily on whether planned rate adjustments comply with the following manda-

tory requirements of 39 U.S.C. chapter 36, subchapter 1:

(1) Whether the planned rate adjustments measured using the formula established in rule 3010.23(b) are at or below the annual limitation established in rule 3010.11; and

(2) Whether the planned rate adjustments measured using the formula established in rule 3010.23(b) are at or below the limitations established in rule 3010.28.

(c) Within 14 days of the conclusion of the public comment period the Commission will determine, at a minimum, whether the planned rate adjustments are consistent with the annual limitation set forth in rule 3010.11; the limitations set forth in rule 3010.28; and 39 U.S.C. 3626, 3627, and 3629 and issue an order announcing its findings.

(d) If the planned rate adjustments are found consistent with applicable law by the Commission, they may take effect pursuant to appropriate action by the Governors.

(e) If planned rate adjustments are found inconsistent with applicable law by the Commission, the Postal Service will submit an amended notice of rate adjustment and describe the modifications to its planned rate adjustments that will bring its rate adjustments into compliance. An amended notice of rate adjustment shall be accompanied by sufficient explanatory information to show that all deficiencies identified by the Commission have been corrected.

(f) The Commission will post any amended notice of rate adjustment filing on its website and allow a period of 10 days from the date of the filing for public comment. Comments in the amended notice of rate adjustment should address the subjects identified in rule 3010.13(b).

(g) The Commission will review any amended notice of rate adjustment together with any comments filed for compliance and within 14 days issue an order announcing its findings.

(h) If the planned rate adjustments as amended are found to be consistent with applicable law, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(i) If the planned rate adjustments in an amended notice of rate adjustment are found to be inconsistent with applicable law, the Commission shall explain the basis of its determination and suggest an appropriate remedy.

(j) For purposes of subsequent Commission proceedings, findings that a planned Type 1 rate adjustment is in compliance with the annual limitation set forth in rule 3010.11; the limitations set forth in rule 3010.28; and 39 U.S.C. 3626, 3627, and 3629 are decided on the merits. A Commission finding that a planned Type 1 rate adjustment does not contravene other policies of 39 U.S.C. chapter 36, subchapter 1 is provisional and subject to subsequent review.

§ 3010.14 Contents of notice of rate adjustment.

(a) *General.* The Postal Service notice of rate adjustment must include the following information:

(1) A schedule of the proposed rates;

(2) The planned effective date(s) of the proposed rates;

(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the proposed new rates; and

(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) *Supporting technical information and justifications.* The notice of rate adjustment shall be accompanied by:

(1) The amount of the applicable change in CPI-U calculated as required by rule 3010.21 or 3010.22, as appropriate. This information must be supported by workpapers in which all calculations are shown, and all input values including all relevant CPI-U values are listed with citations to the original sources;

(2) A schedule showing unused rate authority available for each class of mail displayed by class and available amount for each of the preceding 5 years. This information must be supported by workpapers in which all calculations are shown;

(3) The percentage change in rates for each class of mail calculated as required by § 3010.23. This information must be supported by workpapers in which all calculations are shown, and all input values including current rates, new rates, and billing determinants are listed with citations to the original sources;

(4) The amount of new unused rate authority, if any, that will be generated by the rate adjustment calculated as required by § 3010.26. All calculations are to be shown with citations to the original sources. If new unused rate authority will be generated for a class of mail that is not expected to cover its attributable costs, the Postal Service must provide the rationale underlying this rate adjustment;

(5) A schedule of the workshare discounts included in the proposed rates, and a companion schedule listing the avoided costs that underlie each such discount. The avoided cost figures must be developed from the most recent PRC Annual Compliance Report. This informa-

tion must be supported by workpapers in which all calculations are shown, and all input values are listed with citations to the original sources;

(6) Separate justification for all proposed workshare discounts that exceed avoided costs. Each such justification shall reference applicable reasons identified in 39 U.S.C. 3622(e)(2) or (3). The Postal Service shall also identify and explain discounts that are set substantially below avoided costs and explain any relationship between discounts that are above and those that are below avoided costs;

(7) A discussion that demonstrates how the planned rate adjustments are designed to help achieve the objectives listed in 39 U.S.C. 3622(b) and properly take into account the factors listed in 39 U.S.C. 3622(c);

(8) A discussion that demonstrates the planned rate adjustments are consistent with 39 U.S.C. 3626, 3627, and 3629;

(9) A schedule identifying every change to the Mail Classification Schedule that will be necessary to implement the planned rate adjustments; and

(10) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested increases are consistent with applicable statutory policies.

(c) *New workshare discounts.* Whenever the Postal Service establishes a new workshare discount rate, it must include with its filing:

(1) A statement explaining its reasons for establishing the discount;

(2) All data, economic analyses, and other information relied on to justify the discount; and

(3) A certification based on comprehensive, competent analyses that the discount will not adversely affect either the rates or the service levels of users of postal services who do not take advantage of the discount.

(d) *Information required only when Type 1-B rate adjustments are proposed.* The notice of rate adjustment shall identify for each affected class how much existing unused rate authority is used in the proposed rates calculated as required by rule 3010.27. All calculations are to be shown, including citations to the original sources.

Subpart C—Rules for Applying the Price Cap**§ 3010.20 Test for compliance with the annual limitation.**

The appropriate annual limitation shall be applied to a measure of the rates paid by mail sent in each class for which rate adjustments are to be made to determine whether planned rates are consistent with the annual limitation.

§ 3010.21 Calculation of annual limitation.

(a) The calculation of an annual limitation involves three steps. First, a simple average CPI-U index is calculated by summing the most recently available 12 monthly CPI-U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). Then, a second simple average CPI-U index is similarly calculated by summing the 12 monthly CPI-U values immediately preceding the Recent Average and dividing the sum by 12 (Base Average). Finally, the annual limitation is calculated by dividing the Recent Average by the Base Average and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to one decimal place.

(b) The formula for calculating an annual limitation is as follows: Annual Limitation = (Recent Average/Base Average) - 1.

§ 3010.22 Calculation of less than annual limitation.

(a) If a notice of rate adjustment is filed less than 1 year after the last Type 1-A or Type 1-B notice of rate adjustment applicable to an affected class of mail, then the annual limitation will recognize the rate increases that have occurred during the preceding 12 months. When the effects of those increases are removed, the remaining partial year limitation is the applicable restriction on rate increases.

