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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY

ORDER NO. 1322

UNITED STATES OF AMERICA
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

George A. Omas, Vice Chairman;
Dana B. Covington; Ruth Y. Goldway;
and W.H. "Trey" LeBlanc III

Review of Sunset Rules

Docket No. RM2001-3

NOTICE AND ORDER ADOPTING FINAL RULE

(Issued September 24, 2001)

In Order No. 1319, the Commission requested interested persons to comment on the advisability of reissuing five sets of rules of practice that had expired through operation of five-year sunset provisions. PRC Order No. 1319 (July 18, 2001). These rules, which provide for expedited consideration of certain Postal Service requests for a recommended decision, are of two types. The first concerns changes in Express Mail rates and fees;¹ the second encompasses four sets of rules addressing certain limited classification changes.²

Four sets of comments were filed. The comments reflect no unanimity, ranging from the Postal Service's suggestion that, at a minimum, each rule be reissued, to United Parcel Service's position that none of the rules be reissued. The comments, which are briefly summarized below, are available for public inspection at the Commission's offices and via the Commission's web site, www.prc.gov.

¹ See 39 C.F.R. § § 3001.57-57c (1999). The Express Mail Service rules were adopted in 1989 and reissued in 1995. See PRC Order No. 836 (August 10, 1989) and PRC Order No. 1042 (February 17, 1995). These rules expired March 6, 2000. 60 FR 12116.

² See 39 C.F.R. § § 3001.161-166 (concerning market tests), 39 C.F.R. § § 3001.171-176 (concerning provisional service changes), 39 C.F.R. § § 3001.69-69c, (concerning minor classification changes), and 39 C.F.R. § § 3001.181-182 (concerning multi-year test periods for new services). These rules became effective in May 1996 and expired May 15, 2001. See PRC Order No. 1110 (May 7, 1996); *see also* 61 FR 24447.

Upon consideration of the comments and an assessment of the rules, the Commission has determined to reissue the rules for an additional five-year period. The Commission, however, declines to broaden the scope of this proceeding beyond the affected rules.

I. Comments

1. *Postal Service*. The Postal Service urges the Commission to reissue and to consider broadening the scope of the rules. The Postal Service asserts that, at a minimum, the limited classification rules should be reissued, suggesting further that the Commission should consider expanding the concept of multi-year test periods, Rule 181, to include alternative test periods in rate and classification proceedings before the Commission. Postal Service Comments at 1-2, 12.

Second, the Postal Service advocates that the Express Mail rules be reissued, while suggesting the possibility that those procedures be expanded to other services. *Id.* at 2-3. Recognizing that this suggestion may be beyond the reach of this proceeding, the Postal Service concludes that the concept "is worthy of consideration at some point in the future." *Id.* at 3.

Third, the Postal Service raises issues not covered by the expired rules, *i.e.*, rate bands and negotiated service agreements, concluding that "these and other measures of ratemaking flexibility would be worthwhile topics of a future rulemaking." *Ibid.*

In support of reissuing the rules, the Postal Service focuses on the flexibility they afford, particularly the limited classification rules. The infrequency with which these rules have been invoked is not, according to the Postal Service, an indication that they lack value. Rather, a combination of events has lessened the Postal Service's ability to invoke the rules, *e.g.*, its caseload before the Commission. *Id.* at 4-5. Underscoring the point, it notes that the Commission's rules governing experimental classification proposals, 39 U.S.C. § § 3001.67-67d, were employed only once in the first fifteen years of their existence. *Id.* at 4. Beginning in 1996, however, they have been invoked numerous times.

