Dated: May 8, 1996.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends Part 685 of Title 34 of the Code of Federal Regulations as follows:

PART 685—WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

1. The authority citation for Part 685 continues to read as follows:

Authority: 20 U.S.C. 1087a *et. seq*, unless otherwise noted.

§ 685.209 [Amended]

2. Section 685.209 is amended by revising the OMB control number following the section to read as follows: ''(Approved by the Office of Management and Budget under control number 1840–0672).''

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POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM95–4; Order No. 1110]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This final rule sets forth amendments to the Commission's rules of practice and procedure that provide for expedited consideration of requests of the United States Postal Service to: conduct market tests of new postal services in order to develop information necessary to support a permanent mail classification change; adopt, on a provisional basis, mail classification and associated rate changes that supplement, but do not alter, existing rates and mail classifications; and adopt permanent but narrowly focused mail classification changes that supplement, but do not alter, existing rates and mail classifications. In addition to these amendments, the final rule adopts provisions that allow the Postal Service to use a multi-year test period for the purpose of demonstrating the financial viability of potential new services that are the subject of a concurrent Postal Service request.

EFFECTIVE DATE: These rules are effective May 15, 1996 through May 15, 2001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, Legal Advisor, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington DC 20268–0001 (telephone: 202/789–6820).

SUPPLEMENTARY INFORMATION: On October 27, 1995, the Commission published a notice of proposed amendments to its rules of practice and procedure designed to facilitate expedited consideration of Postal Service requests to: (1) Conduct market tests of new postal services in order to develop information necessary to support a permanent mail classification change; (2) adopt, on a provisional basis, mail classification and associated rate changes that supplement, but do not alter, existing rates and mail classifications; and (3) adopt permanent but narrowly focused mail classification changes that supplement, but do not alter, existing rates and mail classifications. The proposed amendments also include provisions that would permit the Postal Service to request the Commission's use of a multi-year test period for the purpose of demonstrating the financial viability of potential new services that are the subject of a concurrent Postal Service request. 60 FR 54981–89 (October 27, 1995). The Commission's proposed rules pursue specific recommendations of the Joint Task Force on Postal Ratemaking,[1] and are responsive to a majority of the initiatives requested by the Postal Service in a petition submitted to the Commission on April 13, 1995. Id. at 54981.

The Commission received 17 sets of comments in response to the Notice of October 27.[2] The commenters present divergent views on both the substance of the Commission's proposed rules and the propriety of adopting them in the current proceeding. Additionally, several commenters suggest that the Commission pursue other initiatives in this proceeding that were originally recommended by the Joint Task Force Report and proposed in the Postal Service's petition. In view of these diverse statements of position, it is appropriate to begin with a discussion of the considerations bearing on the Commission's determination to adopt new rules at this time in four areas, on a five-year trial basis.

I. Considerations Bearing on Adoption of Proposed Rules

In the Notice of Proposed Rulemaking published on October 27, the Commission announced its determination to promulgate draft rules which would implement a majority, but not all, of the seven procedural initiatives contained in the Postal Service's Petition of April 13, 1995. 60 FR 54981. The Commission found that four of the initiatives offered the greatest promise for procedural improvement in the near term. Accordingly, the Commission published draft rules of procedure governing market tests, limited-duration provisional service changes, minor classifications changes, and multi-year test periods for new services. With regard to the remaining three Postal Service initiatives—rules for limited scope rate cases, rate bands for competitive services, and Negotiated Service Agreements—the Commission concluded that their consideration should be deferred for various reasons, but stated that each of the areas merits further study and deliberation in subsequent proceedings. Id. at 54981, 54985.

The Deferred Postal Service Proposals

Several commenters ask the Commission to take up one or more of the three remaining initiatives, either in this proceeding or by initiating another rulemaking in the near future. Time Warner urges the Commission to reconsider the determination to defer consideration of rules for establishing rate bands for competitive services and rules providing for contract rates; Parcel Shippers Association comments that adoption of procedures allowing rate bands and negotiated service contracts is crucial to the competitive posture of the Postal Service. Advertising Mail Marketing Association, Dow Jones & Company, Magazine Publishers of America, and Mail Order Association of America comment in favor of initiating a proceeding in the near future to consider one or more of the three deferred initiatives. The Postal Service states that it would have preferred that all its proposals be addressed in this proceeding, but urges the Commission to issue a further rulemaking on the remaining initiatives now that Docket No. MC95–1 has been concluded.

The Commission continues to believe that limited scope rate cases, rate bands, and Negotiated Service Agreements present issues that are qualitatively

[1] See Postal Ratemaking in a Time of Change: A Report by the Joint Task Force on Postal Ratemaking (June 1, 1992).

