

ORDER NO. 1479

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

Before Commissioners:

George Omas, Chairman;  
Dawn A. Tisdale, Vice Chairman;  
Mark Acton; Ruth Y. Goldway; and  
Tony Hammond

Review of Sunset Rules

Docket No. RM2006-1

NOTICE AND ORDER CONCERNING SUNSET RULES

(September 15, 2006)

The Commission's Rules of Practice and Procedure, 39 C.F.R. § 3001.1 *et seq.*, include five sets of rules that are subject to 5-year sunset provisions. Generally, these rules, which are set to expire November 28, 2006, provide for expedited consideration of various Postal Service requests for a recommended decision. They include the following five sets of rules:

57 – 60, market response Express Mail rate requests;

69 – 69c, minor classification changes;

161 – 166, market tests of proposed classification changes;

171 – 176, provisional service changes of limited duration; and

181 – 182, multi-year test periods for proposed new services.

The Commission seeks comments on rules 57 - 60. Those rules will lapse unless reissued. The Commission proposes to reissue the remaining sets of rules, amended to eliminate the sunset provision. The Commission also proposes to

standardize and shorten the time period for interventions as of right in proceedings involving minor classification changes, market tests, and provisional service changes.<sup>1</sup>

As a ministerial matter, the attached rules reflect minor editorial changes for clarity and consistency. These minor changes are not intended to have substantive effect. In addition, the rules for minor classification changes (§§ 3001.69 – 69c) are renumbered as § 3001.69(a) – (f) to conform to Office of the Federal Register style preference.

Interested persons are invited to comment on the foregoing proposals and on rules 57 - 60. Initial comments are due October 13, 2006; reply comments, if any, are due October 20, 2006.

The substance and history of each rule are briefly discussed below.

#### I. MARKET RESPONSE RATE REQUESTS FOR EXPRESS MAIL SERVICE

Rules 57 through 60, 39 C.F.R. §§ 3001.57 - 60, govern Postal Service requests for an expedited recommended decision on changes in Express Mail rates and fees. These rules, which became effective in 1989, were adopted in response to a Postal Service petition requesting the Commission to initiate a rulemaking to implement special rules designed to consider changes in Express Mail rates prompted by changes in market conditions. See PRC Order No. 836, Docket No. RM88-2, August 10, 1989. The rules provide, consistent with due process, for expedited consideration of proposed changes in Express Mail rates in response to competitive changes in the expedited delivery market for the purpose of minimizing the loss of Express Mail's contribution to institutional costs recommended in the most recent omnibus rate case. Rule 57(a). Among other things, the rules address the data to be filed in support of the Postal Service's request and provide for an expedited procedural schedule under which the Commission is to consider the Postal Service's request within 90 days of its filing. See, e.g., rules 58 - 60.

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<sup>1</sup> The Rules of Practice and Procedure may be accessed on the Commission's website, [www.prc.gov](http://www.prc.gov), by clicking first on "Contents" and then on "Commission Rules" which are found under the heading "Table of Contents." A copy of the proposed revised rules is attached.

These rules have been reissued twice. See PRC Order No. 1042, Docket No. RM95-1, February 17, 1995, and PRC Order No. 1322, Docket No. RM2001-3, September 24, 2001. The Postal Service has never invoked these rules.

Any person advocating that these rules be reissued is requested to provide support showing that retention is in the public interest.

## II. LIMITED CLASSIFICATION CHANGES

The remaining four sets of rules are a product of a separate rulemaking proceeding, initiated pursuant to a petition filed by the Postal Service in April 1995, to amend the Commission's rules to accommodate certain limited rate and classification matters. Following the receipt of comments by interested parties on the Postal Service's petition, the Commission issued a notice of proposed rulemaking in which it proposed specific amendments to its rules of practice designed to expedite consideration of certain limited classification-related changes requested by the Postal Service. See PRC Order No. 1084, Docket No. RM95-4, October 13, 1995. Thereafter, the Commission adopted rules designed to facilitate expedited review of Postal Service requests concerning minor classification changes, market tests, and provisional service changes of limited duration. The Commission also adopted a rule permitting the Postal Service to request use of a multi-year test period for new services. PRC Order No. 1110, Docket No. RM95-4, May 7, 1996. Each of the foregoing rules has been reissued once. See PRC Order No. 1322, *supra*.

### A. Minor Classification Cases

Rules 69 through 69c, to be renumbered as rule 69, provide for expedited review of Postal Service requests for a recommended decision of minor mail classification changes. A change is considered minor if it: involves no change in an existing rate or fee, would impose no new eligibility requirements on a subclass or rate category, and would not significantly affect the institutional cost contribution of the affected subclass or

rate category. Rule 69(b)(1)-(3).<sup>2</sup> These rules describe the information to be filed in support of a request and the procedures for expediting proceedings. Rules 69(c)-(e). In qualifying proceedings, the Commission will issue a recommended decision in not more than 120 days after the filing of the request. Rule 69(f).