(b) The applicable partial year limitation is calculated in two steps. First, a simple average CPI-U index is calculated by summing the 12 most recently available monthly CPI-U values from the date the Postal Service files its notice of rate adjustment and dividing the sum by 12 (Recent Average). The partial year limitation is then calculated by dividing the Recent Average by the Recent Average from the most recent previous notice of rate adjustment (Previous Recent Average) applicable to each affected class of mail and subtracting 1 from the quotient. The result is expressed as a percentage, rounded to one decimal place.

(c) The formula for calculating the partial year limitation for a notice of rate adjustment filed less than 1 year after the last notice is as follows: Partial Year Limitation = (Recent Average/Previous Recent Average) - 1.

§ 3010.23 Calculation of percentage change in rates.

(a) The term *rate cell* as applied in the test for compliance with the annual limitation shall apply to each and every separate rate identified in any applicable notice of rate adjustment for rates of general applicability. Thus, seasonal or temporary rates, for example, shall be identified and treated as rate cells separate and distinct from the corresponding non-seasonal or permanent rates.

(b) For each class of mail, the percentage change in rates is calculated in three steps. First, the volume of each rate cell in the class is multiplied by the planned rate for the respective cell and the resulting products are summed. Then, the same set of rate cell volumes are multiplied by the corresponding current rate for each cell and the resulting products are summed. Finally, the percentage change in rates is calculated by dividing the results of the first step by the results of the second step and subtracting 1 from the quotient. The result is expressed as a percentage.

(c) The formula for calculating the percentage change in rates for a class described in paragraph (b) of this section is as follows:

Percentage change in rates =

$$\left(\frac{\sum_{i=1}^N (R_{i,n})(V_i)}{\sum_{i=1}^N (R_{i,c})(V_i)} \right) - 1$$

where,

N = number of rate cells in the class

i = denotes a rate cell (i = 1, 2, ..., N)

R_{i,n} = planned rate of rate cell i

R_{i,c} = current rate of rate cell i

V_i = volume of rate cell i

(d) The volumes for each rate cell shall be obtained from the most recent available 12 months of Postal Service billing determinants. The Postal Service shall make reasonable adjustments to the billing determinants to account for the effects of classification changes such as the introduction, deletion, or redefinition of rate cells. Whenever possible, adjustments shall be based on known mail characteristics. The Postal Service shall identify and explain all adjustments. All information and calculations relied upon to develop the adjustments shall be provided together with an explanation of why the adjustments are appropriate.

§ 3010.24 Treatment of volume associated with negotiated service agreements.

(a) Mail volumes sent at rates under negotiated service agreements are to be included in the calculation of percentage

change in rates as though they paid the appropriate rates of general applicability. Where it is impractical to identify the rates of general applicability (e.g., because unique rate categories are created for a mailer), the volumes associated with the mail sent under the terms of the negotiated service agreement shall be excluded from the calculation of percentage change in rates.

(b) The Postal Service shall identify and explain all assumptions it makes with respect to the treatment of negotiated service agreements in the calculation of the percentage change in rates and provide the rationale for its assumptions.

§ 3010.25 Limitation on unused rate adjustment authority rate adjustments.

Unused rate adjustment authority rate adjustments may only be applied together with inflation-based limitation rate adjustments or when inflation-based limitation rate adjustments are not possible. Unused rate adjustment authority rate adjustments may not be used in lieu of an inflation-based limitation rate adjustment.

§ 3010.26 Calculation of unused rate adjustment authority.

(a) Unused rate adjustment authority accrues during the entire period between notices of Type 1 rate adjustments.

(b) When notices of Type 1 rate adjustments are filed 12 months apart or less, either the annual or partial year limitation (developed pursuant to § 3010.21(a) or rule 3010.22(b) respectively) is used to measure the accrued unused rate authority. In either circumstance, the new unused rate authority for each class is equal to the difference between the maximum allowable percentage change in rates under the applicable rate limitation and the actual percentage change in rates for that class.

(c) When a notice of rate adjustment is filed more than 12 months after the previous notice of rate adjustment, unused rate authority is computed in three steps:

(1) The unused rate authority for the 12 months represented by the annual limitation is computed as described in subsection (b);

(2) The additional unused rate authority accrued is measured by dividing the Base Average applicable to the instant notice of rate adjustment (as developed pursuant to rule 3010.21(a)) by the Recent Average utilized in the previous notice of rate adjustment (as developed pursuant to rule 3010.21(a)) and subtracting 1 from the quotient. The result is expressed as a percentage; and

(3) The results from step 1 and step 2 are added together.

(d) Unused rate adjustment authority lapses 5 years after the date of filing of the notice of rate adjustment leading to its computation.

§ 3010.27 Application of unused rate adjustment authority.

When the percentage change in rates for a class is greater than the applicable annual limitation, then the difference between the percentage change in rates for the class and the price cap shall be subtracted from the existing unused rate authority for the class, using a first-in, first-out (FIFO) method, beginning 5 years before the instant notice.

§ 3010.28 Maximum size of unused rate adjustment authority rate adjustments.

Unused rate adjustment authority exercised in notices of rate adjustments for any class in any 12-month period may not exceed the applicable limitations described in rules 3010.21 or 3010.22 plus the lesser of:

(a) 2 percent; or

(b) The sum of any unused rate adjustment authority for that class.

§ 3010.29 Transition rule.

If the Postal Service initial exercise of its authority to file a Type 1-A notice of rate adjustment is preceded by a transitional rate case filing under 39 U.S.C. 3622(f):

(a) The annual limitation as calculated in rule 3010.21 is applicable if the notice of rate adjustment is 12 months or more after the date of the Decision of the Governors approving rate changes associated with the transitional filing; and

(b) The annual limitation as calculated in rule 3010.22 is applicable if the notice of rate adjustment is 12 months or more after the date of the Decision of the Governors approving rate changes associated with the transitional filing. In such circumstances, the date of the Decision of the Governors approving rate changes associated with the transitional filing is the most recent previous notice of rate adjustment.

Subpart D—Rules for Rate Adjustments for Negotiated Service Agreements (Type 2 Rate Adjustments)

§ 3010.40 Negotiated service agreements.