[2] The American Bankers Association, American Business Press, Advertising Mail Marketing Association, Direct Marketing Association, Inc., Dow Jones & Company, Inc., Federal Express Corporation, McGraw-Hill Companies, Inc., Major Mailers Association, Mail Order Association of America, Magazine Publishers of America, Newspaper Association of America, National Newspaper Association, the Commission's Office of the Consumer Advocate, Parcel Shippers Association, Time Warner, Inc., United Parcel Service, and the United States Postal Service submitted comments in response to the Notice. Some of these comments were not timely filed, primarily owing to extraordinarily adverse weather conditions on the date they were due. In order to avoid prejudice to any party who wished to comment, the Commission has considered all comments received.

different from, and more difficult than, those in the four areas for which rules have been proposed. For this reason they will not be considered in the current proceeding. In addition to the unresolved legal and other issues cited in the Notice of October 27, *see* 60 FR 54985, consideration of rules in these three areas would necessarily involve an exploration of technical and other substantive issues. For example, development of a rule providing for rate bands would require consideration of the technical resources available to support adoption of a range of rates for competitive mail categories and to gauge the impact of their adoption, and appropriate filing requirements to support such requests. With regard to Negotiated Service Agreements, adoption of rules applicable to such special classifications would involve consideration of the objective criteria that would be required of a mailer to qualify for reduced contract rates.[3] The Commission is prepared to take up the issues raised by limited scope rate cases, rate bands, and Negotiated Service Agreements in a forthcoming rulemaking proceeding.

The Commission's Proposed Rules

One commenter—the Newspaper Association of America (NAA)—opposes adoption of most of the Commission's proposed amendments as unsound from a regulatory perspective. NAA urges the Commission to abandon the proposed rules for market tests, provisional services, and multi-year test periods because their adoption would violate the regulatory structure of the Postal Reorganization Act, unjustifiably advancing competitive considerations at the ultimate expense of captive monopoly ratepayers.

A particular problem raised by the proposed rules, according to NAA, ''is who bears any potential losses from market tests of new services, provisional services, or from multi-year test periods.'' NAA Comments at 4–5. Were the Postal Service a private regulated utility, NAA observes, the Service's losses would be disallowed from its rate base, or at least segregated from the costs of monopoly services, and ultimately absorbed by its shareholders. In contrast, when the Service loses money, that loss is cumulated in the Prior Years' Losses component of the revenue requirement, and adds to the institutional costs of the Postal Service. As a result, NAA argues, any financial losses stemming from ill-advised or underpriced new services approved under the proposed rules would ultimately be shifted in large measure to monopoly mailers, thereby creating a cross-subsidy in contravention of the intent of Congress. Unless and until Congress makes fundamental changes in the Reorganization Act that would grant the Commission power to police the rate effects of Postal Service forays into competitive service—especially enhanced authority over the revenue requirement—NAA states that the proposed rules should not be adopted.

NAA's comments raise legitimate concerns regarding the possible impact of non-compensatory services upon other postal ratepayers, particularly monopoly mailers. The Commission agrees that new services adopted to meet competitive or other perceived needs must be offered at compensatory rates, and cannot be allowed to become a revenue burden on other categories of mail. However, the possibility that the Commission's proposed rules could become a vehicle for producing such results does not compel the conclusion that they should not be adopted. Rather, it is a reason for fashioning and applying the rules in a manner that will avoid this potential harm. Each of the proposed rules for introducing new services includes provisions that will serve to limit the potential negative financial impact of its application. Market tests will be limited in duration and typically will occur in only a few areas. Provisional services also will be limited in duration. Minor classification changes will be recommended only if their anticipated impact on overall postal costs and revenues is minor. Furthermore, in applying the rules the Commission will be bound, as always, by the requirement in § 3622(b)(3) to recommend rates that recover estimated costs and contribute to the institutional costs of the Postal Service.

National Newspaper Association (NNA) and other commenters raise a different general concern regarding the proposed rules: potential problems of due process associated with the 90- to 120-day procedural schedules established in the rules. NNA comments that the speed made necessary by the foreshortened decisional deadlines equates to advantage for the Postal Service as proponent, to exclusion of potential parties, to expense borne by parties who do participate, and to harm of the Commission's decisional process by limiting the time in which to develop an evidentiary record. NNA Comments at 3–4. The Commission's Office of the Consumer Advocate also identifies due process and evidentiary problems that could result from the abbreviated procedural schedules as its primary concerns regarding the rules. OCA asks the Commission to state explicitly that any new rules adopted in this proceeding will not be used to shift the burden of proof from the Postal Service or limit discovery. OCA Comments at 7–10. Similar concerns regarding particular proposed rules were voiced by American Bankers Association, McGraw-Hill, Newspaper Association of America, and United Parcel Service.