The Postal Service has employed these rules four times.<sup>3</sup> These include:

Docket No. MC99-4, in which the Postal Service sought expedited review of its request for a classification change expanding the availability of Bulk Parcel Return Service. An unopposed stipulation and agreement formed the basis of the Commission's recommended decision in that proceeding. PRC Op. MC99-4, August 19, 1999; see *also* Governors' Decision, MC99-4, August 30, 1999.

Docket No. MC2003-1, in which the Postal Service proposed to permit certain types of nonrectangular shapes, Customized Market Mail (CMM), to be eligible for mailing in the basic nonletter rate categories of Standard Mail Regular and Nonprofit subclasses. The Commission adopted a Stipulation and Agreement as the basis of its opinion approving CMM as a new Standard Mail category. PRC Op. MC2003-1, June 6, 2003.

Docket No. MC2006-2, in which the Postal Service proposed to extend the expiration date of a provisional service allowing bulk mailers to attach Repositionable Notes to nonparcel-shaped First-Class Mail, Standard Mail, and Periodicals. The Commission approved the proposed extension of the expiration date. PRC Op. MC2006-2, March 20, 2006.

Docket No. MC2006-5, in which the Postal Service proposed to revise the definition of a nominal subscription rate by increasing the amount by which an annual subscription price may be discounted from 50 to 70 percent. The

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<sup>2</sup> Unless otherwise noted, all citations are to the proposed rules.

<sup>3</sup> An additional Request would have been filed under the rules governing minor classification changes, but the rules had lapsed. See Request of the United States Postal Service for a Recommended Decision on Extension of the Experimental Ride-Along Classification for Periodicals, Docket No. MC2001-3, September 28, 2001, at 1, n.1.

Commission recommended the change, adopting an unopposed stipulation and agreement as the basis of its decision. PRC Op. MC2006-5, August 30, 2006.

#### B. Market Tests of Proposed Mail Classification Changes

Subpart I, rules 161 through 166, governs requests by the Postal Service to permit market testing in support of a permanent classification change. These rules require the Postal Service to file concurrently its request for a permanent classification change and its request for its proposed market test, and set forth the information to be filed regarding the market test, *e.g.*, the services to be provided, the proposed rate or fee, and the objectives of the test. Rule 162. The rules also provide a timetable for expediting the proceedings and a rule for issuing a decision within 90 days. Rules 163 and 164. Absent good cause, market tests are limited to 1-year durations. Rule 161.

The Postal Service has invoked these rules twice. In Docket No. MC98-1, Mailing Online Service, the Postal Service sought to conduct a market test of a proposed mailing online service prior to its introduction as an experimental mail classification. The Commission approved the proposed market test. PRC Op. MC98-1, October 7, 1998.<sup>4</sup>

In Docket No. MC2004-5, the Postal Service proposed to conduct a market test to determine whether to permit bulk mailers of nonparcel-shaped mail to attach a Repositionable Note to the outside of each mailpiece. The Commission found that the proposal was not properly filed under the Commission's market test rules, but that it did qualify for consideration under the Commission's rules governing provisional service changes. See PRC Order No. 1413, July 21, 2004, at 4-5. The Commission approved the provisional service change. PRC. Op. MC2004-5, December 10, 2004.

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<sup>4</sup> The Postal Service withdrew its proposal to conduct an expanded Mailing Online experiment after encountering technical difficulties in its market test. Subsequently, in November 1999, the Postal Service filed Docket No. MC2000-2 to implement a nationwide Mailing Online experiment.

### C. Provisional Service Changes of Limited Duration

Subpart J, rules 171 through 176, applies to requests for the establishment of a provisional service to supplement, but not alter, existing mail classifications and rates for a limited and fixed duration which, except in extraordinary circumstances and for good cause shown, may not exceed two years.<sup>5</sup> The requirements of Subpart J generally parallel those for market tests, *e.g.*, identifying the information to be provided, the procedures to be followed, and the timetable for issuing a decision. Rules 172-74.

The Postal Service has employed these rules once. In Docket No. MC97-5, the Postal Service requested a provisional classification and fee schedule for a packaging service under which mailers would bring items to selected post offices for packing prior to mailing as parcels. The Commission recommended the provisional service, albeit with modifications. PRC Op. MC97-5, March 31, 1998.<sup>6</sup>

As noted previously, the Commission also processed the Postal Service's request in Docket No. MC2004-5 as a provisional service change.

### D. Multi-Year Test Periods

Subpart K, rules 181 and 182, applies to requests to implement a new postal service which the Postal Service believes will not recover all costs associated with the new service in its first full fiscal year of operation. The Commission may adopt test periods of up to five fiscal years for the purposes of determining breakeven of a proposed new service. Rule 181. The Postal Service must justify its request through testimony and other documentary support. Rule 182.

The Postal Service has never invoked these rules.