(a) In administering this subpart, it shall be the objective of the Commission to allow implementation of negotiated service agreements that satisfy the statutory requirements of 39 U.S.C. 3622(c)(10). Negotiated service agreements must either:

(1) Improve the net financial position of the Postal Service (39 U.S.C. 3622(c)(10)(A)(i)); or

(2) Enhance the performance of operational functions (39 U.S.C. 3622(c)(10)(A)(ii)).

(b) Negotiated service agreements may not cause unreasonable harm to the marketplace (39 U.S.C. 3622(c)(10)(B)).

(c) Negotiated service agreements must be available on public and reasonable terms to similarly situated mailers.

§ 3010.41 Procedures.

The Postal Service, in every instance in which it determines to exercise its statutory authority to make a Type 2 rate adjustment for a market dominant postal product shall provide public notice in a manner reasonably designed to inform the mailing community and the general public that it intends to change rates not later than 45 days prior to the intended implementation date; and transmit a notice of agreement to the Commission no later than 45 days prior to the intended implementation date.

§ 3010.42 Contents of notice of agreement in support of a negotiated service agreement.

(a) Whenever the Postal Service proposes to establish or change rates or fees and/or the Mail Classification Schedule based on a negotiated service agreement, the Postal Service shall file with the Commission a notice of agreement that shall include at a minimum:

(1) A copy of the negotiated service agreement;

(2) The planned effective date(s) of the proposed rates;

(3) A representation or evidence that public notice of the planned changes has been issued or will be issued at least 45 days before the effective date(s) for the proposed new rates; and

(4) The identity of a responsible Postal Service official who will be available to provide prompt responses to requests for clarification from the Commission.

(b) A statement identifying all parties to the agreement and a description clearly explaining the operative components of the agreement.

(c) Details regarding the expected improvements in the net financial position or operations of the Postal Service. The projection of change in net financial position as a result of the agreement shall include for each year of the agreement:

(1) The estimated mailer-specific costs, volumes, and revenues of the Postal Service absent the implementation of the negotiated service agreement;

(2) The estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the negotiated service agreement;

(3) An analysis of the effects of the negotiated service agreement on the con-

tribution to institutional costs from mailers not party to the agreement; and

(4) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, together with a discussion of the currency and reliability of those costs and their suitability as a proxy for the mailer-specific costs.

(d) An identification of each component of the agreement expected to enhance the performance of mail preparation, processing, transportation or other functions in each year of the agreement, and a discussion of the nature and expected impact of each such enhancement.

(e) Details regarding any and all actions (performed or to be performed) to assure that the agreement will not result in unreasonable harm to the marketplace.

(f) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested changes are consistent with applicable statutory policies.

§ 3010.43 Data collection plan.

The Postal Service shall include with any notice of agreement a detailed plan for providing data or information on actual experience under the agreement sufficient to allow evaluation of whether the negotiated service agreement operates in compliance with 39 U.S.C. 3622(c)(10). The data report is due 60 days after each anniversary date of implementation and shall include, at a minimum, the following information for each 12-month period the agreement has been in effect:

(a) The change in net financial position as a result of the agreement. This calculation shall include for each year of the agreement:

(1) The actual mailer-specific costs, volumes, and revenues of the Postal Service;

(2) An analysis of the effects of the negotiated service agreement on the net overall contribution to the institutional costs of the Postal Service; and

(3) If mailer-specific costs are not available, the source and derivation of the costs that are used shall be provided, including a discussion of the currency and reliability of those costs, and their suitability as a proxy for the mailer-specific costs.

(b) A discussion of the changes in operations of the Postal Service that have resulted from the agreement. This shall include, for each year of the agreement, identification of each component of the agreement known to enhance the performance of mail preparation, processing, transportation, or other functions in each year of the agreement.

(c) An analysis of the impact of the negotiated service agreement on the marketplace, including a discussion of any and all actions taken to protect the marketplace from unreasonable harm.

§ 3010.44 Proceedings for Type 2 rate adjustments.

(a) The Commission will establish a docket for each Type 2 rate adjustment filing, promptly publish notice of the filing in the *Federal Register*, and post the filing on its website. The notice shall include:

(1) The general nature of the proceeding;

(2) A reference to legal authority to which the proceeding is to be conducted;

(3) A concise description of the planned changes in rates, fees, and the Mail Classification Schedule;

(4) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(5) A period of 10 days from the date of the filing for public comment; and

(6) Such other information as the Commission deems appropriate.

(b) The Commission shall review the planned Type 2 rate adjustments and the comments thereon, and issue an order announcing its findings. So long as such adjustments are not inconsistent with 39 U.S.C. 3622, they may take effect pursuant to appropriate action by the Governors. However, no rate shall take effect until 45 days after the Postal Service files a notice of rate adjustment specifying that rate.

(c) Commission findings that a planned Type 2 rate adjustment is not inconsistent with 39 U.S.C. 3622 are provisional and subject to subsequent review.

Subpart E—Rules for Rate Adjustments in Exigent Circumstances (Type 3 Rate Adjustments)**§ 3010.60 Applicability.**

The Postal Service may request to increase rates for market dominant products in excess of the annual limitation on the percentage changes in rates described in rule 3010.11(d) due to extraordinary or exceptional circumstances. Such requests will be known as exigent requests.

§ 3010.61 Contents of exigent requests.

(a) Each exigent request shall include the following:

- (1) A schedule of the proposed rates;
- (2) Calculations quantifying the increase for each affected product and class;
- (3) A full discussion of the extraordinary or exceptional circumstance(s) giving rise to the request, and a complete explanation of how both the requested overall increase, and the specific rate increases requested, relate to those circumstances;
- (4) A full discussion of why the requested increases are necessary to enable the Postal Service, under best practices of honest, efficient and economical management, to maintain and continue the development of postal services of the kind and quality adapted to the needs of the United States;
- (5) A full discussion of why the requested increases are reasonable and equitable as among types of users of market dominant products;

(6) An explanation of when, or under what circumstances, the Postal Service expects to be able to rescind the exigent increases in whole or in part;

(7) An analysis of the circumstances giving rise to the request, which should, if applicable, include a discussion of whether the circumstances were foreseeable or could have been avoided by reasonable prior action; and

(8) Such other information as the Postal Service believes will assist the Commission to issue a timely determination of whether the requested increases are consistent with applicable statutory policies.