Procedural schedules of 90 or 120 days admittedly may impose some extraordinary demands on participants, but they are by no means impossible to meet, as the prompt litigation and deliberations in Docket No. MC96–1 demonstrate. The Reorganization Act directs the Commission to consider rate and classification change requests ''promptly,'' and authorizes it to adopt rules ''[i]n order to conduct its proceedings with utmost expedition consistent with procedural fairness to the parties.'' 39 U.S.C. § 3624(a), (b). The Commission has designed the rules adopted in this proceeding with features—such as registration and expedited notice provisions—to increase the feasibility of the prescribed decisional schedules. However, the Commission wishes to assure all parties that it will not allow these 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. It should also be borne in mind that in any proceeding conducted under the new rules, an affected participant may lodge a motion for extension of the procedural schedule, which the Commission will grant if it finds that an extension is required to provide due process.

Additionally, in light of the various concerns expressed by commenters about the operation of the proposed rules and their consequences, the Commission is including a ''sunset'' provision in each of the four components of the final rule, which will cause them to be reviewed or terminated within a five-year period.

II. Market Tests of Potential New Services

Applicability of Rule

Several parties filed comments suggesting changes which would enlarge applicability of the Commission's proposed market test rule. Both the Postal Service and Time Warner express support for a rule that

[3] By way of analogy, the Postal Service's rules applicable to International Customized Mail (ICM) service impose two objective qualifications on potential international contract ratepayers: minimum-volume qualifying criteria, and a single-point-of-origin criterion. International Mail Manual § 292; *see* 58 FR 29782.

would go beyond the Joint Task Force's recommendations by encompassing market tests of rate changes as well as market tests of new services. Federal Express Corporation comments that the rule should extend to tests of new international mail services, as well as domestic services; the National Newspaper Association suggests that non-postal services contemplated by the Postal Service should also be included. Finally, American Bankers Association suggests that a Postal Service request for a permanent change in mail classification should not be a pre-requisite for procedures that would authorize market tests of potential new services.

The final rule adopted by the Commission preserves the terms of applicability recommended by the Joint Task Force Report and incorporated in the proposed market test rule. As the Commission observed in the Notice of October 27, tests of pure rate changes in the usual selective form of market testing would necessarily raise questions of fairness and equity under 39 U.S.C. § 3622(b)(1) and of undue discrimination or preference among mail users under § 403(c). Comments provided in response to the October 27 Notice do not provide persuasive countervailing considerations that would justify inclusion of rate tests in the rule.[4] Similarly, in the absence of clear statutory bases for including market tests of international postal services and non-postal services to—which types of service none of the Commission's current rules applies—the Commission declines to extend the final rule into these areas. The Commission also declines to broaden the rule beyond the context contemplated by the Joint Task Force recommendation, namely, in connection with the filing of a request for a permanent change in mail classification. In the Commission's view, a ''free-standing'' market test rule would require a different set of procedures, and possibly additional forms of evidentiary support by the Postal Service.

As the preamble states, the final rule includes a new § 3001.161(b), which establishes a five-year sunset provision for the effectiveness of the market test rule.

Evidentiary Requirements

Several parties commented on the appropriateness of the evidentiary requirements applicable to market test proposals prescribed in proposed § 3001.162. The Postal Service commented generally that the proposed section requires the preparation and provision of too much information, and more particularly that the required estimate of the number of customers who will participate in the market test could be difficult to produce. In contrast, other commenters—including American Bankers Association, Newspaper Association of America, and National Newspaper Association—suggested that the Postal Service should be required to produce additional information to support proposed market tests.

The Commission's final rule maintains the evidentiary requirements of the proposed rule, with minor alterations to accommodate the concerns of commenters. The Commission continues to believe that the general standard declared in proposed § 3001.162, namely, the provision of ''such information and data . . . 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,'' establishes the appropriate standard of evidentiary support. In response to the Postal Service's comments, § 3001.162(g) of the final rule requires the Service to provide an estimate of the number of customers who will participate in the test ''to the extent that such an estimate is practicable.'' Also, in order to implement Federal Express Corporation's proposal of a mechanism that would provide an alternative to rendering a ''yes or no'' decision on proposed market tests, § 3001.162(f) of the final rule adds a requirement that the Postal Service state the goals and objectives of the market test, and subsection (g) requires the Service to identify ''those features of the proposed market test that, [in its opinion,] cannot be modified without significantly impairing the value of the test.''

Rule for Decision

Proposed § 3001.164 provides for the Commission's issuance of a ''yes or no'' decision either in favor of or against the Postal Service's proposed market test. Several commenters—Federal Express Corporation, the Commission's Office of the Consumer Advocate, and United Parcel Service—question the consistency of this decisional standard with the exercise of the Commission's best judgment in performing its statutory responsibilities. As noted above, Federal Express proposes an alternative to a ''yes or no'' decisional standard: allowing the Postal Service to designate those elements of its proposed market test which cannot be modified without negating its value, and adopting a decisional standard which would preclude the Commission only from modifying those designated elements. The Commission would thereby retain the option of making necessary modifications in less essential elements of a proposed market test.

