

(2) *Effect of termination or invalidation.* Termination of a special preferred QEF election by the Commissioner will be effective on the first day of the shareholder's first taxable year following the last taxable year of the shareholder for which the requirements of the election are satisfied. For purposes of sections 1291 through 1297 and the regulations thereunder, the holding period of qualified preferred shares subject to an election that has been terminated will be treated as beginning on the effective date of the termination. A shareholder that has made an election that is invalidated by the Commissioner will be treated for purposes of sections 1291 through 1297 and the regulations thereunder as if the shareholder never made the election.

(h) *Effective date.* An election under this section may only be made with respect to qualified preferred shares that are issued after the date that is 30 days after the date of publication of this document as a final regulation.

Margaret Milner Richardson,
Commissioner of Internal Revenue.

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POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM97-1; Order No. 1146]

Rules of Practice and Procedure

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes to amend its rules of practice and procedure to clarify what it requires under certain circumstances. Where the Postal Service files a request that proposes to change rates or fees and, at the same time, proposes to change established cost attribution principles, the proposed amendment would require the Postal Service's request to estimate the impact of its proposed changes in rates or fees separately from the impact of its proposed changes in attribution principles. The purpose of the proposed amendment is to require that such a request give other parties and the Commission adequate and timely notice of the impact of the rate proposals that it contains, in order not to delay evaluation of those proposals.

DATES: Comments must be filed by January 31, 1997.

ADDRESSES: Comments and correspondence should be sent to Margaret Crenshaw, Secretary of the

Commission, 1333 H Street, NW, Suite 300, Washington, D.C., 20268-0001.

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

SUPPLEMENTARY INFORMATION: The basic purpose of Rule 54 of the Commission's Rules of Practice [39 CFR 3001.54] is to require the Postal Service to include with its request for changes in rates the threshold level of cost, volume, and revenue information necessary to support its direct case, so that its request can be evaluated within the tight deadline that the Act imposes. Most Rule 54 requirements also apply to Postal Service requests for classification changes, if such changes affect rates. See 39 CFR 3001.64. Evaluating the consistency of proposed changes in rates with the pricing standards of 39 USC 3622, requires accurate estimates of their impact. For this reason, Rule 54(a) requires the Postal Service to include with a request for changes in rates enough information to "fully inform" the Commission and the parties of the "significance and impact" of the proposed changes.

A Postal Service request for changes in rates cannot "fully inform" the Commission and the parties of its "significance and impact" if it does not show the effect that its proposed rates would have on the relative institutional cost burdens that the affected subclasses of mail would bear. The customary measure of relative institutional cost burdens is "cost coverage," i.e., the ratio of subclass revenue to subclass attributable cost. To satisfy Rule 54(a), therefore, the Postal Service's request must demonstrate the impact that its proposed rates would have on cost coverages. Docket No. MC96-3 is the most recent Postal Service request that involves proposals to significantly increase Postal Service revenues and rates. The Postal Service's Rule 54 cost presentation in that docket, however, did not satisfy this objective of Rule 54(a). It estimated only the combined effect on subclass attributable costs and cost coverages of its proposed changes in rates and its proposed changes in attribution principles. It left the task of distinguishing between these effects to other parties and the Commission.

It is not properly the Commission's or the parties' burden to disentangle the effects of the Postal Service's proposed changes in rates from the effects of its proposed changes in attribution principles, in order to evaluate the Postal Service's proposals. As the proponent of change, the Postal Service has the burden of going forward. See 5 USC 556(d), 39 USC 3622, 39 CFR

3001.53 and 3001.54. If the Postal Service's request confounds the effects of its proposals to change rates and its proposals to change cost attribution principles, its request does not provide timely and effective notice of the significance of either.

An important criterion for evaluating the significance and impact of proposed changes in rates is the effect that they would have on cost coverages. Because the attribution principles applied determine the amount of costs that are attributed to subclasses, they, too, affect cost coverages. When a Postal Service request combines proposals to change rates with proposals to change established cost attribution principles, mailers and competitors are not able to determine from the Postal Service's request how its proposed changes in attribution principles would affect their interests until they calculate for themselves what cost coverages would be at the Postal Service's proposed rates, under established attribution principles. For many potential participants in our hearings, performing this elaborate set of calculations is a formidable and time consuming task. It can defeat, or seriously delay, their ability to determine how the Postal Service's proposals would affect them, and whether they should intervene to support or oppose them. This is not consistent with the objective of Rule 54(a), which is to provide parties and the Commission with enough information from the outset of the proceeding to evaluate the significance and impact of the Postal Service's proposals.