(b) The Postal Service shall identify one or more knowledgeable Postal Service official(s) who will be available to provide prompt responses to Commission requests for clarification related to each topic specified in rule 3010.61(a).

§ 3010.62 Supplemental information.

The Commission may require the Postal Service to provide clarification of its request or to provide information in addition to that called for by rule 3010.61 in order to gain a better understanding of the circumstances leading to the request or the justification for the specific rate increases requested.

§ 3010.63 Treatment of unused rate adjustment authority.

(a) Each exigent request will identify the unused rate authority for each class of mail as of the date of the request.

(b) Pursuant to an exigent request, increases may use accumulated unused rate adjustment authority in amounts greater than the limitation described in rule 3010.28.

(c) Exigent increases will exhaust all unused rate adjustment authority for each class of mail before imposing additional rate increases in excess of the price cap for any class of mail.

§ 3010.64 Expeditious treatment of exigent requests.

Requests under this subpart seek rate relief required by extraordinary or exceptional circumstances and will be treated with expedition at every stage. It is Commission policy to provide appropriate relief as quickly as possible consistent with statutory requirements and procedural fairness.

§ 3010.65 Special procedures applicable to exigent requests.

(a) The Commission will establish a docket for each request for exigent rate adjustments, promptly publish notice of the request in the *Federal Register*, and post the filing on its website. The notice shall include:

- (1) The general nature of the proceeding;
- (2) A reference to legal authority to which the proceeding is to be conducted;
- (3) A concise description of the proposals for changes in rates, fees, and the Mail Classification Schedule;
- (4) The identification of an officer of the Commission to represent the interests of the general public in the docket;
- (5) A specified period for public comment; and
- (6) Such other information as the Commission deems appropriate.

(b) The Commission will hold a public hearing on the Postal Service request. During the public hearing, responsible Postal Service officials will appear and respond under oath to questions from the Commissioners or their designees addressing previously identified aspects of the Postal Service's request and the supporting information provided in response to the topics specified in rule 3010.61(a).

(c) Interested persons will be given an opportunity to submit to the Commission suggested relevant questions that might be posed during the public hearing. Such questions, and any explanatory materials submitted to clarify the purpose of the questions, should be filed in accordance with rule 3001.9, and will become part of the administrative record of the proceeding.

(d) The timing and length of the public hearing will depend on the nature of the circumstances giving rise to the request and the clarity and completeness of the supporting materials provided with the request.

(e) If the Postal Service is unable to provide adequate explanations during the public hearing, supplementary written or oral responses may be required.

(f) Following the conclusion of the public hearings and submission of any supplementary materials interested persons will be given the opportunity to submit written comments on:

- (1) The sufficiency of the justification for an exigent rate increase;
- (2) The adequacy of the justification for increases in the amounts requested by the Postal Service; and
- (3) Whether the specific rate adjustments requested are reasonable and equitable.

(g) An opportunity to submit written reply comments will be given to the Postal Service and other interested persons.

§ 3010.66 Deadline for Commission decision.

The Commission will act expeditiously on the Postal Service request, taking into account all written comments. In every instance a Commission decision will be issued within 90 days of a Postal Service request for an exigent rate increase.

PART 3015—REGULATION OF RATES FOR COMPETITIVE PRODUCTS**§ 3015.1 Scope.**

Rules in this part are applicable to competitive products.

§ 3015.2 Changes in rates of general applicability.

(a) When the Postal Service determines to change a rate or rates of general applicability, it shall file notice of the change with the Commission no later than the date of publication of the decision in the *Federal Register* concerning such change, but at least 30 days before the effective date of the change.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and a schedule of the changed rates.

§ 3015.3 Decrease in rates of general applicability.

(a) When the Postal Service determines to change a rate or rates of general applicability for any competitive product that results in a decrease in the average rate of that product, it shall file notice of the change with the Commission no later than the date of publication of the decision in the *Federal Register* concerning such change, but at least 30 days before the effective date of the change.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and a schedule of the changed rates.

(c) In addition to the notice, the Postal Service shall file with the Commission:

(1) Sufficient revenue and cost data for the 12-month period following the effective date of the rate to demonstrate that each affected competitive product will

be in compliance with 39 U.S.C. 3633(a)(2); and

(2) certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).

§ 3015.4 Change in class of general applicability.

(a) In the case of a change in class of general applicability, the Postal Service shall file notice of the change with the Commission no later than the date of publication of the decision in the *Federal Register*, but at least 30 days before the effective date of the increase.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, and the record of proceedings regarding such decision.

§ 3015.5 Rate or class not of general applicability.

(a) When the Postal Service determines to add or change a rate or class not of general applicability, it shall file notice of its decision with the Commission at least 15 days before the effective date of the change.

(b) The notice filed with the Commission shall include an explanation and justification for the change, the effective date, the rate and class decision, and the record of proceedings regarding such decision.

(c) In addition to the notice, the Postal Service shall file with the Commission:

(1) Sufficient revenue and cost data for the 12-month period following the effective date of the rate or class to demonstrate that each affected competitive

product will be in compliance with 39 U.S.C. 3633(a)(2); and

(2) A certified statement by a representative of the Postal Service attesting to the accuracy of the data submitted, and explaining why, following the change, competitive products in total will be in compliance with 39 U.S.C. 3633(a)(1) and (3).

§ 3015.6 Sufficiency of information.

If, after review of the information submitted pursuant to this part, the Commission determines additional information is necessary to enable it to evaluate whether competitive products will be in compliance with 39 U.S.C. 3633(a), it may, in its discretion, require the Postal Service to provide additional information as deemed necessary.

§ 3015.7 Standards for compliance.

For purposes of determining competitive products' compliance with 39 U.S.C. 3633, the Commission will apply the following standards:

(a) Incremental costs will be used to test for cross-subsidies by market dominant products of competitive products. To the extent that incremental cost data are unavailable, the Commission will use competitive products' attributable costs supplemented to include causally related, group-specific costs to test for cross-subsidies.

(b) Each competitive product must recover its attributable costs as defined in 39 U.S.C. 3631(b).