Upon consideration, the Commission believes that the mechanism proposed by Federal Express is preferable to restricting the Commission's decision to a blanket approval or rejection of a proposed market test. As noted in the Notice of October 27, the Commission's preference and practice has been to cure any identified inconsistencies with statutory policies or factors by recommending modifications, if they are feasible. 60 FR 54982. Yet, the Commission also noted, a recommendation to modify a market test in a manner that would depart significantly from postal management's plan ''could jeopardize the timeliness of the test and seriously impair its usefulness.'' Ibid. Because the mechanism proposed by Federal Express would better accommodate these competing considerations, § 3001.164 of the final rule provides for issuance of a decision in accordance with the policies of the Reorganization Act, but without ''modification of any feature of the proposed market test which the Postal Service has identified in accordance with § 3001.162(f)'' as one that cannot be modified without significantly impairing the value of the test.[5]

Data Collection and Reporting Requirements

Several parties submitted comments addressing the data collection and reporting requirements specified in proposed § 3001.165, and the exemption from providing market test data afforded by proposed § 3001.166(b). The Postal Service comments that the provision requiring it to submit all test data to the Commission no later than 60 days following the conclusion of the test could prove to be an obstacle. McGraw-Hill suggests that the rule should be modified to require the Postal Service to report all test data collected. Similarly, United Parcel Service states that the rule

[4] The Postal Service is, of course, free to request expedited consideration under special rules of practice in connection with any rate change request it may wish to submit.

[5] Commenter McGraw-Hill suggests an alternative mechanism which would provide for preliminary Commission advice to the Postal Service to modify unacceptable features of the proposed market test prior to rendition of a decision. While this proposal also has merit, the Commission anticipates that its implementation could significantly extend the 90-day schedule proposed by the Commission and adopted in the final rule.

should require periodic public reporting of the test data without exception.

The Commission's final market test rule retains the data collection and reporting provisions of the proposed rule. The 60-day requirement in § 3001.165 is intended to establish a benchmark for the Service's production of market test data in the proceeding to consider recommendation of the proposed service as a permanent mail classification; if the Postal Service encounters difficulty in meeting this deadline in a particular case, the Commission will entertain a motion for a reasonable extension. The Commission also continues to believe that an inflexible rule requiring the Postal Service to report all market test data on a periodic basis, without exception, would be insufficiently flexible to accommodate the Service's legitimate needs, especially with regard to services tested in a competitive field. Accordingly, the final rule continues to require production of all test data only if the Postal Service elects to pursue recommendation of the tested new service as a permanent mail classification.

Suspension, Continuation or Termination of Proceeding

Section 3001.166 of the Commission's proposed rule provides for Postal Service motions to suspend the proceeding to consider its request for a permanent mail classification change, and states that the Commission shall grant the motion ''if, in the Commission's opinion, it would be reasonable under the circumstances to defer consideration of the request'' until data to be produced by the market test becomes available. In its comments on this provision, the Postal Service states that the suspension of its request should be automatic.

The Commission is concerned that the Postal Service may have misunderstood the intent of this provision. It is not designed to compel the Service to litigate its proposal while the market test is being conducted. Rather, it is designed to preserve the opportunity to move forward in the consideration of the requested permanent change in mail classification if meaningful progress can be made, for the sake of expedition. Automatic suspension of the proceeding would foreclose this option. If no progress appears likely until information produced in the market test is available, the Commission will order a suspension.

III. Requests for Provisional Service Changes of Limited Duration

Applicability of Rule

Commenters raised two issues regarding applicability of a rule for provisional service changes: (1) whether such a rule would serve any independent purpose, given adoption of a market test rule; and (2) what the proper scope of a provisional service change rule should be.

Several commenters—including American Business Press, the Newspaper Association of America, the Commission's Office of the Consumer Advocate, and United Parcel Service—take the position that a rule for considering provisional service changes would perform no separately identifiable function, or that the concept of a ''provisional service change'' is too nebulous to warrant adoption of a rule. Notwithstanding these comments, the Commission continues to believe, as the Joint Task Force concluded, that a separate rule may be useful for considering certain types of service changes for which market testing would not be appropriate or adequate. While it would be impossible to foresee the full spectrum of such changes, the Commission anticipates that certain types of systemwide, seasonal, or special service changes would be more appropriately considered as provisional service changes, rather than as the subjects of market tests. Therefore, the final rule contains separate provisions for the expeditious consideration of provisional service changes.

However, the Commission declines to expand the rule to include provisional changes in rates or in the terms of existing mail classifications, as the Postal Service and Time Warner suggest in their comments. The Joint Task Force recommended that an expedited procedure for introducing provisional service changes ''should be available, *under more restrictive terms,* for use in appropriate circumstances.'' Report at 52. [Emphasis added.] The ''restrictive terms'' include a limitation to ''innovations * * * which supplement existing rates and classifications without altering any of them, so that customers could either try the new service or stick with the existing service menu, or both.'' Ibid. American Business Press, Newspaper Association of America, and McGraw-Hill express concern in their comments that the provisional service change rule could be used to restructure existing services under the guise of introducing a ''new'' service, or otherwise alter pre-existing service options. In order to address these concerns, and to implement the concept envisioned by the Joint Task Force, the Commission's final rule retains the proposed rule's limitation of applicability to proposed provisional services that ''will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration.'' § 3001.171(a).

