

sign the answer when filed, a signature page must be filed within ten days thereafter with the Commission, but need not be served on participants. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants pursuant to § 3001.12(b).

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and work hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time.

Objections are to be signed by the attorney making them. The party objecting to interrogatories shall serve the objections on the party who served the interrogatories within 10 days of the service of the interrogatories. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon the proponent of the interrogatory and the Postal Service. Special requests for service by other participants shall be honored.

(d) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the party who moved to compel the answer within 10 days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and on participants pursuant to § 3001.12(b).

6. Section 3001.26 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 3001.26 Requests for production of documents or things for purpose of discovery.**

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his/her behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon whom the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to a request shall serve the objection on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request for production. Special requests for service by other participants shall be honored.

7. Section 3001.27 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 3001.27 Requests for admissions for purpose of discovery.**

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes

of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon the Postal Service. Special requests for service by other participants shall be honored.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and work hours required to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests for admissions shall serve the objections on the party requesting admissions, upon the Secretary pursuant to § 3001.9 and upon the Postal Service, within 10 days of the request. Special requests for service by other participants shall be honored.

8. Section 3001.30 is amended by adding paragraph (i) to read as follows:

**§ 3001.30 Hearings.**

(i) *Transcript corrections.* Corrections to the transcript of a hearing should not be requested except to correct a material substantive error in the transcription made at the hearing.

Issued by the Commission on February 17, 1995.

**Margaret P. Crenshaw,**

*Secretary.*

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**39 CFR Part 3001**

[Docket No. RM95-1; Order No. 1042]

**Rules of Practice and Procedure**

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rule.

**SUMMARY:** In response to a petition filed by the United States Postal Service, the Postal Rate Commission initiated this rulemaking to consider re-enactment of special rules of practice and procedure applicable to Postal Service requests to change Express Mail rates in response to

market conditions. Interested persons were invited to comment. 59 FR 65985-65987 (December 22, 1994). After reviewing the comments submitted, the Commission has determined that the published rules should be re-enacted, subject to a five-year sunset provision.

**EFFECTIVE DATE:** These rules will become effective March 6, 1995 and ending March 6, 2000 if not re-enacted by the Commission after the provision of an opportunity for public comment.

**ADDRESSES:** Correspondence should be sent to Margaret P. Crenshaw, Secretary of the Commission, 1333 H Street NW, Washington, DC 20268-0001.

**FOR FURTHER INFORMATION CONTACT:** Stephen Sharfman, Legal Advisor (telephone: (202) 789-6820).

**SUPPLEMENTARY INFORMATION:** On August 15, 1994, the United States Postal Service filed a petition for institution of a rulemaking to re-enact Commission rules that establish special procedures for considering Postal Service requests to change Express Mail rates in response to market conditions. These rules, codified at 39 CFR 3001.57 through 3001.57c, were adopted as the culmination of the Commission's Docket No. RM88-2 in August, 1989; at that time, the Commission included a five-year sunset provision in 39 CFR 3001.57(b). Order No. 836, 54 FR 33681 (August 16, 1989). Consequently, by their own terms the rules ceased to be effective in mid-August of 1994.

The Commission granted the Postal Service's petition and began this rulemaking on December 14, 1994. Order No. 1038; Notice of Proposed Rulemaking, 59 FR 65985-87 (December 22, 1994). In its Notice of Proposed Rulemaking, the Commission published the pre-existing rules, stated its preliminary agreement with the Postal Service's position that the Express Mail market response rules should be retained, and established January 23, 1995, as the due date for comments by interested parties. *Id.* at 65985.

Two sets of comments were submitted in response to the Notice of Proposed Rulemaking in this docket.<sup>1</sup> United Parcel Service (UPS), a competitor of the Postal Service in the expedited delivery market, opposes re-enactment of the rules because: (1) Circumstances have changed since their initial adoption in

a manner that allegedly negates any possible justification for their continued existence; (2) the rules are unnecessary because other available Commission rules provide adequate avenues for expedited consideration of specific Postal Service rate requests; and (3) the rules allegedly are contrary to the letter and spirit of the Postal Reorganization Act, the Administrative Procedure Act, and fundamental considerations of due process. The Commission's Office of the Consumer Advocate (OCA) opposes re-enactment on similar grounds: that there is less demonstrable need for, and opportunity to use, the rules than was anticipated when they were adopted in Docket No. RM88-2; and that it would be more efficient to devise comprehensive rules of procedure applicable to any class of mail, in the context of the Commission's Procedural Streamlining Inquiry, Docket No. RM95-2. Because these comments raise a variety of issues, the latter will be grouped by category for consideration.