To ensure timely and effective notice of the impact of Postal Service requests that propose to simultaneously change rates and attribution principles, the Commission proposes to amend Rule 54(a). The proposed amendment would require the Postal Service to include with such a request an alternate attributable cost presentation that would calculate attributable costs and cost coverages at Postal Service proposed rates according to established attribution principles. A cost presentation that holds attribution principles constant is necessary to isolate the effect of the Postal Service's proposed changes in rates on cost coverages. The appropriate set of attribution principles to use as a baseline is the set that was used to establish current rates. That set defines the status quo, is most consistent with historic attributable cost and cost coverage estimates, and has the weight of precedent.

As used in the proposed amendment to Rule 54(a), the phrase "attribution

principles" is intended to refer to theories of cost causation (e.g., volume variability, exclusivity), models of cost causation (e.g., econometric models of volume variability), the identity and role of cost drivers (e.g., shape, coverage), and the identity and role of distribution keys (e.g., pieces, pound/miles). It is not intended to encompass the detailed mechanics of implementing these principles if proposed adjustments in implementation do not conflict with existing use of established attribution principles, as defined above. Nor are attribution principles intended to encompass apparent errors in arithmetic, spreadsheet mechanics, or documentation that do not raise issues as to the theory or logic by which costs are attributed to subclasses.

To estimate attributable costs and cost coverages using established attribution principles, i.e., those applied by the Commission in the most recent general rate proceeding in which its recommended rates were implemented, the Postal Service would not have to replicate in exact detail every calculation that the Commission used to estimate the attributable cost relationships that underlie current rates. Adjustments are often necessary to account for new circumstances such as operational changes or intervening rate and classification changes. A "best efforts" attempt to follow the same basic attribution principles is all that would be required to satisfy the objective of Rule 54(a).

Estimating the impact of its proposed rates on costs according to the attribution principles that the Commission applies should impose only a modest burden on the Postal Service. It has a large technical staff with the specialized background required to develop a comprehensive estimate of Postal Service attributable costs, and has previously demonstrated its ability to accurately attribute costs according to established principles.

As previously noted, this task can be formidable and time consuming for other participants. Developing a comprehensive estimate of subclass attributable costs at the Postal Service's proposed rates can be time consuming for the Commission as well. Although its staff has the specialized technical background required, it faces some of the same obstacles that the parties face in developing a comprehensive estimate of Postal Service attributable costs. For example, in recent proceedings essential databases have not been provided by the Postal Service in a form that could be read and manipulated by conventional data processing techniques until after a lengthy dialogue between Commission

and Postal Service technical staff had taken place. For these reasons, a Postal Service request that does not distinguish the impact of its proposed rate changes on cost coverages from the impact of its proposed changes in attribution principles on cost coverages, and shifts this burden to other parties or the Commission, can jeopardize the opportunity of other parties and the Commission to evaluate the Postal Service's proposals within the tight statutory deadline imposed by 39 USC § 3624(c)(1).

In Docket No. MC96-3, the Commission ordered the Postal Service to separately show the effect of its proposed rate changes and the effect of its proposed changes in attribution principles on cost coverages by calculating costs according to the principles upon which current rates are based. See PRC Order Nos. 1120 and 1126. The Postal Service refused. It justified its refusal, in part, by asserting that showing only the combined effect fully complied with the filing requirements of Rule 54. It argued that the only relevant requirement in Rule 54 is found in paragraphs (f)(1) and (f)(2), which require it to present total actual and estimated accrued costs for various years. It asserted that no obligation could be inferred from Rule 54 to estimate costs or cost coverages by any specific method. See Docket No. MC96-3, Motion of the United States Postal Service for Reconsideration of Order No. 1120, and Partial Response (June 28, 1996) at 9-10; Opposition of United States Postal Service to Office of the Consumer Advocate Motion Under 39 USC 3624(c)(2) for Day-to-Day Extensions (August 22, 1996) at 6-7. It argued as though complying with paragraphs (f)(1) and (f)(2) of Rule 54 satisfies its obligation to support its request with cost information, regardless of the proposed changes that its request contains.