As the preamble states, the final rule includes a new § 3001.171(b), which establishes a five-year sunset provision for the effectiveness of the provisional service change rule.

Evidentiary Requirements

The Postal Service comments that the filing requirements contained in proposed § 3001.172 would increase the complexity of seeking a provisional service change, and would be likely to impair the expedition with which such changes could be adopted. American Bankers Association takes the position that the rule should require the Service to provide the maximum cost and revenue information available, in order to prevent shifting the cost burden of providing the provisional service to captive users of First-Class Mail.

The final rule maintains the filing requirements of the proposed rule. The Commission continues to believe that requiring the Service to provide a description of the salient features of a proposed provisional service change, together with an estimate of the effects of implementing it and all other available information responsive to the requirements in current § 3001.64, imposes a reasonable standard of evidence. If the Postal Service experiences difficulty in developing the required information, it may file a motion for waiver, or an explanation of unavailability as provided in § 3001.172(b). On the other hand, if a participant believes that critical information has not been produced, it may seek to compel its production through discovery and motions practice.

As with the market test rule, in order to implement Federal Express Corporation's proposal of a mechanism that would provide an alternative to rendering a ''yes or no'' decision on proposed provisional service changes, § 3001.172(a)(2) of the final rule adds a requirement that the Postal Service state its goals and objectives in introducing the provisional service, and subsection (a)(3) requires the Service to identify ''those features of the proposed provisional service that, [in its opinion,] cannot be modified without significantly reducing the benefits of introducing the proposed service.''

Rule for Decision

Proposed § 3001.174 provides for the Commission's issuance of a ''yes or no'' decision either in favor of or against the Postal Service's proposed provisional service change. Several commenters—Federal Express Corporation, the Commission's Office of the Consumer Advocate, and United Parcel Service—challenge this mode of decision, as they did with respect to market tests. Once again, Federal Express proposes an alternative that would allow the Postal Service to designate those elements of its proposed provisional service change which cannot be modified without negating its value, together with a decisional standard which would preclude the Commission only from modifying those designated elements.

Because the same decisional considerations are mutually applicable to market tests and provisional service changes, the Commission has decided to modify proposed § 3001.174 to provide for issuance of a decision in accordance with the policies of the Reorganization Act, but without ''modification of any feature of the proposed service which the Postal Service has identified in accordance with § 3001.172(a)(2).''[6]

Data Collection and Reporting Requirements

Section 3001.175 of the proposed rule directs the Postal Service to collect and report data pertaining to a recommended provisional service during the period in which it is in effect. The section would allow the Service to satisfy these requirements either through its regular data collection and reporting systems, in combination with the Service's regularly filed periodic reports under 39 CFR § 3001.102, or by conducting and reporting the results of special studies on a corresponding schedule ''to the extent reasonably practicable.''

In its comments, the Postal Service ''strongly objects'' to the requirements in proposed § 3001.175. Comments at 19. The Service asserts that it is ''neither necessary nor practical'' to require it to modify its regular data reporting systems to include a provisional service, and that it is ''unreasonable'' to expect it to conduct special studies on a quarterly basis. Ibid. In the Service's view, data pertaining to a provisional service will not be germane until a record is developed for the purpose of determining whether to recommend the service as a permanent mail classification, and ''[d]ata issues will receive a full airing then.'' Ibid.

The Postal Service's resistance to periodic data collection and reporting for recommended provisional services is, quite frankly, difficult to fathom. Under § 3001.171(a) of the final rule, a provisional service may be recommended for a duration of up to two years. The Postal Service collects and publicly reports cost and revenue data for all services it offers on at least an annual basis; there is no apparent justification for exempting a recommended provisional service from this practice. Proposed § 3001.175 does not require the Service to perform quarterly special studies for provisional services; it only cites § 3001.102 reporting requirements as a standard, and directs the Service to observe them ''to the extent reasonably practicable.'' The final rule retains this reasonable standard of data collection and reporting.

IV. Expedited Consideration of Requests for Minor Mail Classification Changes

Applicability of Rule

Proposed § 3001.69 states that a requested mail classification change may be considered to be ''minor in character,'' and therefore eligible for expedited consideration, if it would not involve a change in any existing rate or fee and: (a) involves only changes in eligibility standards or requirements applicable to mail classes or services; or (b) would only affect categories of service with low aggregate costs and revenues. Several commenters suggested that the section's standard of applicability should be clarified, or replaced with an alternative definition of ''minor in character.''

