DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113007–99]

RIN 1545–AU98

Obligations of States and Political Subdivisions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the definition of private activity bond applicable to tax-exempt bonds issued by State and local governments.

DATES: The public hearing originally scheduled for Tuesday, September 9, 2003, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Treena Garrett of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), (202) 622–3401 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on Wednesday, May 14, 2003, (68 FR 25845), announced that a public hearing was scheduled for Tuesday, September 9, 2003, at 10 a.m. in the Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 141 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Tuesday, August 19, 2003. Outlines of oral comments were due on Tuesday, August 19, 2003.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Thursday, August 28, 2003, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, September 9, 2003, is cancelled.

Cynthia E. Grigsby,

Acting Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

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POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM2003–5; Order No. 1383]

Negotiated Service Agreements

AGENCY: Postal Rate Commission.

ACTION: Proposed rule.

SUMMARY: This document provides notice that the Commission is establishing a docket to address the first in a series of anticipated rulemakings concerning negotiated service agreement dockets. This initial rulemaking concerns baseline and functionally equivalent negotiated service agreements. It provides guidance to the Postal Service and others on the procedures the Commission proposes following for certain negotiated service agreement requests. It also establishes the organizational framework for the comprehensive set of rules. Adoption of these rules, with any revisions deemed appropriate after considering comments, will facilitate expeditious consideration of negotiated service agreements.

DATES: Initial comments due September 29, 2003; reply comments due October 14, 2003.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system, which can be accessed at *http://www.PRC.gov.*

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6818.

SUPPLEMENTARY INFORMATION:

Introduction

In opinion and recommended decision, docket no. MC2002–2, (Opinion) the Commission made a commitment to initiate a series of rulemakings designed to facilitate consideration of Postal Service requests based on negotiated service agreements.[1] See Opinion paras. 1006, 2007, 4026, 4041–2, 7026, and 8023. This notice and order represents the initiation of the first such rulemaking, and will address rules applicable to consideration of Postal Service requests to recommend baseline negotiated service agreements and negotiated service agreements that are functionally equivalent to then-effective negotiated service agreements.[2] The intent of this rulemaking is to facilitate the consideration of baseline negotiated service agreements and the extension of the terms and conditions of ongoing negotiated service agreements to similarly situated mailers. As the first such rulemaking, the proposed rules also establish the organizational framework for the complete set of Commission rules in regard to requests based on negotiated service agreements.

When the Postal Service filed its request of the United States Postal Service for a recommended decision on experimental changes to implement Capital One NSA (request), September 19, 2002, the Commission did not have procedural rules specifically tailored for consideration of negotiated service agreements. The Postal Service filed its request noting potential application of the Commission's rules for requests involving experimental changes. See rules 67–67d. Although the concept of a request based on a negotiated service agreement could be considered somewhat experimental, the functional elements of the request included features that were only of a limited experimental nature. See Opinion Chapter IV. Furthermore, the Commission's rules for experimental changes connote a standard of review and procedures appropriate for consideration of an experiment, which might not be appropriate for the review of a request based on a negotiated service agreement. Considering these issues and others that arose during the proceeding, such as initial intervention by parties to the negotiated service agreement and treatment of co-proponents discussed below, it became apparent that the process could be improved if the Commission's rules were revised specifically to accommodate consideration of negotiated service agreements.

The docket no. MC2002–2 experience provided the impetus for the Commission to propose rules specifically applicable to the review of Postal Service proposals based on negotiated service agreements. The goal of this rulemaking is foremost to develop rules to assure that Commission recommendations on proposals based on negotiated service agreements satisfy the requirements of the Act. The rules must balance the development of an adequate record against the burdens on

[1] Docket No. MC2002–2, Experimental Rate and Service Changes to Implement Negotiated Service Agreement with Capital One, was the first docket in which the Commission considered and recommended a Postal Service request predicated on a Negotiated Service Agreement.

[2] A baseline negotiated service agreement is a negotiated service agreement that is not predicated on a functionally equivalent negotiated service agreement currently in effect. The term ''baseline'' is used to denote that the negotiated service agreement potentially may form the basis of a future Postal Service request to recommend a functionally equivalent negotiated service agreement. The term emphasizes the policy that functionally equivalent negotiated service agreements should be made available to qualifying similarly situated mailers.

the participants and the Commission. The rules must assure the provision of a timely review, while safeguarding due process requirements. The rules also provide for a standard of review that is appropriate for negotiated service agreements.