This fails to recognize that Rule 54(a) requires information that is sufficient to meet specific, listed objectives. One listed objective is to have the Postal Service's request give notice of the impact of proposed changes in rates. The kind of information that will meet this objective will depend on the nature of the rate changes that are proposed and the context in which they are proposed. Where the Postal Service proposes changes in rates with significant revenue effects, and at the same time proposes changes to established attribution principles that affect estimates of subclass attributable costs, the impact of its rate proposals on cost coverages cannot be separately identified and evaluated. To allow the

impact of its rate proposals to be separately identified and evaluated, and thereby meet the objective of Rule 54(a), the Postal Service must include with its request an alternative estimate of attributable costs and cost coverages at its proposed rates, under established attribution principles.

Because the Postal Service has construed Rule 54 to relieve it of such an obligation, it is necessary to clarify the Rule. The proposed amendment would apply if the Postal Service's request simultaneously proposes changes in rates and changes in the attribution principles upon which current rates are based. In that circumstance, it would require the Postal Service to include with its request an alternative estimate of attributable costs and cost coverages at its proposed rates that is consistent with the attribution principles upon which current rates are based.

In determining the form that such an amendment should take, the Commission considered rules of other regulatory agencies that have the same purpose as the amendment proposed here. Federal Energy Regulatory Commission (FERC) rule § 154.301 [18 CFR 154.301] is an analog of the Postal Rate Commission's Rule 54. It provides

A natural gas company filing for a change in rates or charges must be prepared to go forward at a hearing and sustain, solely on the material submitted with its filing, the burden of proving that the proposed changes are just and reasonable. The filing and supporting workpapers must be of such composition, scope, and format as to comprise the company's case-in-chief in the event that the change is suspended and the matter is set for hearing. *If the change in rates or charges presented are not in full accord with any prior Commission decision directly involving the filing company, the company must include in its working papers alternate material reflecting the effect of such prior decision.* (Emphasis added.)

If applied in the context of postal ratemaking, such a rule would require an alternate attributable cost presentation showing the effect of departing from basic cost attribution principles applied by the Commission in prior proceedings. But this requirement is framed so broadly that it is capable of being construed to require an alternate cost presentation where one is not warranted.

It is possible, for example, that a rule framed this broadly could be construed to require alternate presentations to show the effect of Postal Service corrections of apparent arithmetic, documentation, or presentation errors that do not involve questions of the theory or logic by which costs are attributed to subclasses. Illustrations of

these would be the alleged errors in the implementation procedures applied by the Commission in Docket No. R94-1 that the Postal Service cited during the post-hearing phase of that docket. See Comments of USPS in Response to Order No. 1039 (January 9, 1995) at 5, fn. 2, and Reply Comments of USPS in Response to Order No. 1041 (February 27, 1995) at 6. These alleged errors are discussed at paragraphs 263-74 of the Commission's Opinion and Further Recommended Decision in Docket No. R94-1. It is also possible that a rule framed this broadly could be construed to require alternate workpapers to show the effect of Postal Service corrections to apparent errors in the Commission's spreadsheet mechanics. An illustration of this would be the error cited at page 12 of the Governors Decision returning the Commission's recommended decision in R94-1 for reconsideration and discussed at paragraphs 264-65 of the Commission's Opinion and Further Recommended Decision.

Requiring the Postal Service to file alternative workpapers showing the effect of correcting such apparent errors on subclass attributable costs and cost coverages would be unwarranted. This is especially true where, as with the illustrations discussed above, their impact on subclass attributable costs is inconsequential. See the Commission's Opinion and Further Recommended Decision in Docket No. R94-1 at paragraph 260.

A number of public service commissions at the state and local level also have procedural rules with the same objective as the Commission's proposed amendment to Rule 54. An example is § 200.2 of the Municipal Regulations for the Public Service Commission of the District of Columbia [15 DCMR § 200.2 (1991)]. That rule provides:

Whenever, in a rate change application, a party proposes to change the ratemaking principles adopted in its most recent rate case, the party shall also file with its § 200.1 filing [an application for changed rates] a statement describing each proposed change in the *ratemaking principles* adopted by the Commission in the applicant's last general rate proceeding, *showing the effect of each such change upon the applicant's request if no such changes were made.* (Emphasis added.)

