

service agreement.⁸ The benefits of a functionally equivalent negotiated service agreement could be reduced if it were required to terminate at the same time as the baseline negotiated service agreement.

Proposed § 3001.191—Filing of Formal Requests

Subsection (a) provides general instruction for filing whenever the Postal Service proposes changes to rates, fees, or the mail classification schedule based on a negotiated service agreement. The Postal Service is directed to clearly indicate whether its request is for the review of a baseline negotiated service agreement, the review of a functionally equivalent negotiated service agreement, the review of a renewal for an ongoing negotiated service agreement, or the review of a modification to an ongoing negotiated service agreement. This designation is used to trigger specific rules applicable to each type of request. After receiving the Postal Service's request, the Commission shall provide notice through the **Federal Register** of the Postal Service's request.

Subsection (b) addresses procedural issues in regard to intervention and to the treatment of the proponents of the direct case. In docket no. MC2002–2, motions were filed requesting intervention of Capital One prior to public notice of the docket, and requesting submission of testimony out of turn. This was necessary to allow Capital One to submit direct testimony simultaneous with the Postal Service's direct testimony, and to be treated as a co-proponent with the Postal Service. The rules in proposed subsection (b) eliminate this motions practice. The Postal Service is required to identify all parties to the negotiated service agreement. Identification of the parties shall serve as an automatic notice of intervention. It also shall serve as notice that the identified parties are to be treated as co-proponents with the Postal Service in the proceeding.⁹

Proposed § 3001.192—Filing of Prepared Direct Evidence

Subsection (a) requires the filing of the Postal Service's and, if it is to be filed, its co-proponent's direct evidence simultaneous with the filing of the

request. This subsection eliminates the need for a co-proponent to file a motion requesting that its direct testimony be accepted out of turn.

Subsection (b) requires the Postal Service to review and affirm that any direct evidence filed by a co-proponent can be relied on in concert with the Postal Service's direct evidence. Co-proponent testimony that is not consistent with the Postal Service's direct case would in effect be rebuttal testimony, and would be inappropriate as part of a direct case. It is expected that the co-proponents present a unified case. It is also expected that the Postal Service, as the lead proponent, understands and agrees with the parameters of all testimony presented in support of the direct case.

Proposed § 3001.193—Contents of Formal Requests

Currently, when the Postal Service requests a change in rates, fees or the mail classification schedule, it must file a request that conforms with the "contents of formal requests" requirements delineated in § 3001.54 and/or § 3001.64. The requirements direct the Postal Service to produce a large quantity of information. The relevance of the bulk of the information tends to vary in relation to the system-wide significance of the change being proposed. Typically, with more limited proposals, the Postal Service seeks a waiver requesting relief from providing material that is not relevant or not available in regard to that particular proposal. The intent of proposed rule 193 is to tailor the content requirements of rules 54 and 64 to what is necessary to support a proposal based on a negotiated service agreement. This should provide the Postal Service with better direction on what the Commission expects, and should eliminate most of the motions practice requesting waivers for material that is either not available or not relevant.¹⁰

Subsection (a)(1) provides the general requirements for presentation of a direct case in support of a negotiated service agreement. This is substantively the same general requirement that the Postal Service complies with under rules 54 and 64.

Subsection (a)(2) specifies the procedure to request a waiver of a filing requirement in instances where otherwise required filing information is not available. The explanation accompanying the request for waiver

will carry significant weight. The Commission expects that the Postal Service take reasonable steps to compile the necessary information, when practicable, or to take reasonable steps to develop reliable estimates of the required information. This rule recognizes that there might be instances where required information is just not available.

Subsection (a)(3) specifies the procedure to request a waiver of a filing requirement in instances where the Postal Service believes the provision of information is not required. This subsection is to be used where the requested information is considered not relevant to the proceeding, whether or not it is available.

In instances where a waiver is granted under subsection (a)(2) or (a)(3) for unavailable or not required information, subsection (a)(4) precludes future argument related to the absence of such information, except in extraordinary circumstances. Participants contending the absence of such information should bear on the merits of the proposal must demonstrate that the Postal Service was clearly unreasonable, or that there are other compelling or exceptional circumstances, that show why the absence of information that was alleged to be unavailable or not required should be used as a basis for rejection of the request.

Subsections (a)(5) and (a)(6) reserve the right of the Commission and the presiding officer to request whatever information that is deemed necessary to analyze the Postal Service's proposal in the process of issuing an opinion and recommended decision. If a participant contends that information not originally provided is now necessary to develop relevant and material analysis of the request, the burden shifts to the participant that now finds the information necessary to seek this information through discovery.

Subsection (b) requires that a copy of the negotiated service agreement be included with the request. In docket no. MC2002–2, a question arose whether the copy of the negotiated service agreement was or was not executed prior to filing. This occurred because the copy included with the request was not signed. The resolution of this issue favored by the Commission is to file an unsigned text file copy with the request, and not require the Postal Service to file an executed copy. The presumption will be that the Postal Service would not file a request without all parties in agreement to its terms and conditions, and that the parties other than the Postal Service would not support a request as co-proponents unless they agreed to

⁸ For example, a functionally equivalent negotiated service agreement may be recommended for a three year duration even though the baseline negotiated service agreement has been in effect for two years.

⁹ The Postal Service is recognized as the "lead" co-proponent. This is dictated by the Act, as a co-proponent other than the Postal Service cannot initiate a request before the Commission, nor can the Postal Service be bound to adhere to a proposal that is not in its best interest.

¹⁰ The Postal Service as the lead proponent is required to respond to the items delineated in this section, with the Commission's understanding that some responses may actually be prepared and presented by other co-proponents.