Turning to the rules, the Postal Service discusses the instances in which the limited classification rules have been invoked. It concludes that these rules, involving market tests, provisional services, and minor classification changes, while from its perspective somewhat imperfect, worked sufficiently well to warrant their renewal. *Id.* at 7-11. Concerning multi-year test periods, a rule that it has yet to invoke, the Postal Service notes the importance of having an opportunity to recover start-up costs over an appropriate period. In addition, it broaches the issue of expanding the Commission's rules to permit alternate test periods "in all Commission proceedings conducted pursuant to 39 U.S.C. § § 3622 and 3623." *Id.* at 12. Noting that this issue has been previously considered, the Postal Service states that such an expansion would promote rate proposals based on phased rate schedules "over a predetermined rate cycle." *Id.* at 13.

Finally, citing their potential utility, the Postal Service urges the Commission to renew the Express Mail rules. It would prefer, however, if the rules were expanded "to other services facing market pressures similar to Express Mail." *Id.* at 15. As noted above, the Postal Service recognizes that this suggestion may exceed the scope of this rulemaking. *Id.* at 2-3.

2. *Newspaper Association of America.* The Newspaper Association of America (NNA) submitted brief comments advocating that each of the expired rules be reissued.

3. *Office of Consumer Advocate.* The Office of Consumer Advocate (OCA) frames the issue whether to reissue the rules by posing several questions, e.g., whether the rules were invoked, whether they are likely to be used, and whether the rules need to be revised. OCA Comments at 2. Having considered these questions, the OCA recommends against reissuing the Express Mail rules, but favors renewing those involving limited classification changes.

Citing the history of the rules, *i.e.*, their never being invoked and the Postal Service's failure to seek their renewal, the OCA claims that the Express Mail rules are

unnecessary. In addition, the OCA asserts that the Commission can, on an ad hoc basis, accommodate requests for expedition should it be warranted. *Id.* at 3.

In general, the OCA finds renewal of the limited classification rules is justified because the rules have proved useful, workable, and practical. *Id.* at 3-6. The OCA supports reissuing rule 181, multi-year test periods, because, among other things, the rule signals the Commission's willingness to consider new services requiring a longer test period. *Id.* at 7.³

4. *United Parcel Service.* United Parcel Service (UPS) opposes reissuing the rules, contending that they are neither necessary nor useful. UPS Comments at 1-2. UPS advances three arguments against reissuing the Express Mail rules. First, it notes that they have never been employed by the Postal Service. *Id.* at 2. Second, it asserts that the market for expedited letters is mature, implying that there is no need for the Express Mail rules. *Ibid.* Third, UPS argues that the Commission's regular rules are adequate to address requests for expedition. *Id.* at 3; *see also* 6-9.

Citing their infrequent use, UPS also opposes reissuing the rules concerning limited classification changes. *Id.* at 3-4. Further, UPS asserts that the rules for minor classification cases, provisional changes, and market tests are ambiguous and thus "invite litigation over whether the proper set of rules is being applied." *Id.* at 5.

UPS argues that the Commission's regular rules are sufficiently flexible to address the Postal Service's rate and classification requests. In support, it cites, *inter alia*, rule 1 (the rules are to be liberally construed to achieve a just and speedy result), rule 23(a)(1) (concerning the presiding officer's hearing authority), and rule 22 (concerning waivers). *Id.* at 6-7. In addition, UPS suggests that the rules governing experimental changes provide sufficient flexibility "to accommodate situations that the regular rules do not cover." *Id.* at 8.

³ The OCA also notes the need to conform the instant rules to rules currently under consideration in Docket No. RM2001-2, Filing Online. This is a matter to be addressed in a subsequent order since that docket remains pending.

Finally, UPS contends that reissuing the rules poses certain risks. These include: predetermined procedural tracks that may not be appropriate, more rules add complexity and confusion, and, assuming the rules are unnecessary, raising the “potential for implicating due process concerns.” *Id.* at 10.

II. Discussion

The Commission’s decision to reissue the rules is influenced by several factors. First, the rules were previously enacted. Thus not only are they well known to participants, there has been ample opportunity to consider and to comment on the rules. Second, the rules are narrowly drawn and have not engendered significant controversy. Third, they afford the Postal Service procedural flexibility while, concomitantly, protecting intervenors’ rights to participate meaningfully in any such proceeding. Fourth, the rules have proven to be workable, or provide an option that, on balance, continues to have merit. Finally, renewing the rules, including the sunset provisions, will enable the Postal Service and parties to gain further experience while also tolling their existence should they become unnecessary or obsolete.