This alternate filing requirement is worded more narrowly than the Federal Energy Regulatory Commission rule referenced above. If applied in the context of postal ratemaking, it would imply a narrower duty than the FERC rule would imply. Rather than require an alternate attributable cost presentation whenever a Postal Service

request for changes in rates is not "in full accord" with prior Commission recommended decisions, it would require an alternate presentation whenever a Postal Service request proposed a change in the attribution "principles" adopted in the most recent Commission recommended decision. It is therefore less likely than the FERC rule to be construed as extending to minor adjustments in the mechanics of implementing those principles that do not warrant alternate cost presentations, such as those needed to conform to new facts, or corrections of inconsequential mathematical or documentation errors.

Applied to postal ratemaking, a rule of this scope would allow the Postal Service to modify a particular procedure that the Commission uses when it implements established attribution principles. It would not require an alternate cost presentation as long as the modification is consistent with those principles. For example, it would not require the Postal Service to ignore changes that might have occurred since the Commission's most recent recommended decision in such things as how mail is handled, how employees are classified, or how subclasses of mail are defined. It would allow the Postal Service to adapt Commission procedures to accommodate such changes without being required to file an alternate cost presentation. Ordinarily, the need to exercise some judgment in adapting the Commission's implementation procedures would not activate the rule, unless the judgment exercised were in some way inconsistent with established attribution principles.

Applied in the postal ratemaking context, the D.C. Public Service Commission rule would also be narrower than the FERC rule with respect to the reference point from which proposed changes in attribution principles would be measured. Rather than make the attribution principles adopted in any prior Commission recommended decision the reference point, the D.C. Public Service Commission rule would make attribution principles applied in the most recent general rate case the reference point. This would avoid any potential ambiguity as to what attribution principles are "established."

The D.C. Public Service Commission rule appears to be a more suitable model for the Commission's proposed amendment than the FERC rule, because it would be less amenable to an overly broad construction, and would employ a more focused reference point from which departures from established attribution principles would be

measured. The Commission's proposed amendment to Rule 54(a) is similar to that rule.

Complying with this amended rule would not preclude the Postal Service from proposing changes to established attribution principles. The alternate attributable cost and cost coverage presentation that amended Rule 54(a) would require would apply only when a Postal Service request for changes in rates proposes simultaneous changes to established attribution principles. In providing the alternate presentation, the Postal Service is not required to affirm the theoretical soundness or the practical wisdom of the established attribution principles. It is merely required to affirm that it has provided the parties and the Commission with its best estimate of what the consequences of its proposed changes in rates would be if they were measured by established attribution principles.

Under the amended rule, the reference point for determining proposed changes in established attribution principles would be the attribution principles followed by the Commission in the most recent general rate proceeding in which its recommended rates were implemented. The proposed amendment recognizes that these principles were arrived at following litigation during that or prior Commission proceedings and have survived any appellate review that might have been conducted under 39 U.S.C. § 3628. Such principles are entitled to the weight of precedent, and the Commission may apply those principles in subsequent proceedings without additional litigation. It is not the purpose of the proposed amendment to require the Postal Service to provide a record basis for applying attribution principles previously litigated and approved. The purpose of the proposed amendment is to provide the Commission and other parties with timely notice of the impact of the Postal Service's proposed changes in rates.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, the PRC hereby certifies that this notice of proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

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

PART 3001—[AMENDED]

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.

§ 3001.54 [Amended]

2. Section 3001.54(a)(1) is revised to read as follows:

(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 or fees and to show that the changes or adjustments in rates or fees are in the public interest and in accordance with the policies of the Act 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 (r) of this section. If a request for changes in rates or fees proposes to change the cost attribution principles applied by the Commission in the most recent general rate proceeding in which its recommended rates were implemented, the Postal Service shall include with its request for changes in rates or fees a statement describing each change that it proposes in those cost attribution principles, and shall show what the effect on its request would be if its request did not propose such changes. 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.