#### I. Alleged Legal Defects

Commenter United Parcel Service argues that certain features of rules 57 through 57c violate pertinent portions of the Postal Reorganization Act, the Administrative Procedure Act, and applicable due process requirements. For the most part, these comments replicate earlier arguments considered and rejected during the course of the RM88-2 proceeding, and the Commission finds them equally unpersuasive now.

UPS suggests that by contemplating the recommendation of Express Mail rates near the level of estimated attributable costs, the market response rules could yield rates which fail to recover the portion of institutional costs "reasonably assignable" to Express Mail, in contravention of 39 U.S.C. 3622(b)(3). UPS Comments at 7-8. UPS also argues that the recommendation of such rates would produce an overall rate schedule that fails to satisfy the "fair and equitable" standard of § 3622(b)(1). *Id.* at 8-9. However, these criticisms overlook the special rationale on which the market response rules are premised, and the particular restrictions on the rates which the Postal Service can propose under the rules. The appropriate level of "reasonably assignable" costs is determined by reference to the non-cost factors in § 3622(b);<sup>2</sup> the Postal Service could invoke rules 57 through 57c only where

one or more of the policies of the Act arguably applies with such force as to justify a minimal contribution to institutional costs.<sup>3</sup> Additionally, the rules establish two different protective rate floors which the Postal Service must observe in its requests. Under section 57b(b), the Service is forbidden to propose rates less than the *greater* of average per piece attributable costs: (1) As determined in the most recent omnibus rate case, or (2) as estimated for the most recent fiscal year for which information is available. Section 57b(b)(2) also prohibits proposal of a rate "for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service." The Commission retained these restrictions in the final rules adopted in Docket No. RM88-2, over the objections of the Postal Service, in order "to eliminate the risk that new Express Mail rates would be a burden on other classes of mail[.]" and to ensure "that the relationships among the classes of mail—in terms of contribution to institutional costs—are disturbed as little as possible." Order No. 836 at 15, 13. Thus, the Commission has already considered and accommodated the concerns raised by UPS, and there is no reasonable basis for concern that re-enactment of the rules would degrade the Commission's sound application of the § 3622(b) (1) and (3) factors.

The Commission also rejects the claims of UPS that the market response rules constitute "a clear license to engage in unfair competition with private sector enterprises, in violation of Section 3622(b)(4) [.] and that they "violate the discrimination prohibition in Section 403(c) of the Act" by establishing a preference for Express Mail users. UPS Comments at 9. During the course of the RM88-2 proceeding the Commission received comments from several parties—including the Bureau of Competition of the Federal Trade Commission—regarding the Postal Service's participation in the expedited parcel delivery market. On the basis of that record, the Commission concluded that there was no justification for:

\* \* \* any finding that the Postal Service is so restricting the ability of other firms to compete in the expedited delivery market through use of the Private Express Statutes that it should not be given even the potential

<sup>1</sup> Additionally, while no provision had been made for reply comments, Advertising Mail Marketing Association (AMMA) submitted reply comments on February 3, 1995, together with a motion for leave to file such comments. In order to avoid prejudice to other parties that may have been inclined to file replies, the Commission shall grant AMMA's motion only in part, and will consider its comments strictly as an expression of support for re-enactment of the pre-existing rules.

<sup>2</sup> See *National Association of Greeting Card Publishers v. U.S. Postal Service*, 462 U.S. 810, 834 (1983): "The Rate Commission is to assign remaining costs on the basis of the other eight factors set forth by § 3622(b)."

<sup>3</sup> Section 57a(c) requires that every formal request under §§ 57 through 57c "contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond."

to change its rate more quickly in response to developments in the market.