(c) Annually, on a fiscal year basis, the appropriate share of institutional costs to be recovered from competitive products collectively is, at a minimum, 5.5 percent of the Postal Service's total institutional costs.

PART 3020—PRODUCT LISTS**Subpart A—Mail Classification Schedule****§ 3020.1 Applicability.**

(a) The rules in this part provide for establishing product lists. The product lists shall categorize postal products as either market dominant or competitive. As established, the market dominant and competitive product lists will be specified in the Mail Classification Schedule and shall be consistent with the market dominant products identified in 39 U.S.C. 3621(a) and the competitive products identified in 39 U.S.C. 3631(a).

(b) Once established, the Mail Classification Schedule may be modified subject to the procedures specified in this part.

§ 3020.10 General.

The Mail Classification Schedule shall consist of two parts. Part One shall specify the list of market dominant products and include the explanatory information specified in rule 3020.13(a). Part Two shall specify the list of competitive products and include the explanatory information specified in rule 3020.13(b).

§ 3020.11 Initial Mail Classification Schedule.

The initial Mail Classification Schedule shall specify the market dominant and competitive product lists. The Mail Classification Schedule product lists shall reflect the market dominant and competitive product lists identified in 39 U.S.C. 3621(a) and 39 U.S.C. 3631(a) respectively. The explanatory detailed descriptive information specified in rule 3020.13(a) and rule 3020.13(b) shall be incorporated by subsequent rulemaking.

§ 3020.12 Publication of the Mail Classification Schedule.

(a) The Mail Classification Schedule established in accordance with subchapters I, II, and III of chapter 36 of title 39 of the United States Code and this subpart shall appear as Appendix A to this subpart.

(b) *Availability of the Mail Classification Schedule.* Copies of the Mail Classification Schedule, both current and previous issues, are available during regular business hours for reference and public inspection at the Postal Regulatory Commission's Reading Room located at 901 New York Avenue, NW, Suite 200, Washington, DC 20268-0001. The Mail Classification Schedule, both current and previous issues, also are available on the Internet at <http://www.prc.gov>.

§ 3020.13 Contents of the Mail Classification Schedule.

The Mail Classification Schedule shall provide:

(a) The list of market dominant products, including:

(1) The class of each market dominant product;

(2) The description of each market dominant product;

(3) A schedule listing for each market dominant product the current rates and fees;

(4) Where applicable, the identification of a product as a special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(5) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(6) Where applicable, the identification of a product as a non-postal product.

(b) The list of competitive products, including:

(1) The description of each competitive product;

(2) A schedule listing for each competitive product of general applicability the current rates and fees;

(3) The identification of each product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products;

(4) Where applicable, the identification of a product as an experimental product undergoing a market test; and

(5) Where applicable, the identification of a product as a non-postal product.

§ 3020.14 Notice of change.

Whenever the Postal Regulatory Commission modifies the list of products in the market dominant category or the competitive category, it shall cause notice of such change to be published in the *Federal Register*. The notice shall:

(a) Include the current list of market dominant products and the current list of competitive products appearing in the Mail Classification Schedule;

(b) Indicate how and when the previous product lists have been modified; and

(c) Describe other changes to the Mail Classification Schedule as necessary.

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1505.8	Delivery Confirmation
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1505.10	Merchandise Return Service
1505.11	Parcel Airlift (PAL)
1505.12	Registered Mail
1505.13	Return Receipt
1505.14	Return Receipt for Merchandise
1505.15	Restricted Delivery
1505.16	Shipper -Paid Forwarding
1505.17	Signature Confirmation
1505.18	Special Handling
1505.19	Stamped Envelopes
1505.20	Stamped Cards
1505.21	Premium Stamped Stationery
1505.22	Premium Stamped Cards
1510	International Ancillary Services
1510.1	International Certificate of Mailing
1510.2	International Registered Mail
1510.3	International Return Receipt
1510.4	International Restricted Delivery
1515	Address List Services
1520	Caller Service
1525	Change-of-Address Credit Card Authentication
1530	Confirm
1535	International Reply Coupon Service

Part A—Market Dominant Products

Sec.	
1540	International Business Reply Mail Service
1545	Money Orders
1550	Post Office Box Service
1555	Premium Forwarding Service (Experiment)
1600	Negotiated Service Agreement
1610	Bank One Negotiated Service Agreement
1615	HSBC North America Holdings Inc. Negotiated Service Agreement
1620	Bookspan Negotiated Service Agreement

Part B—Competitive Products

Sec.	
2000	Competitive Product List
2001	Competitive Product Descriptions
2100	Express Mail
2105	Express Mail
2110	Outbound International Expedited Services
2115	Inbound International Expedited Services
2200	Priority Mail
2205	Priority Mail
2210	Outbound Priority Mail International
2215	Inbound Air Parcel Post
2300	Parcel Select
2400	Parcel Return Service
2500	International
2505	International Priority Airlift (IPA)
2510	International Surface Airlift (ISAL)
2515	International Direct Sacks—M-Bags
2520	Global Customized Shipping Services

Sec.	
2525	Inbound Surface Parcel Post (at non-UPU rates)
2530	International Money Transfer Service
2535	International Ancillary Services
2535.1	International Certificate of Mailing
2535.2	International Registered Mail
2535.3	International Return Receipt
2535.4	International Restricted Delivery
2535.5	International Insurance
2600	Negotiated Service Agreements
2605	Domestic
2610	Outbound International

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Part A—Market Dominant Products

Sec.	
1000	Market Dominant Product List
	First-Class Mail
	Single-piece Letters/Postcards
	Bulk Letters/Postcards
	Flats
	Parcels
	Outbound Single-piece First-Class Mail International
	Inbound Single-piece First-Class Mail International
	Standard Mail (Regular and Nonprofit)
	High Density and Saturation Letters
	High Density and Saturation Flats/Parcels
	Carrier Route
	Letters
	Flats
	Not Flat-Machinables (NFM)/Parcels
	Periodicals

