

## Postal Rate Commission

## § 3001.171

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.

[66 FR 54441, Oct. 29, 2001, as amended at 68 FR 12590, Mar. 17, 2003]

### § 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 rec-

ommended 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.

## Subpart J—Rules for Expedited Review of Requests for Provisional Service Changes of Limited Duration

SOURCE: 66 FR 54443, Oct. 29, 2001, unless otherwise noted.

### § 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

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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 November 28, 2001 through November 28, 2006.

**§ 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 the rules of practice. 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 intervene pursuant to §3001.20 within 28 days after the filing of a formal request made under the provisions of this subpart.