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Issued by the Commission on December 17, 1996.

Margaret P. Crenshaw,
Secretary.

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ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 50**

[AD–FRL–5669–8]

RIN 2060–AE57, AE66 and AH09

National Ambient Air Quality Standards for Ozone and Particulate Matter

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of public hearings.

SUMMARY: The EPA is announcing public hearings on the proposed revisions to the national ambient air quality standards (NAAQS) for ozone and particulate matter as well as the proposed reference method (Appendix L, 40 CFR part 50) and the proposed requirements for designation of reference and equivalent methods for monitoring PM_{2.5}, and ambient air quality surveillance for particulate matter that were published on December 13, 1996 (61 FR 65715, 65637, and 65779, respectively). These public hearings are the opportunity for the oral presentation of data, views, or arguments required by section 307(d)(5) of the Clean Air Act.

DATES: Public hearings on the proposed ozone and particulate matter NAAQS decisions will be held on January 14 and 15, 1997 at the locations identified below. The record of each hearing will be held open for 30 days to allow for submission of any rebuttal or supplementary information. The January 14, 1997 hearings will begin at 10:30 a.m. (local time) and end at 8:00 p.m. (local time).

The January 15, 1997 hearings will begin at 9:00 a.m. (local time) and end at 3:00 p.m. (local time). The public hearing on the proposed reference method (Appendix L) and the proposed requirements for designation of reference and equivalent methods for monitoring PM_{2.5} and air quality surveillance for particulate matter will be held on January 14, 1997 beginning at 9:00 a.m. (local time) and ending at 5:00 p.m. (local time). As previously announced, the public comment period for the proposed decisions will close on February 18, 1997. This comment period applies to all public comments, written or oral, including any made via the telephone hotline and electronic mailboxes established for this purpose.

ADDRESSES: Submit written comments (duplicate copies preferred) to Office of Air and Radiation Docket and Information Center (6102), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Comments on the proposed revisions to the ozone NAAQS should be submitted to the above address, Attention: Docket No. A–95–58. Comments on the proposed revisions to the particulate matter NAAQS (including Appendix L) should be submitted to the above address, Attention: Docket No. A–95–54. Comments on the proposed requirements for designation of reference and equivalent methods for monitoring PM_{2.5} and ambient air

quality surveillance for particulate matter should be submitted to the above address, Attention: Docket No. A–96–51.

Public hearings on the proposed revision to the ozone and particulate matter NAAQS will be held at the following locations:

- (1) Westin Copley Place, 10 Huntington Avenue, Boston, MA 02116, 617–262–9600
- (2) Midland Hotel, 172 West Adams at LaSalle, Chicago, IL 60603, 312–332–1200
- (3) Red Lion Hotel, 255 South West Temple Street, Salt Lake City, UT 84101, 801–328–2000

The public hearing on the proposed reference method (Appendix L, 40 CFR part 50), and the proposed requirements for designation of reference and equivalent methods for monitoring PM_{2.5} and ambient air quality surveillance for particulate matter (40 CFR parts 53 and 58) will be held at: Omni Durham Hotel, 201 Foster Street, Durham, NC 27701, 919–683–6664.

Rebuttal or supplementary information or other written statements for the record of any public hearings should be submitted (duplicate copies preferred) to the appropriate docket at the address specified above for the submission of written comments.

FOR FURTHER INFORMATION CONTACT: Ozone NAAQS—Dr. David McKee, MD–15, Air Quality Strategies and Standards Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone: (919) 541–5288. Particulate Matter NAAQS—Ms. Patricia Koman at the above address, telephone: (919) 541–5170. PM_{2.5} Reference Method, Reference and Equivalent Methods, and Ambient Air Surveillance for Particulate Matter—Mr. Neil Frank, MD–14, Emissions, Monitoring, and Analysis Division, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone: (919) 541–5560.

SUPPLEMENTARY INFORMATION:**Court Order on Particulate Matter NAAQS**

The court order entered in *American Lung Association v. Browner*, CIV–93–643–TUC–ACM (D. Ariz., October 6, 1994), has been modified to change the date specified for the close of the public comment period on the proposed decision on particulate matter NAAQS from January 29, 1997 to February 18, 1997. The date for final decision on the