The Postal Service comments that the proposed rule's applicability criteria require further explanation; Direct Marketing Association regards the Commission's standards as an improvement over those in the Service's proposed rule, but observes that application in specific instances will present difficulties. American Bankers Association, Newspaper Association of America, National Newspaper Association, and McGraw-Hill challenge the proposed rule's definition of eligibility changes as ''minor,'' drawing on experience in recent dockets such as MC95–1 to illustrate that putative eligibility changes may produce major impacts on users of the affected mail classification. Other commenters question the appropriateness of the ''low costs and revenues'' standard. OCA comments that the standard is ambiguous, and may be over-inclusive in light of past mail classification controversies that arguably involved low costs and revenues but required more extensive scrutiny. United Parcel Service comments that imposition of the ''low costs and revenues'' standard would tend to reduce scrutiny of classification changes in almost all the competitive subclasses. Advertising Mail Marketing Association comments that neither of the proposed rule's standards will serve to include minor classification changes and exclude major ones, and proposes an alternative two-part test that would treat a proposed change as ''minor'' if it:

> (a) Does not materially alter the conditions of eligibility for the entry of mail in a particular subclass, or for a particular rate element or work sharing discount; and (b) does not materially increase or decrease the estimated or projected institutional cost contribution of the affected subclass.

AMMA Comments at 5–6.

Upon consideration of the parties' comments, the Commission agrees that the definition of ''minor'' classification changes in proposed § 3001.69 should be amended. Therefore, the Commission has re-drafted the applicability provisions to include only those proposed mail classification changes that are likely to be moderate in their impact both on mailers and on the postal system as a whole. The substitute retains the introductory clause precluding any change in existing rates or fees, and models two additional clauses on AMMA's suggested language, with one alteration: the clause concerning changes in conditions of eligibility has been modified to preclude only requests for more restrictive eligibility terms. Thus, proposals to make existing mail classifications more inclusive could be considered under the minor classification change provisions.

As the preamble states, the final rule includes a new § 3001.69(b), which establishes a five-year sunset provision for the effectiveness of the minor classification change rule.

Expedition of Procedural Schedule—Expedited Notice

Commenter McGraw-Hill suggests that the expedited procedures specified in proposed § 3001.69b should be supplemented to include registration and expedited notice provisions similar to those contained in the proposed market test rule [§ 3001.163(b)-(d)] and proposed rule for provisional service changes [§ 3001.173(b)-(d)]. McGraw-Hill comments that the inclusion of such conforming provisions ''are

[6] McGraw-Hill once again proposes an alternative providing for preliminary Commission advice to the Postal Service to modify unacceptable features of the proposal prior to a decision. The Commission declines to adopt this mechanism on the same bases cited with respect to the market test rule.

justified by the short timeframes contemplated for the proceedings in question.'' McGraw-Hill Comments at 5.

The Commission agrees that inclusion of such provisions in the minor classification change rule is justified, and would be beneficial. Expedited notice of the Postal Service's filing of a request can be expected to enable interested parties to intervene, and initiate discovery if they so desire, earlier in the proceeding. Consequently, the final rule has been amended to add three new subsections to proposed § 3001.69b. New subsection (b) provides for registration with the Secretary of the Commission by persons who are interested in participating in minor classification change proceedings. These registrants will automatically become parties to each such proceeding, but they may withdraw at any time. New subsection (c) requires service of the Postal Service's complete filing by hand delivery to registrants with addresses within the Washington metropolitan area, and by Priority Mail to all other registrants. New subsection (d) requires the Postal Service to give notice by First-Class Mail of the filing of its request to all participants in the most recent omnibus rate proceeding. Service by Priority Mail and First-Class Mail have been substituted for Express Mail, which is required in the market test and provisional service change rules, in view of the potentially longer procedural schedule available in minor classification change proceedings, and to reduce the resulting burden on the Postal Service. Also, in order to enable the Service to identify the last day for parties' intervention in the notice required by new subsection (d), § 3001.69b(e) of the final rule has been modified to provide that the Commission's notice of proceeding ''shall afford all interested parties 26 days after filing of the Postal Service's request within which to intervene[.]''

V. Multi-Year Test Periods for Proposed New Services

Applicability of Rule.

Several commenters question the terms under which proposed § 3001.181 would allow the Postal Service to use multi-year test periods for proposed new services. Newspaper Association of America, United Parcel Service, and McGraw-Hill take the position that the rule should not extend to permit test periods as long as five years, in light of the Postal Service's demonstrated limitations in producing forecasts in prior Commission proceedings. In contrast, the Postal Service comments that a five-year period may not be sufficient for some proposed services, and that the appropriate length of a test period should be determined on a case-by-case basis.

The final rule retains the declaration of a Commission policy in favor of test periods of up to five fiscal years. The Joint Task Force Report recommended the adoption of ''rules providing for a multi-year break-even period of at least four or five years[,]'' Report at 51, and the Commission accordingly has used five years as a policy benchmark. The Commission is well aware that Postal Service projections have usually been limited to two- or three-year horizons in postal rate and classification proceedings. However, the Commission is prepared to provide the Service with the opportunity to submit longer-range forecasts, and to use those projections if they prove to be credible. Furthermore, the Postal Service is free in any given proceeding to ask the Commission to expand its policy declaration, if it can furnish even longer-range projections that it believes to be reliable.

