

understanding and evaluating the estimates summarized in the CRA, and provides some insight into the likely causes of the trends discerned in these summary figures.

The Commission will be able to use the information contained in adequately documented periodic reports to decide whether it should institute a classification case. Likewise, a customer or a competitor will be able to use information gained from adequately documented periodic reports to determine whether rates are in violation of the policies of the Act and whether a complaint should be filed with the Commission. Both are functions that the Act authorizes the Commission and the public to perform whether or not the Postal Service is litigating an omnibus rate request. The Commission, customers, and competitors of the Postal Service cannot make adequately informed decisions to invoke these provisions of the Act between omnibus rate cases if they cannot competently interpret or evaluate the Postal Service's routine financial reports.

More important, the partial documentation of periodic reports that the rule requires facilitates the processing of future rate, classification, or complaint cases because it gives the Commission and the affected public some hope of keeping current with the "state of the art" by which the Postal Service attributes costs to the classes of mail. The rule does not require the Postal Service to explain or justify the changes that it has made to its cost attribution engine, but it requires the Postal Service to disclose changes to the mechanical process by which that engine attributes costs. This will allow the Commission and the interested public to identify what the Postal Service's current CRA does, if not why it does it. By staying informed of what the Postal Service's current cost attribution engine actually does, the Commission and the interested public will be able to respond more quickly to an omnibus rate request, or to a case filed by the Postal Service under expedited rules, because they will not have to spend a substantial portion of the available litigation window reacquiring this necessary expertise.

The Periodic Reporting Rule requires the Postal Service to provide the basic datasets that it uses to produce its financial estimates in the CRA between cases. Public access to current datasets between rate cases is needed because they are the raw material that others must have if they are to develop their own cost attribution, volume forecasting, or revenue forecasting techniques that reflect current

operations. Providing these datasets between omnibus rate cases facilitates the functioning of the Act because it allows potential intervenors sufficient time to develop alternative techniques.

In omnibus rate cases, and in the various proceedings that are litigated under the Commission's expedited rules, intervenors are generally unable to develop alternative models of postal cost or volume behavior within the compressed litigation window provided. Because the Postal Service has custody of virtually all of the relevant data, it has an unlimited opportunity to develop such models. This imbalance is a basic flaw in the functioning of the Act, which presumes that all interested parties to a hearing will be afforded adequate due process and procedural fairness. If intervenors do not have the basic data with which to develop models between rate or classification cases, their right to present an opposing case in a rate hearing is unnecessarily limited and more theoretical than real. By requiring that the basic datasets used to produce the Postal Service's routine financial reports be made available to others between rate cases, the updated rule helps restore basic due process rights to intervenors who wish to develop alternative cost, volume, and revenue estimating procedures on which to base rates.

Differences Between the Proposed Rule and the Final Rule

The Postal Service argues that releasing enough information between omnibus rate cases to allow its routine financial reports to be evaluated, or enough data to allow others to develop alternative models of cost or volume behavior, subverts, rather than facilitates the intended functioning of the Act. It seems to interpret the Postal Reorganization Act to grant it immunity from such activity between omnibus rate cases. The Postal Service is primarily concerned about documenting its annual CRA report, complaining that the rule would require it to provide as much supporting documentation for it as it provides in support of an omnibus rate case. In order to meet the Postal Service objections to the additional burden that the updated rule would impose, the Commission has pared back its requirements to the minimum that will still serve the basic purposes of the rule. The Commission has also incorporated some additional flexibility in meeting the requirements of the rule.

The proposed rule required the Postal Service to provide three general classes of files used to produce the current year's CRA—(1) all input datasets, (2) all processing programs used to attribute

mail processing costs, and (3) all other processing programs that have changed since the most recently completed omnibus rate case. See proposed Rule 102(a), Attachment to the NPR, at page 1 of 4. The final rule narrows the first general class of files to input datasets that have changed since the last general rate case. It deletes the second general category of files, and retains the third general category. Under the final rule, datasets that have not changed, such as those from already-documented special studies, need not be provided. Similarly, under the final rule, processing programs used to attribute mail processing costs that have not changed need not be provided. See final Rule 102(a)(1).

The final rule is more flexible than the proposed rule with respect to datasets and processing programs that have been used for the first time to produce the CRA. If the Postal Service uses an estimation technique based on a new special study, the Postal Service may, under the final rule, choose to provide the Commission and the interested public with a short written narrative, or an oral briefing on that technique. The narrative or briefing should describe the data, the variables, and the analytical method used (such as the regression equation used). The purpose of the presentation would be to explain how the method was applied. The Postal Service may reserve its right to discuss the merits of its new method relative to alternative methods in the context of a formal hearing. After the written or oral presentation, the Postal Service may request a waiver of the requirement that input data and processing programs used to apply the new method be provided. If the presentation is sufficient to allow others to understand how the estimates affected by the new method were obtained, the requirement that the Postal Service provide the input data and processing programs used may be waived. See final Rule 102(a)(1)(ii).²

In its NPR, the Commission noted that there are significant differences between the methods used by the Commission and the Postal Service to attribute mail processing costs to subclasses of mail. It also noted that the methods that the

² The Postal Service did not analyze specific language of the proposed rule in its substantive comments. It complained generally, however, that the proposed rule is "broadly worded," and cited this as one ground for concluding that it would require it to provide documentation that is comparable to an omnibus rate case in its "scale and scope." Substantive Comments of the United States Postal Service (July 2, 2003) at 4, 22. Presumably it was referring to proposed paragraph 102(a)(1), since the remaining language in the rule is quite specific.