This rulemaking considers rules for reviewing Postal Service proposals based on baseline and functionally equivalent negotiated service agreements. The intent of the proposed rules for functionally equivalent negotiated service agreements is to reduce the procedural burden and expedite the proceeding otherwise applicable to a de novo review of a new or unique baseline negotiated service agreement.

The proposed rules do not include a definition for what qualifies as a functionally equivalent negotiated service agreement. The many possible forms and features that a negotiated service agreement can encompass make development of a universal definition of functional equivalency difficult, if not impossible. The proposed rules place the burden on proponents to explain why the newly proposed negotiated service agreement is functionally equivalent to a previously recommended negotiated service agreement.[3] The Commission will be left to decide, on a case by case basis, whether the Postal Service has met this burden. If the case for functional equivalency is not persuasive, the request will be subject to § 3001.195.

A. General Rules

Proposed § 3001.5(r)—Definitions

The proposed rules begin with a definition of the term ''negotiated service agreement.'' The definition is necessary for distinguishing the applicability of the proposed rules from rules that cover other subject areas. Several concepts are important in the definition. First, a negotiated service agreement is a contract. Second, the terms and conditions of the contract apply only to the Postal Service and the specific mailer, or mailers, named in the contract. Third, the contract controls the provision of mailer-specific rates, fees, and/or postal services. Fourth, the duration of the contract must be defined in the contract.[4] Finally, the contract must be memorialized in writing. The proposed definition of a negotiated service agreement appears in attachment A, § 3001.5(r).[5]

Proposed § 3001.51 and § 3001.61—Applicability Amendments

The proposed amendments to rules 51 and 61 specify that Postal Service requests based on negotiated service Agreements, which otherwise would be considered pursuant to subparts B or C, shall instead be considered pursuant to subpart L.

Proposed § 3001.190—Applicability

Subsection (a) establishes that the rules proposed under subpart L, ''Rules Applicable to Negotiated Service Agreements,'' are applicable to Postal Service proposals based on negotiated service agreements. This subsection also incorporates subpart A, ''Rules of General Applicability,'' into subpart L.

Subsection (b) states the general policy considerations of the Commission to justify the need for the proposed rules for negotiated service agreements. These policy considerations do not supercede any provision of the Act, but merely highlight issues that the Commission will consider important when reviewing negotiated service agreements.

This subsection also expresses the Commission's strong preference that negotiated service agreements be limited in duration to three years or less. Negotiated service agreements by their nature have features that are discriminatory, and have the potential to cause harm to the marketplace.[6] There also is a potential for harm to the Postal Service, and thereby to other mailers, where negotiated service agreements are predicated on less than complete knowledge of the mailer-specific mailing costs and characteristics.[7] Furthermore, over time, the material facts on which an agreement is based will tend to change, making uncertain the future benefits of any agreement. Imposing a maximum duration limits the time that any potential risk might be in effect, and allows a fixed time over which an analysis can be performed to quantify this risk. It also provides an opportunity to periodically analyze the pros and cons of allowing the agreement to extend into the future.

The Commission's preference to place a limit on duration is also based on the concern that the interaction between negotiated service agreements and omnibus rate cases is not understood. Overall Postal Service costs and revenues are reviewed during every omnibus rate proceeding—which typically occur every three years. The methodology for incorporating the impact of negotiated service agreements into an omnibus rate case has not been developed. Furthermore, the effect of an omnibus rate case on a negotiated service agreement is not known. There is a potential that the impact of negotiated service agreements on overall costs and revenue, information that is required when considering an omnibus rate case, could perpetually escape review if not properly incorporated. While the preference for a maximum three-year duration does not fully address these concerns, it should at least help by placing bounds on the possible effects of negotiated service agreements which must be evaluated in future omnibus rate proceedings.

The preference for a three-year maximum duration contains two explanatory notes. The proposed subpart L contemplates a procedure for rapid and repeated renewals of a previously recommended negotiated service agreement. There is no known reason that a negotiated service agreement that is shown to benefit the Postal Service, meets the statutory requirements, and does not cause any undue harm, should not be allowed to be renewed indefinitely. The proposed rule also allows for the prompt review of a functionally equivalent negotiated service agreement. The intent of the rule is that the duration of the functionally equivalent negotiated service agreement should not be dependent on the duration of the underlying negotiated

[3] Functional equivalency is broader than the literal terms and conditions of the negotiated service agreement. Just as similarly situated mailers do not necessarily have to have identical characteristics, functionally equivalent negotiated service agreements do not necessarily have to have identical terms and conditions. The Commission will have to examine the facts and surrounding circumstances of each proposal to make a functional equivalency determination. As an example of factors outside of the literal terms and conditions of the negotiated service agreement, whether the Postal Service derives a ''functionally equivalent'' benefit from the proposed agreement could bear on an argument for functional equivalency.