Notice of Proposed Rule, 54 FR 11404-11405 (March 20, 1989). The Commission also stated its resolve to "take into account the effect on the market" when recommending rates under the expedited rules. *Id.* No commenter in this docket claims that the Postal Service has engaged in anti-competitive conduct in the expedited delivery market in the interim.

As to the claim of preference in violation of § 403(c), the Commission concluded in RM88-2 that adoption of expedited procedural rules would not constitute "undue or unreasonable" discrimination because "Express Mail is the only class for which evidence supporting such rules has been given." *Id.* at 11399. Lacking evidence of a need to change rates for other classes expeditiously in response to competition, and of the likely impact such rate changes would have on postal finances, the Commission found it unreasonable to reject the proposed rules for Express Mail. The Commission also alluded to the possibility of extending the applicability of those rules, "[i]f it later appears that similar procedures might be suitable for another class. \* \* \*" *Id.* The Commission is in much the same posture in this docket, but with the significant difference that Docket No. RM95-2 has been initiated to consider "potential mechanisms for expediting its proceedings conducted under 39 U.S.C. 3624(a)," which includes rate change proceedings. See 59 FR 65987 (December 22, 1994). Consequently, the Commission's prior conclusion that the rules for Express Mail pose no undue preference problem is now reinforced by its contemporaneous docket to consider similar mechanisms for other types of requests.

The Commission also finds no merit in the arguments that the rules would operate in violation of the hearing requirements of the Administrative Procedure Act, or would trench upon the due process rights of intervenors. Contrary to those claims, the Postal Service would be required to sustain its burden as proponent under rules 57 through 57c, beginning with the data filing requirements laid down in § 3001.57a. If the Commission concludes that the Service's presentation poses one or more genuine issues of material fact, either at the suggestion of an intervenor or on its own motion, a formal hearing would be held. See § 57b(e)(5). Only in the event that *no* such issue was identified—an extremely rare occurrence in the

Commission's institutional experience—would a hearing not be held. In the absence of any genuine issue of material fact, the Commission would be under no obligation to conduct a hearing.<sup>4</sup>

The discovery and hearing procedures established in rule 57b admittedly require prompt action by all parties involved, in furtherance of the declared purpose "to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested parties." § 3001.57c. However, in fashioning these procedures in Docket No. RM88-2, the Commission devoted considerable effort to striking a workable balance between expedition and the due process rights of interested parties. In response to comments, the Commission rejected some of the expedited procedures proposed by the Postal Service and supplemented others. Notice of Proposed Rulemaking (Second Notice), 54 FR 11401-11403 (March 20, 1989); Notice of Proposed Rulemaking (Third Notice), 54 FR 25137-25139 (June 13, 1989). Nor did the Commission overlook the need for flexibility in administering the expedited procedural schedule. It stated: "If any particular date causes difficulty, the Presiding Officer can grant an extension of time \* \* \*. When the Commission reviews its experience with these rules, we will be prepared to judge whether any of the scheduled dates should be changed in the rules." Third Notice of Proposed Rulemaking, 54 FR 25139. Consequently, at this time the Commission finds no basis for concern that re-enactment of these carefully considered rules would jeopardize the due process rights of participants in proceedings under rules 57 through 57c.

## II. Institutional Issues

United Parcel Service also comments that re-enactment of the rules would be inappropriate because they allegedly pose a "risk of seriously undermining Congress' carefully crafted division of authority between the Commission and the Postal Service." UPS Comments at 15. UPS suggests that the rules would improperly delegate the Commission's responsibility for determining attributable costs to the Postal Service; could be invoked to nullify the Commission's rate recommendations for Express Mail in omnibus rate decisions and introduce reduced rates that could be in effect for years; and would serve as "a device for selectively deregulating postal ratemaking in the case of only

one favored class of mail." *Id.* at 15-16. In the Commission's view, these comments mischaracterize the purpose and intended operation of the Express Mail market response rules.

