

Such an agreement might not benefit the Postal Service.

Subsection (f) requires the Postal Service to provide an estimate of the competitive effects of the negotiated service agreement on both the competitors of the Postal Service and on the competitors of the other co-proponents. The intent is to have a basis for analyzing the issues raised by Professor Panzar in docket no. MC2002–2. In instances where proposals are strictly cost-based, the competitive issues should take on less significance, with less of a filing burden encountered. In instances where proposals are not cost based, such as with a declining block discount proposal, the filing burden might be greater. Special studies might have to be considered to fully analyze these competitive issues.

An estimate of the impact of the agreement on mail users as a group also is required. It is important that mailers not be made worse off due to the implementation of a negotiated service agreement.

Subsection (g) requires the Postal Service to propose a data collection plan. The intent is not to burden the Postal Service with a data collection plan such as required for an experimental proposal. The intent is for a data collection plan to gather data that would typically be collected in the normal course of business, and that would be useful in making business decisions. The Postal Service should be collecting this data in any event for its own internal use and to determine the success or failure of the agreement. The Commission anticipates that the data will be necessary for consideration of future proposals. The data can be used to justify the renewal of an ongoing negotiated service agreement. It can be used to justify extending a similar agreement to a similarly situated mailer. It can be used if the Postal Service needs to propose modifications to the ongoing agreement. It also can be used, in general, to determine which characteristics of negotiated service agreements work, and which do not. This will be helpful to the Postal Service and the Commission in considering future proposals.

The proposed rule states that the data is to be reported on an annual or more frequent basis. Frequent data reports are not necessary if the data are only to be used to renew, extend to other participants, or modify existing agreements. It would only be necessary to be produced when those events occur. However, annual data reports will help the Commission gain a more real-time understanding of which types of agreements work, and which do not,

such that the Commission can make more informed recommendations for future requests. More importantly, the Commission anticipates that methodologies will have to be developed for dealing with the interaction of ongoing negotiated service agreements and future omnibus rate cases. Periodic reporting of data should help in the development and implementation of those methodologies.

Subsections (h), (i), and (j) titled “Workpapers,” “Certification by officials,” and “Rejection of requests” parallel rule 54 subsections (o), (p), and (s) respectively, and require no further explanation.

Proposed § 3001.194—Failure To Comply

The proposed rules balance the Commission’s goal of considering negotiated service agreements in a timely manner against the requirement to develop an adequate record, and to consider the due process requirements of all participants. This section places the Postal Service on notice that failure to provide information necessary for the proceeding could result in the schedule being stayed until satisfactory compliance is achieved.

B. Case Specific Rules

Proposed § 3001.195—Requests To Recommend a Baseline Negotiated Service Agreement

Subsection (a) begins by describing the applicability of § 3001.195 to Postal Service proposals based on baseline negotiated service agreements. It defines a baseline negotiated service agreement as a negotiated service agreement that is not predicated on a functionally equivalent negotiated service agreement currently in effect. This could include a new or unique negotiated service agreement that is being proposed for recommendation for the first time. It also could include a negotiated service agreement that could have been considered functionally equivalent to a previously recommended negotiated service agreement, but for the expiration of the previous negotiated service agreement. This category of negotiated service agreement is included because the rules for a functionally equivalent negotiated service agreement allow for reliance on evidence presented in the baseline docket. The passage of time after the expiration of an agreement (including the time that the agreement was in effect) potentially makes this evidence less reliable. Thus, a more comprehensive presentation is required.

In general, the Postal Service is required to respond to each element of

§ 3001.193 when submitting a request to consider a proposal based on a negotiated service agreement. In addition, subsection (a)(1) addresses an issue that is unique to consideration of a baseline negotiated service agreement. Subsections (a)(2) and (a)(3) stress issues that the Commission would like the Postal Service to emphasize in its request.

Subsection (a)(1) requires the Postal Service to describe why the proposal is in the form of a negotiated service agreement as opposed to a less restrictive form of classification. The Commission’s preference is to recommend classifications that are open to wide participation. Because negotiated service agreements are restrictive in participation, there is a potential for unwarranted discrimination. Proposals that exhibit unwarranted discrimination would not be fair and equitable under §§ 3622(b)(1) or 3323(c)(1), and could not be recommended. The response to this subsection will be used to analyze this issue.

Subsection (a)(2) requires the Postal Service to describe the operational bases of the negotiated service agreement. This requirement emphasizes that the Commission is interested in the specific details of the operational requirements placed on each party.

Subsection (a)(3) requires the Postal Service to describe the expectations of the parties regarding performance. This requirement emphasizes that the Commission is interested in the rationale for entering into the negotiated service agreement, and the anticipated future of the agreement.

Subsection (b) establishes the scheduling requirements for the Commission to consider Postal Service proposals predicated on baseline negotiated service agreements. The proposed scheduling requirement recognizes that a negotiated service agreement can take many forms, and may include unique and novel issues. Because of this, it is difficult to predict the duration of a proceeding before initial review of the actual request. A schedule will be established in each case, to allow for prompt issuance of a decision consistent with procedural fairness.

Proposed § 3001.196—Requests To Recommend a Negotiated Service Agreement That Is Functionally Equivalent to a Previously Recommended Negotiated Service Agreement

In general, the Postal Service is required to respond to each element of § 3001.193 when submitting a request to