

Postal Rate Commission

§ 3001.67b

(4) The desired duration of the experiment as indicated by the Postal Service in its request and, specifically, in its proposed Domestic Mail Classification Schedule language.

(c) In the case of a proposal denominated as an experiment by the Postal Service, the Commission will entertain representations by parties to the case that the proposal should not be considered as an experiment and should follow the normal mail classification change procedures. The Commission does not contemplate entertaining representations by parties to a case filed under the normal procedures that the matter should be treated as an experiment under this section and §§ 3001.67a through 3001.67d.

[45 FR 83226, Dec. 18, 1980]

§ 3001.67a Requests involving experimental changes—procedures for limitation of issues.

(a) The purpose of this section is to provide a mechanism for the limiting of issues on which a trial-type hearing is required. It recognizes that in a proceeding properly designated as experimental under § 3001.67, some issues will be appropriate for determination on the basis of a less formal type of presentation and counterpresentation. It is the policy of this section to identify these issues at the earliest possible time and to employ less formal procedures to resolve them where the interests of expedition will be served thereby.

(b) At the earliest possible time following the filing of a request designated as experimental, or following the determination of any question as to whether such designation is proper, holding that such designation is proper, the parties will be required to file statements of the issues they perceive in the case. Each such statement shall designate with particularity those issues the party believes to be or involve genuine issues of material fact. Any party designating an issue as a genuine issue of material fact wholly or in part because of the Postal Service's statement that data called for by § 3001.64 are unavailable shall comply with the requirements of § 3001.67b. Responsive statements will be permitted

within 10 days of the filing of initial statements.

(c) Following the exchange of statements of issues called for by paragraph (b) of this section, the Commission will determine which issues constitute genuine issues of material fact and concomitantly order the limitation of trial-type hearing procedures to those issues. The order issued for this purpose will also set forth to the greatest extent feasible the procedures to be followed in disposing of issues not found to be genuine issues of material fact. According to the nature of the individual issue, these procedures may include.

(1) Filing of written comments and reply comments;

(2) Conference procedures, followed or accompanied by the filing of written comments and reply comments; and

(3) Briefing and argument.

In determining the procedures to be followed with respect to issues not requiring a trial-type hearing, the Commission will seek to accommodate the needs of expedition and procedural fairness in accordance with section 3624(b) of the Act.

[45 FR 83226, Dec. 18, 1980]

§ 3001.67b Requests involving experimental changes—unavailability of data.

If the Postal Service believes that data required to be filed under § 3001.64 are unavailable, it shall explain their unavailability as required by § 3001.64(a)(2)(i), (ii), and (iv). In particular, if the experimental character of the request bears on the unavailability of the data in question, the Postal Service shall explain in detail the nexus between these circumstances. A satisfactory explanation of the unavailability of data will be grounds for excluding from the proceeding a contention that the absence of the data should form a basis for rejection of the request, unless the party desiring to make such contention (a) demonstrates that, having regard to all the facts and circumstances of the case, it was clearly unreasonable for the Postal Service to propose the change in question without having first secured the data which are unavailable, or (b) demonstrates other compelling