As the source and repository of the raw data from which cost estimates are derived, the Postal Service necessarily provides the principal input to the process of determining attributable cost levels. The Commission's functions thereafter are to provide a forum in which interested parties can probe and challenge the Service's estimates; and to decide whether the Service's proposals are supported by substantial evidence and consistent with the Postal Reorganization Act's policies and factors. Rules 57 through 57c provide expedited procedures, but also preserve these essential functions. They do not allow the Commission to recommend Express Mail rates that are unsupported by credible cost evidence or otherwise inconsistent with statutory factors. See the rule for decision in § 3001.57c. They will not be allowed to become a substitute for scrutiny in omnibus rate cases, as the Commission clearly stated in Docket No. RM88-2. See Second Notice of Proposed Rulemaking, 54 FR 11403 (March 20, 1989). Therefore, in no meaningful sense can they be characterized as a vehicle for deregulating Express Mail rates.

## III. The Question of Need

Both United Parcel Service and the Office of the Consumer Advocate take the position that, because of the Postal Service's failure to invoke rules 57 through 57c during their initial five-year period of effectiveness, and changed circumstances in the expedited delivery market in that time, there is no demonstrable need for re-enacting the rules. On the basis of available information, the Commission believes that this conclusion may be incorrect, and at the very least is premature. While the expedited delivery market doubtless has changed in five years, the Postal Service appears to be correct in its characterization that, "[t]he most important feature that distinguishes competitors is price." Postal Service Petition at 4; see PRC Op. R94-1, November 30, 1994, para. 5402. In this fiercely competitive market, it is possible that expeditious adjustments in Express Mail rates may be useful to sustain the viability of that service to meet future competitive exigencies.<sup>5</sup>

<sup>4</sup> See Costle v. Pacific Legal Foundation, 445 U.S. 198, 213-16 (1980).

<sup>5</sup> The Commission cannot agree with the contentions of UPS and OCA that the current modest contribution of Express Mail to the institutional costs of the Postal Service represents an "irreducible minimum" (OCA Comments at 4), leaving no room for operation of the market

Consequently, the Commission will re-enact rules 57 through 57c for an additional five-year period.<sup>6</sup>

#### IV. Regulatory Evaluation

It has been determined pursuant to 5 U.S.C. 605(b) that these rules will apply exclusively to the United States Postal Service in proceedings conducted by the Postal Rate Commission, and to parties who choose to participate in those proceedings. Therefore, it is certified that these rules will not have a significant impact on a substantial number of small entities under the terms of the Regulatory Flexibility Act, 5 U.S.C. 501 *et seq.* Because these rules will only apply to the Postal Service and other participants in Commission proceedings, it has also been determined that these rules do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment pursuant to Executive Order 12612. Inasmuch as the rules impose information-gathering and reporting requirements exclusively upon the United States Postal Service for the purpose of conducting postal rate proceedings, they do not contain any information collection requirements as defined in the Paperwork Reduction Act [44 U.S.C. 3502(4)], and consequently the review provisions of 44 U.S.C. 3507 and the implementing regulations in 5 CFR part 1320 do not apply.

#### List of Subjects in 39 CFR Part 3001

Administrative practices and procedure, Postal Service.

For the reasons set out in the preamble, 39 CFR part 3001 is amended as follows:

#### PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for 39 CFR part 3001 continues to read as follows:

**Authority:** 39 U.S.C. 404(b), 3603, 3622–24, 3661, 3662, 84 Stat. 759–62, 764, 90 Stat. 1303; [5 U.S.C. 553], 80 Stat. 383.

2. Sections 3001.57 through 3001.57c are added to subpart B to read as follows:

response rules. In recommending a 119 percent coverage for Express Mail in the recent omnibus rate case—a target “slightly lower than that proposed by the Postal Service”—the Commission neither stated nor suggested that this figure was an “irreducible minimum.” See PRC Op. R94–1, para. 4052. On the contrary, the finding that 119 percent is an acceptable coverage factor for Express Mail at this time suggests (all other things being equal) that market response rates nearer average estimated attributable costs would be *more* acceptable than if a higher coverage factor had been recommended in the last omnibus rate case.

<sup>6</sup>For the sake of clarity, section 57(b) of the re-enacted rules has been amended by deletion of the word “initially” from its first sentence.

