

consider a proposal based on a negotiated service agreement. However, § 3001.196(a) allows the Postal Service to streamline the responses required by § 3001.193 where a functionally equivalent negotiated service agreement is being proposed, thereby providing the opportunity for expedition of the procedural schedule. The intent is to shift the procedural focus from consideration of the general, functional and operational aspects of the agreement, which are assumed to have been fully litigated in the previous (baseline) docket, to the mailer-specific issues pertinent to consideration of the functionally equivalent docket.

Subsection (a) begins by describing the applicability of § 3001.196 to Postal Service proposals based on functionally equivalent negotiated service agreements. The purpose of proposing rules that expedite procedures for considering functionally equivalent negotiated service agreements is to assure that similarly situated mailers are given timely consideration and not placed at an undue disadvantage when seeking to secure a negotiated service agreement with the Postal Service.

Subsections (a)(1) and (a)(2) require the Postal Service to explain the similarities and differences between the functionally equivalent and baseline agreements. The Commission anticipates using this information to determine whether the proposal is in fact functionally equivalent to the proffered baseline agreement. This determination will bear on the decision of whether or not to proceed under § 3001.196. The comparison of similarities and differences will also alert the participants to areas of the agreement that may require closer inspection.

Assuming that the Postal Service is persuasive in arguing that its proposal is in fact functionally equivalent to an ongoing baseline agreement, subsection (a)(3) allows the Postal Service to cite and rely on record evidence from a baseline docket, or any other completed docket. It should be stressed that the Postal Service is expected to utilize this subsection as the primary method for expediting the procedural schedule. It is expected that the majority of the justification for the agreement has been filed in the baseline docket, and that much of this information will be applicable to the functionally equivalent docket. This should save the Postal Service time and effort by not having to recreate a substantial amount of evidence related to the agreement. If the proposed evidence has been litigated in a previous docket, there should be less need for discovery, or to litigate

evidence in the new docket. Developing the record where possible in this fashion should save time and effort and help shorten the procedural schedule.

Subsection (a)(4) requires the Postal Service to provide any special studies pertinent to the negotiated service agreement. Consistent with the intent of focusing on the mailer-specific issues related to the functionally equivalent proposal, it is anticipated that special studies will analyze mailer specific information pertinent to the new proceeding, and thus should be highly relevant.<sup>11</sup>

Subsection (a)(5) requires the Postal Service to identify circumstances that are unique to the new proceeding. While subsections (a)(1) and (a)(2) focus more on the agreement itself, subsection (a)(5) focuses more on the mailer, and the specific interactions between the mailer and the Postal Service. This subpart will provide information relevant to the extent that the agreement is functionally equivalent to a baseline agreement. It will also provide mailer-specific information pertinent to the Commission's analysis.

The anticipated response to the subsection can best be explained by example. Using the Capital One NSA as a baseline, assume a functionally equivalent agreement for a mailer with one half the volume, and twice the return rate. The distinctive volume and return rate would be unique circumstances, which should be identified and discussed. A second example would be a description of the way that the second mailer prepares its mail versus the methods employed by Capital One.

Subsection (a)(6) provides the Postal Service with an opportunity to propose limiting issues to be considered in the proceeding. The responses to subsections (a)(1) through (a)(5) above should have provided the framework for identifying the relevant issues. The proposal to limit issues should focus the proceeding on relevant issues, and suggest elimination of issues that have been previously determined or that are outside the scope of the proceeding. The goal is to aid in expediting the procedural schedule. However, the Postal Service should not seek to avoid presenting the financial impact of the Negotiated Service Agreement over the duration of the agreement, or discussing the fairness and equity issues necessary for the Commission's consideration. These issues are material and relevant to every proceeding.

Subsection (b) requires the Postal Service to provide written notice of its request to certain participants. This is in addition to the requirement of providing notice by posting on the Commission's web site. The purpose of this is to reduce the potential for participants to allege that notice was inadequate. This purpose should be considered in light of the Commission's intent to limit the time period for intervention in functionally equivalent proceedings. Presumably, parties will be familiar with the nuances of the agreement through the baseline agreement proceeding and will need less time to consider whether or not to intervene. Limiting the intervention period will help expedite consideration of requests under this rule.

Subsections (c) and (d) establish the procedures for considering Postal Service proposals based on functionally equivalent negotiated service agreements. The schedule is expedited based on the assumption that the new proposal is functionally equivalent to a previously recommended negotiated service agreement, for which a Commission record has been developed that can be relied on in the new docket. If it is determined that the proposal does not represent a request for a functionally equivalent negotiated service agreement, § 3001.195 will become applicable.

The Commission will promptly determine, on the basis of materials submitted with the request, and argument presented at or before the initial pre-hearing conference, whether or not it is appropriate to proceed under the rules for functionally equivalent negotiated service agreements. If it is appropriate and no hearing is held, a schedule will be established which allows for a recommended decision to be issued not more than 60 days after determination is made to proceed under the functional equivalency rules. If it is appropriate and a hearing is scheduled, a schedule will be established which allows for a recommended decision to be issued not more than 120 days after determination is made to proceed under the functional equivalency rules.

Where there is no need to expand on the previous record other than to enter evidence pertinent to the specifics of the new proposal, and where no issues warrant further exploration, the issuance of the recommended decision could occur within 10 days of the determination to proceed under the rules for functionally equivalent negotiated service agreements. In such cases, the Postal Service practice of negotiating a stipulation and agreement, which typically helps narrow the issues

<sup>11</sup> This does not preclude the disclosure of studies related to any other aspect of the agreement.