Sec.	
	Within County Periodicals
	Outside County Periodicals
	Package Services
	Single-piece Parcel Post
	Inbound Surface Parcel Post (at UPU rates)
	Bound Printed Matter Flats
	Bound Printed Matter Parcels
	Medial Mail/Library Mail
	Special Services
	Ancillary Services
	International Ancillary Services
	Address List Services
	Caller Service
	Change-of-Address Credit Card Authentication
	Confirm
	International Reply Coupon Service
	International Business Reply Mail Service
	Money Orders
	Post Office Box Service
	Premium Forwarding Service (Experiment)
	Negotiated Service Agreements
	Discover Financial Services Negotiated Service Agreement
	Bank One Negotiated Service Agreement
	HSBC North America Holdings Inc. Negotiated Service Agreement
	Bookspan Negotiated Service Agreement

1001 Market Dominant Product
Descriptions

Sec.	
1100	First-Class Mail [Reserved for Class Description]
1105	Single-piece Letters/Postcards [Reserved for Product Description]

Sec.		Sec.	
1110	Bulk Letters/Postcards [Reserved for Product Description]	1425	Media Mail/Library Mail [Reserved for Product Description]
1115	Flats [Reserved for Product Description]	1500	Special Services [Reserved for Class Description]
1120	Parcels [Reserved for Product Description]	1505	Ancillary Services
1125	Outbound Single-piece First-Class Mail International [Reserved for Product Description]	1505.1	Address Correction Service [Reserved for Product Description]
1130	Inbound Single-piece First-Class Mail International [Reserved for Product Description]	1505.2	Applications and Mailing Permits [Reserved for Product Description]
1200	Standard Mail (Regular and Nonprofit) [Reserved for Class Description]	1505.3	Business Reply Mail [Reserved for Product Description]
1205	High Density and Saturation Letters [Reserved for Product Description]	1505.4	Bulk Parcel Return Service [Reserved for Product Description]
1210	High Density and Saturation Flats/ Parcels [Reserved for Product Description]	1505.5	Certified Mail [Reserved for Product Description]
1215	Carrier Route [Reserved for Product Description]	1505.6	Certificate of Mailing [Reserved for Product Description]
1220	Letters [Reserved for Product Description]	1505.7	Collect on Delivery [Reserved for Product Description]
1225	Flats [Reserved for Product Description]	1505.8	Delivery Confirmation [Reserved for Product Description]
1230	Not Flat-Machinables (NFMs)/Parcels [Reserved for Product Description]	1505.9	Insurance [Reserved for Product Description]
1300	Periodicals [Reserved for Class Description]	1505.10	Merchandise Return Service [Reserved for Product Description]
1305	Within County Periodicals [Reserved for Product Description]	1505.11	Parcel Airlift (PAL) [Reserved for Product Description]
1310	Outside County Periodicals [Reserved for Product Description]	1505.12	Registered Mail [Reserved for Product Description]
1400	Package Services [Reserved for Class Description]	1505.13	Return Receipt [Reserved for Product Description]
1405	Single-piece Parcel Post [Reserved for Product Description]	1505.14	Return Receipt for Merchandise [Reserved for Product Description]
1410	Inbound Surface Parcel Post (at UPU rates) [Reserved for Product Description]	1505.15	Restricted Delivery [Reserved for Product Description]
1415	Bound Printed Matter Flats [Reserved for Product Description]	1505.16	Shipper-Paid Forwarding [Reserved for Product Description]
1420	Bound Printed Matter Parcels [Reserved for Product Description]	1505.17	Signature Confirmation [Reserved for Product Description]
		1505.18	Special Handling [Reserved for Product Description]
		1505.19	Stamped Envelopes [Reserved for Product Description]

Sec.	
1505.20	Stamped Cards [Reserved for Product Description]
1505.21	Premium Stamped Stationery [Reserved for Product Description]
1505.22	Premium Stamped Cards [Reserved for Product Description]
1510	International Ancillary Services
1510.1	International Certificate of Mailing [Reserved for Product Description]
1510.2	International Registered Mail [Reserved for Product Description]
1510.3	International Return Receipt [Reserved for Product Description]
1510.4	International Restricted Delivery [Reserved for Product Description]
1515	Address List Services [Reserved for Product Description]
1520	Caller Service [Reserved for Product Description]
1525	Change-of-Address Credit Card Authentication [Reserved for Product Description]
1530	Confirm [Reserved for Product Description]
1535	International Reply Coupon Service [Reserved for Product Description]
1540	International Business Reply Mail Service [Reserved for Product Description]
1545	Money Orders [Reserved for Product Description]
1550	Post Office Box Service [Reserved for Product Description]
1555	Premium Forwarding Service (Experiment) [Reserved for Product Description]
1600	Negotiated Service Agreements [Reserved for Class Description]
1605	Discover Financial Services Negotiated Service Agreement [Reserved for Product Description]
1610	Bank One Negotiated Service Agreement [Reserved for Product Description]

Sec.	
1615	HSBC North America Holdings Inc. Negotiated Service Agreement [Reserved for Product Description]
1620	Bookspan Negotiated Service Agreement [Reserved for Product Description]

Part B—Competitive Products

Sec.	
2000	Competitive Product List
	Express Mail
	Express Mail
	Outbound International Expedited Services
	Inbound International Expedited Services
	Priority Mail
	Priority Mail
	Outbound Priority Mail International
	Inbound Air Parcel Post
	Parcel Select
	Parcel Return Service
	International
	International Priority Airlift (IPA)
	International Surface Airlift (ISAL)
	International Direct Sacks—M-Bags
	Global Customized Shipping Services
	Inbound Surface Parcel Post (at non-UPU rates)
	International Money Transfer Service
	International Ancillary Services
	Negotiated Service Agreements
	Domestic
	Outbound International

2001 Competitive Product Descriptions

Sec.	
2100	Express Mail [Reserved for Group Description]
2105	Express Mail [Reserved for Product Description]
2110	Outbound International Expedited Services [Reserved for Product Description]
2115	Inbound International Expedited Services
2200	Priority [Reserved for Product Description]
2205	Priority Mail [Reserved for Product Description]
2210	Outbound Priority Mail International [Reserved for Product Description]
2215	Inbound Air Parcel Post [Reserved for Product Description]
2300	Parcel Select [Reserved for Group Description]
2400	Parcel Return Service [Reserved for Group Description]
2500	International [Reserved for Group Description]
2505	International Priority Airlift (IPA) [Reserved for Product Description]
2510	International Surface Airlift (ISAL) [Reserved for Product Description]
2515	International Direct Sacks—M-Bags
2520	Global Customized Shipping Services [Reserved for Product Description]
2525	International Money Transfer Service [Reserved for Product Description]
2530	Inbound Surface Parcel Post (at non-UPU rates) [Reserved for Product Description]
2535	International Ancillary Services [Reserved for Product Description]
2535.1	International Certificate of Mailing [Reserved for Product Description]
2535.2	International Registered Mail [Reserved for Product Description]