[4] The proposed language is interpreted to be broad enough to include allowing for triggering events that may initiate or terminate the contract, in addition to setting a fixed duration.

[5] The complete text of each proposed rule appears in attachment A. The proposed rules in attachment A should be read in parallel with the explanations provided in this notice and order.

[6] Negotiated service agreements are discriminatory in that their application is restricted to the contracting parties. The negative connotation of discrimination is presumed to be ameliorated by making similar negotiated service agreements available to similarly situated mailers. The proposed rules are designed to facilitate this process.

[7] For example, the Capital One Negotiated Service Agreement was predicated on Postal Service average costs as opposed to mailer-specific costs, and on less than complete knowledge of Capital One's likely future mailing strategies.

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 that 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.

what was filed. Furthermore, even if the agreement were signed, the agreement does not go into effect until after the Commission submits its opinion and recommended decision, and the Governors of the United States Postal Service provide their approval. Thus, the actual signatures have very little effect on the Commission's proceeding and will not be required.

The intent of the Commission is to make the actual contracts publicly available on the Commission's Web site. The Postal Service should take this into consideration while constructing its contracts by avoiding use of what might be considered proprietary information. Public disclosure is necessary to curtail any claim of discrimination or secret dealing, to make the operations of the Postal Service more transparent, and most importantly, to provide other similarly situated mailers the opportunity to seek similar negotiated service agreements. Any request for protective conditions being placed on the contract itself will have to meet a high burden before being granted.

Subsection (c) requires the Postal Service to provide a statement describing and explaining the proposed changes to the domestic mail classification schedule and any associated rate schedule. This includes the actual proposed changes to the text of the domestic mail classification schedule, and any associated rate schedule, presented in legislative format. The requirements of this rule do not differ from similar rules that the Postal Service currently complies with when filing rate, fee, or classification requests.

Subsection (d) requires the Postal Service to describe the operative components of the negotiated service agreement. For instance, the Capital One NSA contained two operative components, the declining block discount component, and the return mail/address correction component. The level of detail provided with the Capital One NSA request and associated testimony was appropriate for meeting this requirement. This subsection generally requires the Postal Service to explain how the components work. There should be a detailed explanation of the actions required by the Postal Service and the actions required by the other co-proponents in implementing the agreement. There also should be an explanation of why each action has a benefit to each party, and an explanation of any risks. This is necessary to provide a fuller understanding of the benefits and risks of proceeding with the agreement.

This subsection also requires an explanation of the reasons and bases for including particular components in the agreement. In the case of agreements based on multiple components, it is expected that there be an explanation of why the components are proposed to be grouped together, and not offered separately. There also should be a discussion of any interactions between the components, where necessary. For example, with the Capital One NSA the block discount acted as an incentive to increase mail volume and as a method of returning to Capital One a portion of the savings earned through the address correction component.

Subsection (e) requires the Postal Service to provide a financial analysis of the proposed agreement. Several concepts are important in the proposed rule. The analysis is to be performed over the duration of the agreement, and for each year that the agreement is in effect. The analysis is to use mailer-specific information, where practical. Both before implementation and after implementation financial conditions must be analyzed. Finally, the proposed rule requires an analysis of the agreement's effect on institutional cost contributions.

In the Capital One NSA case, the Commission had no established guidelines for presenting a classification and rate request premised on a negotiated service agreement. There, the Postal Service used a test-year analysis method. Test-year analysis provides probative estimates for omnibus rate cases, however, it proved ill-suited to requests based on negotiated service agreements where the Postal Service is negotiating detailed custom agreements of specified duration.

The Postal Service is expected to understand the ramifications of its contract negotiations. One of the important issues that the Postal Service should be considering when entering into a new agreement is whether it will be financially better or worse off by entering into the agreement. Positive cash flow in the test-year, especially where the test-year is chosen to be the first year of a multi-year agreement, is not necessarily indicative of cash flow in the subsequent years. The test-year approach is the best way to estimate the vast number of aspects of national economic activities. For a limited participation, limited duration contract, good business practice dictates a more focused analysis. The Postal Service presumably will not make a determination based solely on a test-year analysis, nor should the Commission have to make a recommendation based on the limited insight provided by such an analysis.