The Postal Service, Advertising Mail Marketing Association, and Direct Marketing Association oppose another portion of the Commission's policy declaration in proposed § 3001.181, which refers to ''convincing substantial evidence in support of the test period proposed.'' These commenters challenge the quoted language on the ground that it would subject the Postal Service's evidence in support of a multi-year test period to a higher standard of proof than the ''substantial evidence'' standard of evidentiary support commonly required of administrative decisions. The Postal Service suggests that this language ''be eliminated as unjustified and unnecessary.'' Postal Service Comments at 25.

The proposed rule's use of the phrase ''convincing substantial evidence'' in the policy declaration was not intended to establish an extraordinary evidentiary standard for application to the Postal Service's test year projections; it was only intended to declare a policy in favor of departure from the normally-applicable test year rule when the Service's evidence persuades the Commission that such a departure is justified. In order to remove any ambiguity on this point, the final rule deletes the word ''convincing.''

As the preamble states, the final rule includes a new § 3001.181(b), which establishes a five-year sunset provision for the effectiveness of the multi-year test period rule.

Filing of Evidence in Support of Formal Request.

In its comments, the Postal Service opposes the filing requirements in proposed § 3001.182 (b)(2) and (b)(3) of the proposed rule, which direct the Service to produce 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 any other analyses by the Service that bear on the overall effects of introducing the new service during the requested test period. The Service claims these requirements are unnecessary, would introduce needless complexity and confusion into the proceeding, and call for material that is ''likely to include pre-decisional material and/or material of commercial sensitivity that would not ordinarily be disclosed in Commission proceedings.'' Postal Service Comments at 26. Time Warner also comments on the ''excessive data and documentation requirements'' of the proposed rule, Comments at 4, and urges the Commission to ''accommodate its information and documentation requirements to the inevitability that new services will be supported by scarcer, more attenuated data than established ones. . . .'' Time Warner Comments at 5.

The Commission is well aware of the problems of information deficiency that can be associated with new services, and does not intend to apply unrealistic standards of proof to such services. However, the Commission is also aware from experience in prior proceedings that financial analyses and other information of the types responsive to proposed § 3001.182(b) (2) and (3) are likely to underlie the Postal Service's cost and revenue estimates for a proposed new service, or will at least bear significantly on the credibility and accuracy of those estimates. The relevance and probative value of these analyses are likely to be intensified when estimates are projected as much as five years into the future. Consequently, the final rule retains these filing requirements, to put the Postal Service on notice that all relevant supporting analyses will be scrutinized in the proceeding. If the Postal Service believes that special considerations of privilege and resulting harm should exempt certain responsive information in any given case, it may file a motion for waiver explaining why the requirement should not apply.

VI. Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. 605(b) that these rules will apply exclusively to the United States Postal Service in proceedings conducted by the Postal Rate Commission, and to parties who choose to participate in those proceedings. Therefore, it is certified that these rules will not have a significant impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. 501 et seq. Because these rules will only apply to the Postal Service and other participants in Commission proceedings, it has also been determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. Inasmuch as the rules impose information-gathering and reporting requirements exclusively upon the United States Postal Service for the purpose of conducting mail classification change proceedings, they do not contain any information collection requirements as defined in the Paperwork Reduction Act [44 U.S.C. 3502(4)], and consequently the review provisions of 44 U.S.C. 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal Service.

For the reasons set out in the preamble, 39 CFR part 3001 is amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

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

2. Sections 3001.69 through 3001.69c are added to Subpart C to read as follows:

§ 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 May 15, 1996 through May 15, 2001.

§ 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 this part. 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 3001.69c. 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 3001.69c, it shall on that same day effect service by hand delivery of the complete filing to each person registered pursuant to paragraph (b) of this section 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 3001.69c, 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 3001.69c, 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 3001.69c, 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 3001.69c. 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 3001.69c, and request a hearing.

(f) Within 28 days after publication of the notice of proceeding pursuant to paragraph (e) of this section, the Commission shall decide whether to consider the request of the Postal Service as a minor classification change request under §§ 3001.69 through 3001.69c, and shall issue an order in the proceeding incorporating that ruling. The Commission shall order a request to be considered under §§ 3001.69 through 3001.69c 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 3001.69c shall be ordered, and the request will be considered in accordance with other appropriate provisions of Subpart C of this part.

(h) If the Commission determines that the Postal Service request is appropriate for consideration under §§ 3001.69 through 3001.69c, 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 3001.69c 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 paragraph (f) of this section. 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 3001.69c 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.

3. Sections 3001.161 through 3001.166 are added as Subpart I to read as follows:

Subpart I—Rules Applicable to Requests for Market Tests of Proposed Mail Classification Changes

Sec.
3001.161 Applicability.
3001.162 Filing of market test proposal and supporting direct evidence.
3001.163 Procedures—expedition of public notice and procedural schedule.
3001.164 Rule for decision.
3001.165 Data collection and reporting requirements.
3001.166 Suspension, continuation or termination of proceeding.