Sec.	
2535.3	International Return Receipt [Reserved for Product Description]
2535.4	International Restricted Delivery [Reserved for Product Description]
2535.5	International Insurance [Reserved for Product Description]
2600	Negotiated Service Agreements [Reserved for Group Description]
2605	Domestic [Reserved for Product Description]
2610	Outbound International [Reserved for Group Description]

Glossary of Terms and Conditions
[Reserved]

Country Price Lists for International Mail
[Reserved]

Subpart B—Requests Initiated by the Postal Service to Modify the Product Lists Described Within the Mail Classification Schedule

§ 3020.30 General.

The Postal Service, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list appearing in the Mail Classification Schedule. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or moving a product from one list to the other list.

§ 3020.31 Contents of a request.

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Provide a copy of the Governor's decision supporting the request, if any;

(c) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or transfer a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(d) Indicate whether each product that is the subject of the request is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b)(3) for competitive products; or

(3) A non-postal product.

(e) Provide all supporting justification upon which the Postal Service proposes to rely; and

(f) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

§ 3020.32 Supporting justification.

Supporting justification shall be in the form of a statement from one or more knowledgeable Postal Service official(s) who sponsors the request and attests to the accuracy of the information contained within the statement. The justification shall:

(a) Demonstrate why the change is in accordance with the policies and the applicable criteria of chapter 36 of title 39;

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(c) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

§ 3020.33 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the *Federal Register*, and post the filing on its website. The notice shall include:

(a) The general nature of the proceeding;

(b) A reference to legal authority to which the proceeding is to be conducted;

(c) A concise description of the proposals for changes in the Mail Classification Schedule;

(d) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(e) A specified period for public comment; and

(f) Such other information as the Commission deems appropriate.

§ 3020.34 Review.

The Commission shall review the request and responsive comments. The Commission shall either:

(a) Approve the request to modify the market dominant and competitive product lists;

(b) Institute further proceedings to consider all or part of the request if it finds that there is substantial likelihood that the modification is inconsistent with statutory policies or Commission rules, and explain its reasons for not approving the request to modify the market dominant and competitive product lists;

(c) Provide an opportunity for the Postal Service to modify its request; or

(d) Direct other action as the Commission may consider appropriate.

§ 3020.35 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the concerns expressed by the Commission. Written statements commenting on the Commission's concerns shall be requested, to be filed 7 days prior to the conference. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the request;

(c) Explain the reasons for not going forward with additional proceedings and approve the request to modify the market

dominant and competitive product lists;
or

(d) Direct other action as the Commission may consider appropriate.

Subpart C—Requests Initiated by Users of the Mail to Modify the Product Lists Described Within the Mail Classification Schedule**§ 3020.50 General.**

Users of the mail, by filing a request with the Commission, may propose a modification to the market dominant product list or the competitive product list appearing in the Mail Classification Schedule. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

§ 3020.51 Contents of a request.

A request to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the request;

(b) Indicate whether the request proposes to add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(c) Indicate whether each product that is the subject of the request is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b) for competitive products; or

(3) A non-postal product.

(d) Provide all supporting justification upon which the proponent of the request proposes to rely; and

(e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

§ 3020.52 Supporting justification.

(a) Supporting justification shall be in the form of a statement from a knowledgeable proponent of the request who attests to the accuracy of the information contained within the statement. The justification shall:

(b) Demonstrate why the change is in accordance with the policies and the applicable criteria of chapter 36 of 39 U.S.C.;

(c) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(d) Explain why, as to competitive products, the addition, deletion, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633.

(e) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(f) Explain whether or not each product that is the subject of the request is covered by the postal monopoly, as reserved to the Postal Service under

18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(g) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(h) Provide any information available on the views of those who use the product on the appropriateness of the proposed modification;

(i) Provide a description of the likely impact of the proposed modification on small business concerns; and

(j) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Commission of the nature, scope, significance, and impact of the proposed modification.

§ 3020.53 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the *Federal Register*, and post the filing on its website. The notice shall include:

(a) The general nature of the proceeding;

(b) A reference to legal authority to which the proceeding is to be conducted;

(c) A concise description of the proposals for changes in the Mail Classification Schedule;

(d) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(e) A specified period for public comment; and

(f) Such other information as the Commission deems appropriate.

§ 3020.54 Postal Service notice and reply.

The Secretary of the Commission shall forward to the Postal Service a copy of the request. Within 28 days of the filing of the request, the Postal Service shall provide its preliminary views in regard to the request. The Postal Service may include suggestions for appropriate Commission action in response to the request.

§ 3020.55 Review.

The Commission shall review the request, the Postal Service reply, and any public comment to determine whether the proposed modification to the market dominant and competitive product lists complies with applicable statutory requirements and the Commission's rules, and whether the proposed modification is consistent with the position of the Postal Service as expressed in its reply. The Commission shall either:

(a) Approve the request to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;

(b) Reject the request;

(c) Institute further proceedings to consider the request to modify the market dominant and competitive product lists; or

(d) Direct other action as the Commission may consider appropriate.

§ 3020.56 Further proceedings.

If the Commission determines that further proceedings are necessary, a conference shall be scheduled to consider the merits of going forward with the request. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the request;

(c) Explain the reasons for not going forward with formal proceedings; or

(d) Direct other action as the Commission may consider appropriate.

Subpart D—Proposal of the Commission to Modify the Product Lists Described Within the Mail Classification Schedule**§ 3020.70 General.**

The Commission, of its own initiative, may propose a modification to the market dominant product list or the competitive product list provided within the Mail Classification Schedule. For purposes of this part, modification shall be defined as adding a product to a list, removing a product from a list, or transferring a product from one list to the other list.

§ 3020.71 Contents of a proposal.