The limited classification rules have proven to be workable and useful. See OCA Comments at 3 *et seq.*, Postal Service Comments at 7 *et seq.* For example, the market test rules, 39 C.F.R. § § 3001.161-166, were successfully invoked in Docket No. MC98-1, Mailing Online. The rules permitting minor classification changes, 39 C.F.R. § § 3001.69-69c, were successfully employed in Docket No. MC99-4, Bulk Parcel Return Service. The settlement which resulted in that proceeding was facilitated, at least in part, by the operation of the rules. The Postal Service invoked the rules concerning provisional services, 39 C.F.R. § § 3001.171-176, in Docket No. MC97-5. While the packaging service proposal in that proceeding was never implemented, the rules operated effectively, allowing the Postal Service to introduce a new product. Similarly, the multi-year test period rules, 39 C.F.R. § § 3001.181-182, while not yet invoked, provide a useful tool for assessing new services. Taken as a whole, the rules

provide a simplified means for the Postal Service to present and the Commission to consider innovations and refinements in its service offerings.

UPS's claim that the rules are ambiguous is not sufficient reason not to reissue them. First, the claim has not been borne out in practice. The rules have worked reasonably well. Second, UPS's suggestion that the regular rules are an adequate *ad hoc* surrogate for the instant rules is not persuasive. The argument implicitly assumes that were the Postal Service to request a waiver of the regular rules it would engender no controversy in its own right. In practice, such a result would appear to be unlikely. On occasion, controversy may be an unavoidable byproduct of any rules, but this does not establish a legitimate basis to discard the instant rules.⁴

The Express Mail market rules, 39 C.F.R. §§ 3001.57-57c (1999), present a closer question.⁵ Two commenters favor and two commenters oppose their renewal. Those opposing note that the rule has never been invoked. UPS Comments at 2; OCA Comments at 2. They assert this demonstrates that the rule is unnecessary. Lack of use, however, is not necessarily dispositive. As the Postal Service notes, the rules governing experimental classification changes were used but once in their first 15 years of existence, but have been employed seven times in the last six years.⁶ Furthermore, the Postal Service cites various factors that weighed on its use of these rules. Postal Service Comments at 14. In addition, the Postal Service touts the potential value of the rules.

⁴ UPS's due process concerns are neither well founded nor well developed. They proceed from the flawed assumption that the rules are unneeded, and even with that assumption, give rise only to "the potential for implicating due process concerns." UPS Comments at 10. The Commission has previously addressed potential due process problems associated with the instant rules. Among other things the Commission assured "all parties that it will not allow [the limited classification] rules to be used to alter the normally applicable standards of proof, curtail legitimate discovery and hearing practice, or otherwise deprive interested parties of their procedural rights." PRC Order No. 1110 (May 7, 1995) at 7.

⁵ The Express Mail rules in the Attachment reflect renumbering. Former rule 57a is now rule 58; former rule 57b is now rule 59; and former rule 57c is now rule 60.

⁶ Docket No. MC2001-1 (re presorted priority mail), Docket No. MC2000-2 (re Mailing Online), Docket No. MC2000-1 (re ride-along changes for publications), Docket No. MC99-1 (re non-letter-size business reply mail), Docket No. MC98-1 (re Mailing Online), Docket No. MC97-1 (re non-letter size business reply mail), and Docket No. MC96-1 (re small parcel automation rate).

The Commission concludes that reissuing the Express Mail Service rules is appropriate. Lack of use is not, in this instance, compelling enough to foreclose the flexibility afforded by this option. The rules provide adequate safeguards to protect the interests of all interested persons. Furthermore, inclusion of the sunset provision will ensure that these rules will be reviewed again within five years or expire on their own accord.