The proposed rule provides that the Postal Service use mailer-specific information in its analysis, where practical. Using mailer-specific information should result in an analysis that more accurately represents the actual before and after financial effects of the negotiated service agreement on the Postal Service. Using system average information is less likely to give a true representation of the financial effects of the agreement, especially in cases where the mailer's characteristics do not coincide with the system-wide averages.

Use of mailer-specific information becomes more important where a facet of the agreement is based on the mailer deviating from the averages. For example, part of the justification for the Capital One NSA was Capital One's higher than average return rate. This information was vital in analyzing the benefit of the agreement to the Postal Service. Even more mailer-specific information than presented by the Postal Service would have been helpful in accurately analyzing the true costs that the Postal Service incurs in handling Capital One's mail.

The rule proposes that the Postal Service provide an initial analysis of cost, volume, and revenue assuming the rates and fees in effect absent the implementation of the negotiated service agreement. A second analysis is then required that assumes the implementation of the agreement. Each component or feature of the agreement should be independently analyzed in evaluating the overall financial impact. The results of the individual analyses should then be combined to provide an indication of the overall impact of the agreement on the finances of the Postal Service. When used in conjunction with the data collection plan, discussed below, this analysis also can form the basis for tracking the performance of the agreement.

Finally, the rule proposes that the Postal Service provide an analysis of the effect of the negotiated service agreement on contribution. This analysis should verify that the Postal Service will be no worse off as a result of the agreement. It should consider the effect on contribution from mailers that are not parties to the agreement. This is necessary to evaluate concerns raised by Professor Panzar in docket no. MC2002–2. Panzar discussed a potential problem where contribution to the Postal Service received from parties to an agreement increases, but the system-wide contribution might decrease due to competitive effects in the marketplace.

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

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.[11]

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.

[11] This does not preclude the disclosure of studies related to any other aspect of the agreement.

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

for consideration, should become unnecessary.

Proposed §§ 3001.197 and 3001.198—Procedural Rules

Proposed §§ 3001.197 and 3001.198 are reserved for use in future rulemakings governing specific rules for renewal and modifications of negotiated service agreements.

Comments

By this order, the Commission hereby gives notice that comments from interested persons concerning the proposed amendments to the Commission's rules are due on or before September 29, 2003. Reply comments may also be filed and are due October 14, 2003.

Representation of the General Public

In conformance with § 3624(a) of title 39, the Commission designates Shelley S. Dreifuss, director of the Commission's office of the consumer advocate, to represent the interests of the general public in this proceeding. Pursuant to this designation, Ms. Dreifuss will direct the activities of Commission personnel assigned to assist her and, upon request, will supply their names for the record. Neither Ms. Dreifuss nor any of the assigned personnel will participate in or provide advice on any Commission decision in this proceeding.

Ordering Paragraphs

It is ordered:

1. Docket No. RM2003–5 is established to consider Commission rules applicable to Postal Service proposals requesting Commission review of baseline negotiated service agreements and negotiated service agreements that are functionally equivalent to previously recommended negotiated service agreements.

2. Interested persons may submit comments no later than September 29, 2003.

3. Reply comments also may be filed and are due October 14, 2003.

4. Shelley S. Dreifuss, director of the office of the consumer advocate, is designated to represent the interests of the general public in this docket.

5. The Secretary shall arrange for publication of this notice of proposed rulemaking in the **Federal Register**.

Issued: August 27, 2003.

Dated: August 28, 2003.

By the Commission.

Steven W. Williams,

Secretary.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons set forth in the preamble, the Commission proposes to amend 39 CFR part 3001 as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b); 3603; 3622–24, 3661, 3663.

Subpart A—Rules of General Applicability

2. Amend § 3001.5 by adding new paragraph (r) to read as follows:

§ 3001.5 Definitions.

* * * * *

(r) *Negotiated Service Agreement* means a written contract, to be in effect for a defined period of time, between the Postal Service and a mailer, that provides for customer-specific rates or fees and/or postal services in accordance with the terms and conditions of the contract.