A proposal to modify the market dominant product list or the competitive product list shall:

(a) Provide the name, and class if applicable, of each product that is the subject of the proposal;

(b) Indicate whether the proposal would add a product to the market dominant list or the competitive list, remove a product from the market dominant list or the competitive list, or move a product from the market dominant list to the competitive list or from the competitive list to the market dominant list;

(c) Indicate whether each product that is the subject of the proposal is:

(1) A special classification within the meaning of 39 U.S.C. 3622(c)(10) for market dominant products;

(2) A product not of general applicability within the meaning of 39 U.S.C. 3632(b) for competitive products; or

(3) A non-postal product.

(d) Provide justification supporting the proposal; and

(e) Include a copy of the applicable sections of the Mail Classification Schedule and the proposed changes therein in legislative format.

§ 3020.72 Supporting justification.

Supporting justification shall:

(a) Provide an explanation for initiating the docket;

(b) Explain why, as to market dominant products, the change is not inconsistent with each requirement of 39 U.S.C. 3622(d), and that it advances the objectives of 39 U.S.C. 3622(b), taking into account the factors of 39 U.S.C. 3622(c);

(c) Explain why, as to competitive products, the addition, subtraction, or transfer will not result in the violation of any of the standards of 39 U.S.C. 3633;

(d) Verify that the change does not classify as competitive a product over which the Postal Service exercises sufficient market power that it can, without risk of losing a significant level of business to other firms offering similar products:

(1) Set the price of such product substantially above costs;

(2) Raise prices significantly;

(3) Decrease quality; or

(4) Decrease output.

(e) Explain whether or not each product that is the subject of the request is covered by the postal monopoly as reserved to the Postal Service under 18 U.S.C. 1696 subject to the exceptions set forth in 39 U.S.C. 601;

(f) Provide a description of the availability and nature of enterprises in the private sector engaged in the delivery of the product;

(g) Provide any information available on the views of those who use the product involved on the appropriateness of the proposed modification;

(h) Provide a description of the likely impact of the proposed modification on small business concerns; and

(i) Include such information and data, and such statements of reasons and bases, as are necessary and appropriate to fully inform the Postal Service and users of the mail of the nature, scope, significance, and impact of the proposed modification.

§ 3020.73 Docket and notice.

The Commission will establish a docket for each request to modify the market dominant list or the competitive product list, promptly publish notice of the request in the *Federal Register*, and post the filing on its website. The notice shall include:

(a) The general nature of the proceeding;

(b) A reference to legal authority to which the proceeding is to be conducted;

(c) A concise description of the proposals for changes in the Mail Classification Schedule;

(d) The identification of an officer of the Commission to represent the interests of the general public in the docket;

(e) A specified period for public comment; and

(f) Such other information as the Commission deems appropriate.

§ 3020.74 Postal Service notice and reply.

The Secretary of the Commission shall forward to the Postal Service a copy of the notice of proposal. Within 28 days

of the filing of the proposal, the Postal Service shall provide its preliminary views in regard to the proposal. The Postal Service may include suggestions for appropriate further procedural steps.

§ 3020.75 Review.

The Commission shall review the Postal Service reply and public comment. The Commission shall either:

(a) Approve the proposal to modify the market dominant and competitive product lists, but only to the extent the modification is consistent with the position of the Postal Service;

(b) Withdraw the proposal;

(c) Institute further proceedings to consider the proposal, identifying relevant issues that may require further development; or

(d) Direct other action as the Commission may consider appropriate.

§ 3020.76 Further proceedings.

If the Commission determines that further proceedings are appropriate, a conference shall be scheduled to consider the merits of going forward with the proposal. Upon conclusion of the conference, the Commission shall promptly issue a ruling to:

(a) Provide for a period of discovery to obtain further information;

(b) Schedule a hearing on the record for further consideration of the proposal;

(c) Explain the reasons for not going forward with formal proceedings; or

(d) Direct other action as the Commission may consider appropriate.

Subpart E—Requests Initiated by the Postal Service to Change the Mail Classification Schedule**§ 3020.90 General.**

The Postal Service shall assure that product descriptions in the Mail Classification Schedule accurately represent the current offerings of Postal Service products and services.

§ 3020.91 Modifications.

The Postal Service shall submit corrections to market dominant product descriptions in the Mail Classification Schedule that do not constitute a proposal to modify the market dominant product list or the competitive product list as defined in rule 3020.30 by filing notice of the proposed change with the Commission no later than 15 days prior to the effective date of the proposed change.

§ 3020.92 Public input.

The Commission shall publish Postal Service submissions pursuant to rule 3020.91 on its website and provide interested persons with an opportunity to comment on whether the planned changes are inconsistent with 39 U.S.C. 3642.

§ 3020.93 Implementation.

a The Commission shall review the proposed changes to product descriptions, and the comments thereon. So long as such changes are not inconsistent with 39 U.S.C. 3642, the Commission shall, subject to editorial corrections, change the Mail Classification Schedule to coincide with the effective date of the proposed change.

b The Commission's finding that changes to the product descriptions are not inconsistent with 39 U.S.C. 3642 is provisional and subject to subsequent review.

Subpart F—Size and Weight Limitations for Mail Matter**§ 3020.110 General.**

Applicable size and weight limitations for mail matter shall appear in the Mail Classification Schedule as part of the description of each product.

§ 3020.111 Limitations applicable to market dominant mail matter.

(a) The Postal Service shall inform the Commission of updates to size and weight limitations for market dominant mail matter by filing notice with the Commission 45 days prior to the effective date of the proposed update. The notice shall include a copy of the applicable sections of the Mail Classification Schedule and the proposed updates therein in legislative format.

(b) The Commission shall provide notice of the proposed update in the *Federal Register* and seek public comment on whether the proposed update is in accordance with the policies and the applicable criteria of chapter 36 of title 39.

(c) If the Commission finds the proposed update in accordance with the policies and the applicable criteria of title 39, the Commission shall review the proposed Mail Classification Schedule language for formatting and conformance with the structure of the Mail Classification Schedule, and subject to editorial changes, shall change the Mail Classification Schedule to coincide with the effective date of the proposed update.

(d) If the Commission finds the proposed update not in accordance with the policies and the applicable criteria of title 39, the Commission may direct other action as deemed appropriate.

§ 3020.112 Limitations applicable to competitive mail matter.

The Postal Service shall notify the Commission of updates to size and weight limitations for competitive mail matter pursuant to subpart E.