Subpart I—Rules Applicable to Requests for Market Tests of Proposed Classification Changes

§ 3001.161 Applicability.

(a) This section and §§ 3001.162 through 3001.166 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 3001.166 are effective May 15, 1996 through May 15, 2001.

§ 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 paragraphs (a) through (d) of this section;

(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 paragraph (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 3001.166, 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.

4. Sections 3001.171 through 3001.176 are added as Subpart J, to read as follows:

Subpart J—Rules Applicable to Requests for Provisional Service Changes of Limited Duration

Sec.
3001.171 Applicability.
3001.172 Filing of formal request and prepared direct evidence.
3001.173 Procedures-expedition of public notice and procedural schedule.
3001.174 Rule for decision.
3001.175 Data collection and reporting requirements.
3001.176 Continuation or termination of provisional service.

Subpart J—Rules Applicable to Requests for Provisional Service Changes of Limited Duration

§ 3001.171 Applicability.

(a) This section and §§ 3001.172 through 3001.176 apply in cases in which the Postal Service requests that the Commission recommend the establishment of a provisional service which will supplement, but will not alter, existing mail classifications and rates for a limited and fixed duration. The requirements and procedures specified in these sections apply exclusively to the Commission's determination to recommend in favor of or against a provisional service proposed by the Postal Service, and do not supersede the rules applicable to requests for permanent changes in rates, fees, mail classifications, and in the nature of postal services. In administering this subpart, it shall be the policy of the Commission to recommend the introduction of provisional services that enhance the range of postal services available to the public, without producing a material adverse effect overall on postal revenues or costs, and without causing unnecessary or unreasonable harm to competitors of the Postal Service. Except in extraordinary circumstances and for good cause shown, the Commission shall not recommend provisional services of more than two years in duration; however, the Commission may grant a request to extend a provisional service for an additional year if a Postal Service request to establish the provisional service as a permanent mail classification is pending before the Commission.

(b) This section and §§ 3001.172 through 3001.176 are effective May 15, 1996 through May 15, 2001.

§ 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 this part. 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 paragraph (b) of this section 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 3001.176, 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)(3). The purpose of this subpart is to allow for consideration of proposed provisional services within 90 days, consistent with the procedural due process rights of interested persons.

§ 3001.175 Data collection and reporting requirements.

In any case in which the Commission has issued a recommended decision in favor of a provisional service of limited duration requested by the Postal Service, and the Board of Governors has put the provisional service recommended by the Commission into effect, the Postal Service shall collect and report data pertaining to the provisional service during the period in which it is in effect in accordance with the periodic reporting requirements specified in § 3001.102. If the Postal Service's regular data reporting systems are not revised to include the provisional service during the period of its effectiveness, the Postal Service shall perform, and provide to the Commission on a schedule corresponding to § 3001.102 reports, special studies to provide equivalent information to the extent reasonably practicable.

§ 3001.176 Continuation or termination of provisional service.

At any time during the period in which a provisional service recommended by the Commission and implemented by the Board of Governors is in effect, the Postal Service may submit a formal request that the provisional service be terminated, or that it be established, either as originally recommended by the Commission or in modified form, as a permanent mail classification. Following the conclusion of the period in which the provisional service was effective, the Postal Service may submit a request to establish the service as a mail classification under any applicable subpart of the Commission's rules.

5. Sections 3001.181 and 3001.182 are added as Subpart K, to read as follows:

Subpart K—Rules for Use of Multi-Year Test Periods

Sec.
3001.181 Use of multi-year test period for proposed new services.
3001.182 Filing of formal request and prepared direct evidence.

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 3001.182 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 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.

(b) This section and § 3001.182 are effective May 15, 1996 through May 15, 2001.

§ 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.

Issued by the Commission on May 7, 1996.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 96–12130 Filed 5–14–96; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH16–3–7264a; FRL–5439–4]

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: On August 23, 1994, the United States Environmental Protection Agency (USEPA) granted conditional approval of revisions to the emission limitations, compliance methodologies, and compliance time schedules in Ohio's State Implementation Plan (SIP) for sulfur dioxide (SO_2) as it applies to Hamilton County. The outstanding condition has been addressed, and USEPA is now fully approving the Hamilton County, Ohio, SO_2 SIP. Submitted by Ohio in response to modeling analyses which predicted violations of the SO_2 National Ambient Air Quality Standards (NAAQS) due to Hamilton County sources, this SIP has been demonstrated to provide for attainment and maintenance of the SO_2 NAAQS in Hamilton County.

DATES: This action will be effective on July 15, 1996 unless adverse or critical comments not previously addressed by the State or USEPA are received by June 14, 1996. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Written comments should be addressed to: J. Elmer Bortzer, Chief,