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

3. Revise § 3001.51 to read as follows:

§ 3001.51 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to § 3622 of the Act that the Commission submit a recommended decision on changes in a rate or rates of postage or in a fee or fees for postal service if the Postal Service determines that such changes would be in the public interest and in accordance with the policies of the Act. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart. For requests of the Postal Service based on Negotiated Service Agreements, the rules applicable to negotiated service agreements, Subpart L, supersede the otherwise applicable rules of this subpart.

Subpart C—Rules Applicable to Requests for Establishing or Changing the Mail Classification Schedule

4. Revise § 3001.61 to read as follows:

§ 3001.61 Applicability.

The rules in this subpart govern the procedure with regard to requests of the Postal Service pursuant to § 3623 of the Act that the Commission submit a recommended decision on establishing or changing the mail classification schedule. The Rules of General Applicability in Subpart A of this part are also applicable to proceedings on requests subject to this subpart. For requests of the Postal Service based on Negotiated Service Agreements, the Rules Applicable to Negotiated Service Agreements, Subpart L, supersede the otherwise applicable rules of this subpart.

5. Amend Part 3001 by adding Subpart L—Rules Applicable to Negotiated Service Agreements to read as follows:

Subpart L—Rules Applicable to Negotiated Service Agreements

Sec.
3001.190 Applicability.
3001.191 Filing of formal requests.
3001.192 Filing of prepared direct evidence.
3001.193 Contents of formal requests.
3001.194 Failure to comply.
3001.195 Requests to recommend a baseline negotiated service agreement.
3001.196 Requests to recommend a negotiated service agreement that is functionally equivalent to a previously recommended negotiated service agreement.
3001.197 Requests to renew previously recommended Negotiated Service Agreements with existing participant(s). [Reserved]
3001.198 Requests to modify previously recommended Negotiated Service Agreements. [Reserved]

Subpart L—Rules Applicable to Negotiated Service Agreements

§ 3001.190 Applicability.

(a) The rules in this subpart govern requests of the Postal Service for recommended decisions pursuant to § 3622 or § 3623 that are based on Negotiated Service Agreements. The Rules of General Applicability in subpart A of this part are also applicable to proceedings on requests subject to this subpart. The requirements and procedures specified in these sections apply exclusively to requests predicated on Negotiated Service Agreements, and except where specifically noted, do not supersede any other rules applicable to Postal Service requests for recommendation of changes in rates or mail classifications.

(b) In administering this subpart, it shall be the policy of the Commission to recommend Negotiated Service Agreements that are consistent with statutory criteria, and benefit the Postal Service, without causing unreasonable harm to the marketplace. Except in extraordinary circumstances and for

good cause shown, the Commission shall not recommend Negotiated Service Agreements of more than three years duration; however, this limitation is not intended to bar the Postal Service from requesting:

(1) The renewal of the terms and conditions of a previously recommended Negotiated Service Agreement, *see* § 3001.197; or

(2) Recommendation of a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement, *see* § 3001.196.

§ 3001.191 Filing of formal requests.

(a) Whenever the Postal Service proposes to establish or change rates or fees and/or the mail classification schedule based on a Negotiated Service Agreement, the Postal Service shall file with the Commission a formal request for a recommended decision. The request shall clearly state whether it is a request for a recommended decision pursuant to:

(1) The review of a baseline Negotiated Service Agreement, *see* § 3001.195;

(2) The review of a Negotiated Service Agreement that is functionally equivalent to a previously recommended Negotiated Service Agreement, *see* § 3001.196;

(3) The renewal of the terms and conditions of a previously recommended Negotiated Service Agreement, *see* § 3001.197; or

(4) The modification of the terms and conditions of a previously recommended Negotiated Service Agreement, *see* § 3001.198. Such request shall be filed in accordance with the requirements of §§ 3001.9 through 3001.12. Within 5 days after the Postal Service has filed a formal request for a recommended decision in accordance with this subsection, the Secretary shall lodge a notice thereof with the director of the Office of **Federal Register** for publication in the **Federal Register**.

(b) The Postal Service shall clearly identify all parties to the Negotiated Service Agreement. Identification by the Postal Service shall serve as Notice of Intervention for such parties. Parties to the Negotiated Service Agreement are to be considered co-proponents, procedurally and substantively, during the Commission's review of the proposed Negotiated Service Agreement.

§ 3001.192 Filing of prepared direct evidence.