The Commission declines to act on the Postal Service's suggestion that its rules be expanded. See, e.g., Postal Service Comments at 2-3. This proceeding was commenced solely to consider the status of the expired rules. Expanding it to include new issues would raise concerns about timing and notice. This is not to suggest that the topics do not merit further attention, but simply that this is not the appropriate vehicle.

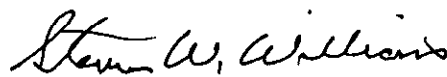
In conclusion, pursuant to the foregoing discussion, the Commission hereby amends its Rules of Practice as set forth in the Attachment to this order.

It is ordered:

1. The Commission's Rules of Practice are amended as set forth in the Attachment.
2. The attached rules are effective [insert 30 days after publication in the Federal Register].
3. The Acting Secretary shall cause this order to be published in the Federal Register.

By the Commission.

(SEAL)


Steven W. Williams
Acting Secretary

Subpart B Rules Applicable to Requests for Changes in Rates or Fees

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

(a) This section and sections 3001.58 through 3001.60 only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 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 sections 3001.58 through 3001.60 are effective [30 days after publication in the Federal Register through the same date five (5) years thereafter].

§ 3001.58 Market Response Rate Requests – data filing requirements.

(a) Each formal request made under the provisions of sections 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 sections 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 sections 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 sections 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 accordance 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 sections 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 sections 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 sections 3001.57 through 3001.60 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 sections 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 sections 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 sections 3001.57 through 3001.60 the Postal Service shall provide, one year after the conclusion of the test period, the data described in section 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 sections 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.

(1) Each formal request made under the provisions of sections 3001.57 through 3001.60 shall be accompanied by a certificate that service of the filing in accordance with section 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 sections 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 section 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 register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market

Response rate proceeding. Other interested persons may intervene pursuant to section 3001.20 within 28 days of the filing of a formal request made under the provisions of sections 3001.57 through 3001.60. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of sections 3001.57 through 3001.60 it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response Registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other Registrants. Each Registrant is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of sections 3001.57 through 3001.60, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which 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 sections 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 sections 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 made within 10 days in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven 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 sections 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

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§ 3001.69 Expedited minor classification cases – applicability

(a) This section and §§ 3001.69a through 3001.69c apply in cases where the Postal Service requests a recommended decision pursuant to section 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 these sections apply exclusively to the Commission's consideration of requested mail classification changes which the Postal Service denominates as, and the Commission finds to be, minor in character. 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 work sharing discount; and
- (3) would not significantly increase or decrease the estimated institutional cost contribution of the affected subclass or category of service.

(b) This section and §§ 3001.69a through 69c are effective [30 days after publication in the Federal Register through the same date five (5) years thereafter].

§ 3001.69a Expedited minor classification cases – filing of formal request and prepared direct evidence

(a) Whenever the Postal Service determines to request that the Commission submit a decision recommending a mail classification change, and to seek expedited review on the ground that the requested change is minor in character, it shall file a request for a change in mail classification pursuant to section 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 particular 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.

(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). If the Postal Service believes that any of the 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, stating with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement. 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 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

(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 information and submitted it in accordance with § 3001.64; or

(2) 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.

§ 3001.69b Expedited minor classification cases – expedition of 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 a change in mail classification and expedite consideration of that request on the ground that the change is minor in character.

(b) Persons who are interested in participating in proceedings to consider Postal Service requests for minor changes in mail classification may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests a minor mail classification change pursuant to §§ 3001.69 through .69c. Parties may withdraw from the register or 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 §§ 3001.69 through .69c, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to subsection (b) who maintains an address for service within the Washington metropolitan area and serve the complete filing by Priority Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of §§ 3001.69 through .69c, it shall on that same day send by First-Class Mail to all participants in the most recent omnibus rate case a notice which 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 §§ 3001.69 through .69c, and identify the last day for filing a notice of intervention with the Commission.