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<sup>5</sup> If a Postal Service request to establish the provisional service as a permanent mail classification is pending before the Commission, this period may be extended for an additional year. See Rule 171(a).

<sup>6</sup> The Governors did not act on this recommended decision.

### III. PROPOSED REVISIONS

Each of the five sets of rules was initiated at the Postal Service's request. They provide the Service with procedural options to facilitate expedited consideration of certain proposals.

The Commission proposes to reissue the four more recent sets of rules, *i.e.*, minor classifications, market tests, provisional service changes, and multi-year test periods, with two amendments. These rules address discrete matters and provide the Postal Service with procedural options not otherwise available. The flexibility inherent in these rules and considerations of administrative efficiency support reissuing them. Each of these rules, with one exception, has been used at least once. The exception, the multi-year test period, continues to have value as a mechanism for considering potential new services.

The 5-year sunset provision was initially adopted in Docket No. RM88-2, concerning market response Express Mail rate requests, because of the experimental nature of the rules and uncertainties about the process. See Notice, Docket No. RM88-2, March 14, 1989, at 1; PRC Order No. 836, August 10, 1989, at 3. Moreover, that the rules involved a competitive product supported imposing a sunset provision to ensure the rules would be re-evaluated (or lapse) in the future. In contrast, with respect to the more recent rules, the continuing need for a sunset provision is not apparent. Those rules are not designed exclusively to address rate requests involving competitive markets. Accordingly, the Commission proposes to eliminate the sunset provision in each of the four more recent sets of rules.

Additionally, the Commission proposes to modify the relevant rules to allow a uniform, shorter period, at least 15 days, for intervention in such proceedings. Under the current rules, interventions are due 26 or 28 days after the filing of the Postal Service's request.<sup>7</sup> These provisions were implemented prior to the Commission's adoption of electronic filing requirements. Although the proposal may result in a modest

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<sup>7</sup> See current rules 69b(e), 163(b), and 173(b); see *also* proposed rules 69(e)(4), 163(e), and 173(e).

reduction from the current time allotted, it should present no hardship to any prospective intervenor given the ready online availability of the Postal Service's request and Commission's order noticing the filing. Furthermore, the process of intervening in Commission proceedings has been simplified by the requirement that, absent a waiver, notices of intervention be filed electronically. See rule 9(a).

The Commission is not proposing to reissue rules 57 - 60, but rather is considering whether to allow them to lapse. These rules have never been invoked in the 17 years since they were implemented. This history suggests that the rules may no longer serve the purpose for which they were intended and that they may have no continuing utility. Absent an affirmative showing, there may be no compelling reason to reissue these rules.

*Request for comments.* By this Notice and Order, the Commission affords interested persons an opportunity to comment on the Commission's proposal, including the advisability of reissuing these rules in whole or in part. Initial comments are due October 13, 2006; reply comments, if any, are due October 20, 2006.

*Representation of the general public.* In conformance with 39 U.S.C. § 3624(a), the Commission designates Shelley S. Dreifuss, Director of the Commission's Office of the Consumer Advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

It is ordered:

1. Interested persons may submit comments on the foregoing proposal, including the advisability of reissuing the rules, by no later than October 13, 2006. Reply comments may also be filed and are due no later than October 20, 2006.

2. Shelley S. Dreifuss, Director of the Office of the Consumer Advocate, is designated to represent the interests of the general public in this docket.
  
3. The Secretary shall cause this Notice and Order to be published in the *Federal Register*.

By the Commission.  
(SEAL)

Steven W. Williams  
Secretary

List of Subjects in 39 C.F.R. Part 3001

Administrative Practice and Procedure, Postal Service

For the reasons discussed above, the Commission proposes to amend 39 CFR part 3001 as follows:

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622-24; 3661, 3662, 3663.

2. Revise § 3001.69 to read as follows:

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

**§ 3001.69 Expedited minor classification cases.**

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

3. Remove § 3001.69a.

4. Remove § 3001.69b.

5. Remove § 3001.69c.

6. In § 3001.161 remove paragraph (b) and remove the designation of paragraph (a) to read as follows:

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

#### **§ 3001.161 Applicability.**

This section and §§ 3001.162 through 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.

7. In § 3001.163, revise paragraphs (b) and (e) to read as follows:

**§ 3001.163 Procedures — expedition of public notice and procedural schedule.**

\* \* \* \* \*

(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.

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(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.

8. In § 3001.171, remove paragraph (b) and removing the designation of paragraph (a) to read as follows:

**Subpart J — Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration**

**§ 3001.171 Applicability.**

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.

9. In § 3001.173, revise paragraphs (b) and (e) to read as follows:

**§ 3001.173 Procedures — expedition of public notice and procedural schedule.**

\* \* \* \* \*

(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.

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(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.

10. Revise § 3001.174 to read as follows:

**§ 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.

11. In § 3001.181, remove paragraph (b) and remove the designation of paragraph (a) to read as follows:

**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 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 test 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.