(a) Simultaneously with the filing of the formal request for a recommended decision under this subpart, the Postal Service and its co-proponents shall file all of the prepared direct evidence upon which they propose to rely in the proceeding on the record before the Commission to establish that the proposed Negotiated Service Agreement is in the public interest and is in accordance with the policies and the applicable criteria of the Act. Such prepared direct evidence shall be in the form of prepared written testimony and documentary exhibits, which shall be filed in accordance with § 3001.31.

(b) Direct evidence may be filed in support of the Negotiated Service Agreement prepared by, or for, any party to the Negotiated Service Agreement. Direct evidence in support of the Negotiated Service Agreement prepared by, or for, any party to the Negotiated Service Agreement shall not be accepted without prior Postal Service review. The Postal Service shall affirm that the Postal Service has reviewed such testimony and that such testimony may be relied upon in presentation of the Postal Service's direct case.

§ 3001.193 Contents of formal requests.

(a) *General requirements.* (1) Each formal request filed under this subpart shall include such information and data and such statements of reasons and bases as are necessary and appropriate fully to inform the Commission and the parties of the nature, scope, significance, and impact of the proposed changes or adjustments in rates, fees, and/or the mail classification schedule associated with the Negotiated Service Agreement, and to show that the changes or adjustments are in the public interest and in accordance with the policies and the applicable criteria of the Act. To the extent information is available or can be made available without undue burden, each formal request shall include the information specified in paragraphs (b) through (k) of this section. If the required information is set forth in the Postal Service's prepared direct evidence, it shall be deemed to be part of the formal request without restatement.

(2) If any information required by paragraphs (b) through (k) of this section is not available and cannot be made available without undue burden, the request shall include a request for waiver of that requirement supported by a statement explaining with particularity:

(i) The information which is not available or cannot be made available without undue burden;

(ii) The reason or reasons that each such item of information is not available and cannot be made available without undue burden;

(iii) The steps or actions which would be needed to make each such item of information available, together with an estimate of the time and expense required therefor;

(iv) Whether it is contemplated that each such item of information will be supplied in the future and, if so, at what time; and

(v) Whether sufficiently reliable estimates are available to mitigate the need for such information, and if so, the specifics of such estimates.

(3) If the Postal Service believes that any of the data or other information required to be filed under § 3001.193 should not be required in light of the character of the request, it shall move for a waiver of that requirement, stating with particularity the reasons why the character of the request and its circumstances justify a waiver of the requirement.

(4) Grant of a waiver under (a)(2) or (a)(3) will be grounds for excluding from the proceeding a contention that the absence of the information should form a basis for rejection of the request, unless the party desiring to make such contention:

(i) 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 information and submitted it in accordance with § 3001.193; or

(ii) Demonstrates other compelling and exceptional circumstances requiring that the absence of the information in question be treated as bearing on the merits of the proposal.

(5) The provisions of paragraphs (a)(2) and (a)(3) of this section for the Postal Service to include in its formal request certain alternative information in lieu of that specified by paragraphs (b) through (k) of this section are not in derogation of the Commission's and the presiding officer's authority, pursuant to §§ 3001.23 through 3001.28, respecting the provision of information at a time following receipt of the formal request.

(6) The Commission may request information in addition to that required by paragraphs (b) through (k) of this section.

(b) *Negotiated Service Agreement.* Every formal request shall include a copy of the Negotiated Service Agreement.

(c) *Rates and standards information.* Every formal request shall include a description of the proposed rates, fees, and/or classification changes, including proposed changes, in legislative format, to the text of the Domestic Mail Classification Schedule and any associated rate schedule.

(d) *Description of agreement.* Every formal request shall include a statement describing and explaining the operative components of the Negotiated Service Agreement. The statement shall include the reasons and bases for including the components in the Negotiated Service Agreement.