(e) Within 5 days after receipt of a Postal Service request invoking the operation of §§ 3001.69 through .69c, the Commission shall issue a notice of proceeding and provide for intervention by interested parties

pursuant to § 3001.20. The notice of proceeding shall state that the Postal Service has denominated the mail classification change it requests a minor change, and has requested expedited consideration pursuant to §§ 3001.69 through .69c. 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 parties 26 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 the terms of §§ 3001.69 through .69c, and request a hearing.

(f) Within 28 days after publication of the notice of proceeding pursuant to subsection (e), the Commission shall decide whether to consider the request of the Postal Service as a minor classification change request under §§ 3001.69 through .69c, and shall issue an order in the proceeding incorporating that ruling. The Commission shall order a request to be considered under §§ 3001.69 through .69c if it finds that:

(1) the requested classification change is minor in character, and

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

(g) If the Commission determines that the request of the Postal Service is not appropriate for consideration as a minor classification change request, no further procedures under §§ 3001.69 through .69c shall be ordered, and the request will be considered in accordance with other appropriate provisions of Subpart C.

(h) If the Commission determines that the Postal Service request is appropriate for consideration under §§ 3001.69 through .69c, those respondents who request a hearing shall be directed to state with specificity within 14 days after publication of the notice 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 true fact or facts and the evidence it intends to provide in support of its position.

(i) The Commission will hold hearings on a Postal Service request which is considered under §§ 3001.69 through .69c 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 the Postal Service request will commence within 21 days after issuance of the Commission order pursuant to subsection (f). Testimony responsive to the Postal Service request will be due 14 days after the conclusion of hearings on the Postal Service request

§ 3001.69c Expedited minor classification cases – time limits.

The Commission will treat cases to which §§ 3001.69 through .69c apply 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 90 days after the filing of the request of the Postal Service if no hearing is held, and not more than 120 days after the filing of the request if a hearing is scheduled.

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Subpart I Rules for Expedited Review to Allow Market Tests of Proposed Mail Classification Changes

§ 3001.161 Applicability.

(a) This section and §§ 3001.162 through .166 apply in cases in which the Postal Service requests a recommended decision pursuant to section 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.

(b) This section and §§ 3001.162 through .166 are effective [30 days after publication in the Federal Register through the same date five (5) years thereafter].

§ 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 section 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 section 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 section 3623.
- (b) Persons who are interested in participating in proceedings to consider Postal Service requests to conduct a market test may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests to conduct a market test pursuant to this subpart. Other interested persons may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from the register or 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 on that same day effect service by hand delivery of the complete filing to each person registered pursuant to subsection (b) who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.
- (d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day send by Express Mail to all participants in the most recent omnibus rate case a notice which 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 .166, and identify the last day for filing a notice of intervention with the Commission.

(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 for intervention by interested parties pursuant to § 3001.20. 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 true 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.

(a) This section and §§ 3001.172 through .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.

(b) This section and §§ 3001.172 through .176 are effective [30 days after publication in the Federal Register through the same date five (5) years thereafter].

§ 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 section 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 proceedings to consider Postal Service requests to establish a provisional service may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such registrants. Persons whose names appear on this list will automatically become parties to each proceeding in which the Postal Service requests establishment of a provisional service pursuant to this subpart. Other interested persons may intervene pursuant to § 3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart. Parties may withdraw from the register or 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 on that same day effect service by hand delivery of the complete filing to each person registered pursuant to subsection (b) who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service on all other registrants. Each registrant is responsible for insuring that his or her address remains current.

(d) When the Postal Service files a request under the provisions of this subpart, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of a Request for Establishment of a Provisional Service to be considered under §§ 3001.171 through .176, and identify the last day for filing a notice of intervention with the Commission.

(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 for intervention by interested parties pursuant to § 3001.20. 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 true 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)(iii). 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.

(a) The rules in §§ 3001.181 and .182 apply to Postal Service requests pursuant to section 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.

(b) 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 section 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.