#### § 3001.57 Market Response Rate Requests for Express Mail service—purpose and duration of rules.

(a) This section and §§ 3001.57a through 3001.57c only apply in cases in which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case. Further explanation concerning these rules can be found at 54 FR 11394–11413 (March 20, 1989), 54 FR 25132–42 (June 13, 1989) and PRC Order No. 836.

(b) This section and §§ 3001.57a through 57c are to be effective for the limited period of five years from the date of their adoption by the Commission. During that period the Commission will continue to analyze the need for these rules to enable the Postal Service to respond to changes in the market for expedited delivery services, and the impact of these procedures on Postal Service proposals. These rules will cease to be effective at the end of this period unless they have been reissued by the Commission following a Notice of Proposed Rulemaking published in the **Federal Register** which provides an appropriate opportunity for public comments.

#### § 3001.57a Market Response Rate Requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) of this section shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by § 3001.54 (b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or

fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 57a shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing available actual data). Volume and revenue estimates required by these rules shall utilize, to the extent practicable, the factors identified in rule 54(j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. The Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the actual Express Mail

revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case for each Express Mail service for which rate changes are proposed assuming:

(1) rates remain at their existing levels, and  
(2) rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;  
(ii) Total postage pounds of Express Mail rated at:  
(A) up to ½ pound,  
(B) ½ pound up to 2 pounds,  
(C) 2 pounds up to 5 pounds; and  
(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.57c the Postal Service shall provide, one year after the conclusion of the test period, the data described in § 3001.57a(j)(1)(i)–(iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include analyses to demonstrate:

(1) that the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b),

(2) that the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) that the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a certificate that service of the filing in accordance with § 3001.57b(c) has been made.

**§ 3001.57b Market Response Rate Requests—expedited of public notice and procedural schedule.**

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.57c rates lower than:

(1) the average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or  
(2) the average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.57a(e) for the most recent fiscal year for which information is available, whichever is higher. Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.57c. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response Registrant who maintains an address for service within the Washington metropolitan area and serve the

complete filing by Express Mail service on all other Registrants. Each Registrant is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.57c, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in accordance with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e) (1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for 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.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.57c unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its

recommended decision as promptly as is consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made within 10 days in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof. It is the Commission's intention that parties resolve discovery disputes informally between themselves whenever possible. The Commission, therefore, encourages the party receiving discovery requests considered to be unclear or objectionable to contact counsel for the party filing the discovery requests whenever further explanation is needed, or a potential discovery dispute might be resolved by means of such communication.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in (e)(5) of this section in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into

the evidentiary record, and should include a description of the evidence to be offered and the amount of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

**§ 3001.57c Express Mail Market Response—rule for decision.**

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.57c is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

Issued by the Commission on February 17, 1995.

**Margaret P. Crenshaw,**  
*Secretary.*

[FR Doc. 95-5115 Filed 3-3-95; 8:45 am]

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[CA 95-3-6638a; FRL-5159-9]

**Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; San Joaquin Valley Unified Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern a rule from the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD). The revised rule controls emissions of volatile organic compounds (VOCs) from in-situ combustion well vents. This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to regulate VOC emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In addition, the final action on this rule serves as a final determination that the finding of

nonsubmittal for this rule has been corrected and that on the effective date of this action, any Federal Implementation Plan (FIP) clock is stopped. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This final rule is effective on May 5, 1995 unless adverse or critical comments are received by April 5, 1995. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

**ADDRESSES:** Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A-5-3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123-1095.

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, suite 200, Fresno, CA 93721.

**FOR FURTHER INFORMATION CONTACT:** Mae Wang, Rulemaking Section (A-5-3), Air and Toxics Division, U.S.

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1200.

**SUPPLEMENTARY INFORMATION:**

**Applicability**

The rule being approved into the California SIP is SJVUAPCD Rule 4407, In-Situ Combustion Well Vents. This rule was submitted by the California Air Resources Board (CARB) to EPA on July 13, 1994.

**Background**

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Joaquin Valley Area which encompassed the following eight air pollution control districts (APCDs): Fresno County APCD, Kern County