(e) *Financial analysis.* Every formal request shall include an analysis of the effects of the Negotiated Service Agreement on Postal Service volumes, costs and revenues. The analysis shall:

(1) Be performed over the duration of the agreement, and for each individual year that the agreement is in effect;

(2) Provide such detail that the analysis of each component of a Negotiated Service Agreement can be independently reviewed;

(3) Be prepared in sufficient detail to allow independent replication, including citation to all referenced material;

(4) Include an analysis, which sets forth the estimated mailer-specific costs, volumes, and revenues of the Postal Service for each year that the Negotiated Service Agreement is to be in effect assuming the then effective postal rates and fees absent the implementation of the Negotiated Service Agreement;

(5) Include an analysis which sets forth actual and estimated mailer-specific costs, volumes, and revenues of the Postal Service which result from implementation of the Negotiated Service Agreement;

(6) Include a discussion of the effects of the Negotiated Service Agreement on contribution to the Postal Service (including consideration of the effect on contribution from mailers who are not parties to the agreement);

(7) Utilize mailer-specific costs, and provide the basis used to determine such costs, including a discussion of material variances between mailer-specific costs and system-wide average costs; and

(8) Utilize mailer-specific volumes and elasticity factors, and provide the bases used to determine such volumes and elasticity factors. If mailer-specific costs or elasticity factors are not available, the bases of the costs or elasticity factors that are proposed shall be provided, including a discussion of the suitability of the proposed costs or elasticity factors as a proxy for mailer-specific costs or elasticity factors.

(f) *Impact analysis.* Every formal request shall include an estimate of the impact over the duration of the Negotiated Service Agreement on:

(1) Competitors of the parties to the Negotiated Service Agreement other than the Postal Service;

(2) Competitors of the Postal Service; and

(3) Mail users.

The Postal Service shall include a copy of any completed special studies that were used to make such estimates. If special studies have not been performed, the Postal Service shall state this fact and explain the alternate bases of its estimates.

(g) *Data collection plan.* Every formal request shall include a proposal for a data collection plan, which shall include a comparison of the analysis presented in § 3001.193(f)(5) with the actual results ascertained from implementation of the Negotiated Service Agreement. The results shall be reported to the Commission on an annual or more frequent basis.

(h) *Workpapers.*

(1) Whenever the Service files a formal request it shall accompany the request with seven sets of workpapers, five for use by the Commission staff and two which shall be available for use by the public at the Commission's offices.

(2) Workpapers shall contain:

(i) Detailed information underlying the data and submissions for paragraphs (b) through (k) of this section;

(ii) A description of the methods used in collecting, summarizing and expanding the data used in the various submissions;

(iii) Summaries of sample data, allocation factors and other data used for the various submissions;

(iv) The expansion ratios used (where applicable); and

(v) The results of any special studies used to modify, expand, project, or audit routinely collected data.

(3) Workpapers shall be neat and legible and shall indicate how they relate to the data and submissions supplied in response to paragraphs (b) through (k) of this section.

(4) Workpapers shall include citations sufficient to enable a reviewer to trace any number used but not derived in the associated testimony back to published documents or, if not obtained from published documents, to primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, *e.g.*, by reference to document, page, line, column, etc. With the exception of workpapers that follow a standardized and repetitive format, the required citations themselves, or a cross-reference to a specific page, line, and column of a table of citations, shall appear on each page of each workpaper. Workpapers that follow a standardized and repetitive format shall include the citations described in this paragraph for a sufficient number of representative examples to enable a reviewer to trace numbers directly or by analogy.

(i) *Certification by officials.* (1) Every formal request shall include one or more certifications stating that the cost statements and supporting data submitted as a part of the formal request, as well as the accompanying workpapers, which purport to reflect the books of the Postal Service, accurately set forth the results shown by such books.

(2) The certificates required by paragraph (j)(1) of this section shall be signed by one or more representatives of the Postal Service authorized to make such certification. The signature of the official signing the document constitutes a representation that the official has read the document and that, to the best of his/ her knowledge, information and belief, every statement contained in the instrument is proper.

(j) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with any requirements of this subpart.

§ 3001.194 Failure to comply.

If the Postal Service fails to provide any information specified by this subpart, or otherwise required by the presiding officer or the Commission, the Commission, upon its own motion, or upon motion of any participant to the proceeding, may stay the proceeding until satisfactory compliance is achieved. The Commission will stay proceedings only if it finds that failure to supply adequate information interferes with the Commission's ability promptly to consider the request and to conduct its proceedings with expedition in accordance with the Act.

§ 3001.195 Requests to recommend a baseline negotiated service agreement.

(a) This section governs Postal Service requests for a recommended decision in regard to a baseline Negotiated Service Agreement, *e.g.*, a Negotiated Service Agreement that is not predicated on a functionally equivalent Negotiated Service Agreement currently in effect. The purpose of this section is to establish procedures which provide for maximum expedition of review consistent with procedural fairness, and which allows for the recommendation of a baseline Negotiated Service Agreement. The Postal Service request shall include:

(1) A written justification for requesting a Negotiated Service Agreement classification as opposed to a more generally applicable form of classification;

(2) A description of the operational bases of the Negotiated Service Agreement, including activities to be performed and facilities to be used by both the Postal Service and the mailer under the agreement; and

(3) A statement of the parties' expectations regarding performance under the Negotiated Service Agreement, including the possibility of cancellation or re-negotiation of the agreement, and the perceived potential for renewal of the agreement for an additional period.

(b) The Commission will treat requests predicated on a baseline Negotiated Service Agreement as subject to the maximum expedition consistent with procedural fairness. A schedule will be established, in each case, to allow for prompt issuance of a decision.

§ 3001.196 Requests to recommend a negotiated service agreement that is functionally equivalent to a previously recommended negotiated service agreement.

(a) This section governs Postal Service requests for a recommended decision in regard to a Negotiated Service Agreement that is proffered as functionally equivalent to a Negotiated Service Agreement previously recommended by the Commission and currently in effect. The previously recommended Negotiated Service Agreement shall be referred to as the baseline agreement. The purpose of this section is to establish procedures that provide for accelerated review of functionally equivalent Negotiated Service Agreements. The Postal Service request shall include:

(1) A detailed description of how the proposed Negotiated Service Agreement is functionally equivalent to the baseline agreement;

(2) A detailed description of how the proposed Negotiated Service Agreement is different from the baseline agreement;

(3) Identification of the record testimony from the baseline agreement docket, or any other previously concluded docket, on which the Postal Service proposes to rely, including specific citation to the locations of such testimony;

(4) Any available special studies developing information pertinent to the proposed Negotiated Service Agreement;

(5) If applicable, the identification of circumstances unique to the request; and

(6) If applicable, a proposal for limitation of issues in the proceeding, except that the following issues will be relevant to every request predicated on a functionally equivalent Negotiated Service Agreement:

(i) The financial impact of the Negotiated Service Agreement on the Postal Service over the duration of the agreement;

(ii) The fairness and equity of the Negotiated Service Agreement in regard to other users of the mail; and

(iii) The fairness and equity of the Negotiated Service Agreement in regard to the competitors of the parties to the Negotiated Service Agreement.

(b) When the Postal Service submits a request predicated on a functionally equivalent Negotiated Service Agreement, it shall provide written notice of its request, either by hand delivery or by First-Class Mail, to all participants in the Commission docket established to consider the baseline agreement.

(c) The Commission will schedule a prehearing conference for each request. Participants shall be prepared to address whether or not it is appropriate to proceed under § 3001.196 at that time. After consideration of the material presented in support of the request, and the argument presented by the participants, if any, the Commission shall promptly issue a decision on whether or not to proceed under § 3001.196. If the Commission's decision is to not proceed under § 3001.196, the docket will proceed under § 3001.195.

(d) The Commission will treat requests predicated on functionally equivalent Negotiated Service Agreements as subject to accelerated review consistent with procedural fairness. If the Commission determines that it is appropriate to proceed under § 3001.196, a schedule will be established which allows a recommended decision to be issued not more than:

(1) 60 days after the determination is made to proceed under § 3001.196, if no hearing is held; or

(2) 120 days after the determination is made to proceed under § 3001.196, if a hearing is scheduled.

§ 3001.197 Requests to renew previously recommended Negotiated Service Agreements with existing participant(s). [Reserved]

§ 3001.198 Requests to modify previously recommended Negotiated Service Agreements. [Reserved]

[FR Doc. 03–22478 Filed 9–3–03; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 287–0410b; FRL–7548–4]

Revisions to the California State Implementation Plan, Kern County Air Pollution Control District and San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Kern County Air Pollution Control District (KCAPCD) and San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portions of the California State Implementation Plan (SIP). The KCAPCD revisions concern the emission of particulate matter (PM–10) from agricultural burning and prescribed burning. The SJVUAPCD revision concerns the emission of oxides of nitrogen (NOX) from lime kilns. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by October 6, 2003.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; *steckel.andrew@epa.gov*.

You can inspect a copy of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see a copy of the submitted rule revisions and TSDs at the following locations:

Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, (Mail Code 6102T), Room B–102, 1301 Constitution Avenue, N.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA 93301.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

A copy of the rule may also be available via the Internet at *http://www.arb.ca.gov/drdb/drdbltxt.htm*. Please be advised that this is not an EPA